कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421.
PHONE : 02838-271426/271163 FAX :02838-271425
E-mail id- adj-mundra@gov.in

| | | |
|---|---|---|
| A | **FILE NO.** फ़ाइल संख्या | GEN/ADJ/ADC/1240/2024-Adjn-O/o Pr Commr-Cus-Mundra |
| B | **OIO NO.** आदेश संख्या | MCH/ADC/AKM/397/2025-26 |
| C | **PASSED BY** जारीकर्ता | **Amit Kumar Mishra,** Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा। |
| D | **DATE OF ORDER** आदेश की तारीख | 25.11.2025 |
| E | **DATE OF ISSUE** जारी करने की तिथि | 02.12.2025 |
| F | **SCN No. & Date** कारण बताओ नोटिस क्रमांक | GEN/ADJ/ADC/1240/2024-Adjn-O/o Pr Commr-Cus-Mundra dated 10.07.2024 |
| G | **NOTICEE/ PARTY/ EXPORTER** नोटिसकर्ता/पार्टी/आयातक | i. M/s JJF Castings Ltd.( IEC No. 0515034517)<br>ii. Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited<br>iii. Sh. Amit Kithania, Employee of M/s Jay Ushin Limited<br>iv. Sh. Inder Bhojwani, CHA, Partner in M/s D.L. Shipping Services<br>v. Sh. Sagar Kamlesh Thakker, CHA, Partner in M/s B.N. Thakker and Sons |
| H | **DIN/**दस्तावेज़ पहचान संख्या | 20251271MO0000720341 |

1. यहआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**"सीमाशुल्कआयुक्त) अपील(,**
**चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,**
**नवरंगपुरा,अहमदाबाद 380 009"**
**"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,**

**NAVRANGPURA, AHMEDABAD-380 009."**

3. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

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

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

**5.** अपील ज्ञापन के साथ ड्यूटि /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

**6.** अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

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**BRIEF FACTS OF THE CASE**

Specific intelligence was gathered by Directorate of Revenue Intelligence, Mumbai Zonal Unit that a Container No. NIDU2204365 destined for Polaris Logistics Park Private Limited-CFS, CWC Logistics Park, Section-10, Dronagiri Node, Navi Mumbai-400 707, contained mis-declared goods and required to be examined. Accordingly, the Container No. NIDU2204365 was kept on hold for conducting the examination.

**2.** The Bill of Lading No. AHLJEANSA23016 dated 28.06.2023 [RUD NO. 1] filed for the said container indicated the cargo as '*Parts of Brakes (M.V. Parts) Calliper Pin Caterpillar set of 3 pcs (Model 797)*' with the Consignee as "M/s M.F.

International [IEC No. 0307070221], Sea Coast CHS, CBD-Belapur, Navi Mumbai-400614", the consignor as 'M/s Llyod & Traf Global FZCO, DSO IFZA, Dubai Silicon Oasis, Dubai' and the delivery agent/shipping liner as "M/s Aahil Shipping & Logistics Pvt. Ltd., CBD-Belapur, Navi Mumbai-400614". The details of the imported consignment are as under:-

**IMPORT DETAILS TABLE 'A'**

| B/L No. | Description | Qty | Bottle Seal No. |
|---|---|---|---|
| AHLJEANSA23016 //28.06.2023 | 1 x 20 GP FCL Parts of Brakes (M.V. Parts) Calliper Pin Caterpillar set of 3 pcs (Model 797) | 2850 Boxes loaded on 25 Pallets (114 Boxes on each Pallet) | 101846 |

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**3. EXAMINATION OF THE CONTAINER:-**

**3.1** Container No. NIDU2204365 was examined on 15.07.2023 in the presence of two panchas, Shri Nasir Hussain, Manager (Import), M/s Aahil Shipping & Logistics Pvt. Ltd., the shipping liner of the import consignment and Shri Mohammed Parvez Rehmatullah Shaikh, Proprietor of M/s M.F. International, the Importer/IEC holder of the cargo, under a panchanama drawn on the spot [RUD NO. 2]. The cargo in the Container was found to be proper as declared in the Bill of Lading No. AHLJEANSA23016 dated 28.06.23.

**3.2** On enquiry with Shri Nasir Hussain, Manager (Import) of M/s Aahil Shipping & Logistics Pvt. Ltd., it was informed that Container No. NIDU2204365 has been received as Return On Board (ROB) under the same bottle seal. He informed that the said cargo was previously exported from Mundra Port, Gujarat and the exporter was M/s JJF Castings Ltd., Bhiwadi, Rajasthan [IEC No. 0515034517]. He also submitted the export-related documents, the details of which are as under:-

–

**EXPORT DETAILS TABLE 'B'**

| Sr. No. | Bill of Lading No | Bill of Lading Date | Container No. | S/b No./ Date | Value | Qty | INR |
|---|---|---|---|---|---|---|---|
| 1 | AHLMUNJEA23016 | 29.04.2023 | NIDU2204365 | 9277085/ 13.04.23 | (USD) 741000 | 2850 | 6,00,95,100 |
| 2 | AHLMUNJEA23021 | 11.05.2023 | EOLU2227578 | 9692104/ 01.05.23 | (AED) 2730300 (AED) 546060 | 2850 570 | 5,93,84,025 1,18,76,805 |
| 3 | AHLMUNJEA23050 | 05.06.2023 | CLHU2968913 | 1174464/ 20.05.23 | (AED) 2293452 (AED) 982908 | 2394 1026 | 4,98,82,581 2,13,78,249 |
| – | – | – | – | – | – | **9690** | **20,26,16,760** |

–

**3.3** However, the consignee and the value mentioned on the subject Invoice/Bill of Lading differs, even though it was ROB. The consignee and value mentioned were M/s M.F. International, Sea Coast CHS, CBD Belapur, Navi Mumbai & USD ($) 15105, respectively. Further, being ROB,

the consignment should have gone to the Exporter who had exported the goods/cargo and should not have been delivered to any third person/entity. In the subject case, the exporter was M/s JJF Castings Ltd., who had exported the consignment

**3 . 4** Enquiry with M/s M.F. International, the impugned importer of the consignment, revealed that they have never given consent for the import of the goods covered under Bill of Lading No. AHLJEANSA23016 dated 28.06.2023 to M/s Llyod & Traf Global FZCO, Dubai, the supplier of the consignment.

**3.5** Prima facie, it appears that the goods exported earlier have been grossly overvalued and inflated at the time of export and were, subsequently, attempted to be illegally imported into India without consent of the impugned importer M/s M.F. International. Hence, they were seized under Section 113 r/w Section 118 and Section 120 of the Customs Act, 1962, vide Seizure Memo dated 20.10.2023 [RUD No. 3] under the reasonable belief that they are liable to confiscation under the provisions of Customs Act, 1962.

**3 . 6** Thereafter, Container No. NIDU2204365 was examined twice on 21.07.2023 and 25.08.2023 under two different panchanamas wherein, the Company representative of M/s JJF Castings Ltd., M/s M.F. International and Chartered Engineer were also present.

**3.7** Thus, the document-wise details of the consignment exported by M/s JJF Castings Ltd. and the cargo which was imported in the name of M/s M.F. International, clearly show that the imported consignment was ROB. The details are as under:-

**TABLE 'C'**

| EXPORT | | | | | IMPORT | | | |
|---|---|---|---|---|---|---|---|---|
| **B/L No.** | **S/B No.** | **Container No.** | **Bottle Seal No.** | **Description** | **B/L No. [No B/E Filed]** | **Bottle Seal No.** | **Container No.** | **Description** |
| AHLMUNJEA23016 dtd. 29.04.2023 | 9277085 dtd. 13.04.23 | NIDU2204365 | 101846 | 1 x 20 GP FCL Parts of Brakes (M.V. Parts) Calliper Pin Caterpillar set of 3 pcs (Model 797) 2850 Boxes loaded on 25 Pallets (114 Boxes on each Pallet) | AHLJEANSA23016 dtd. 28.06.2023 1 | 101846 | NIDU2204365 | 1 x 20 GP FCL Parts of Brakes (M.V. Parts) Calliper Pin Caterpillar set of 3 pcs (Model 797) 2850 Boxes loaded on 25 Pallets (114 Boxes on each Pallet) |

3.8 It can be seen that in both the Bills of Lading, Container No., Seal

No., description of goods and the weight of the cargo are the same, the only difference being, at the time of export, the goods have been exported by M/s JJF Castings Limited to M/s Lloyd and Traf Global FZCO and at the time of import, the said goods have been imported by M/s MF International from M/s Lloyd and Traf Global FZCO.

**3.9** During the examination of the goods in Container No. NIDU2204365, it was found that they were packed distinctly in different boxes compositely containing three (03) items viz. big gear, small gear and a shaft.

**4.** During the course of the investigation, it was observed that M/s JJF Castings Limited had obtained several EPCG Licences for the purpose of importing capital goods into India against which they had to fulfil export obligation within a specific time frame.

**5. IMPORT OF GOODS UNDER EPCG SCHEME:-**

**5.1** During the course of the investigation, it was learnt that five (05) EPCG Licences had been issued to M/s JJF Castings Limited, the details of which are as under:

**TABLE 'D'**

| Sr. No. | EPCG License No. | Duty amount saved (in Rs.) | Export Obligation | Last date for fulfilment of Export Obligation |
|---|---|---|---|---|
| **01** | 0530166482/ 08.12.2015 | 2,14,55,036/- | Rs. 12,87,30,216/- ($1969857.93) i.e. 6 times of the duty saved on import of capital goods on FOB basis. | 08.12.2023 (amended) |
| **02** | 0530166483/ 08.12.2015 | 3,88,88,284/- | Rs. 27,99,95,645/- ($42,26,349.36) i.e. 6 times of the duty saved on import of capital goods on FOB basis. [amended] | 08.12.2023 (amended) |
| **03** | 0530166484/ 08.12.2015 | 3,69,69,055/- | Rs. 22,18,14,330/- ($3394251.41) i.e. 6 times of the duty saved on import of capital goods on FOB basis. | 08.12.2023 (amended) |
| **04** | 0530166485/ 08.12.2015 | 3,19,86,370/- | Rs. 19,19,18,220/- ($2936774.59) i.e. 6 times of the duty saved on import of capital goods on FOB basis. | 08.12.2023 (amended) |
| **05** | 0530167259/ 28.03.2016 | 14,68,109/- | Rs. 88,08,654/- ($127754.22) i.e. 6 times of the duty saved on the import of capital goods on FOB basis. | 28.09.2024 (amended) |

**5.2** The Export Obligation has to be fulfilled over a specified period in the following manner:-

| The period from the date of issue of Authorization | Minimum export obligation to be fulfilled |
|---|---|
| Block 1st to 4th year | 50% |
| | |

| | |
|---|---|
| Block 5th and 6th year | 50% |

For zero duty EPCG scheme only one extension for a period of 2 years for fulfilment of export obligation is available. In the instant case, the exporter – M/s JJF Casting Ltd. has availed the extension of 2 years i.e. the licences have been amended and the export obligation period has been changed from 6 years to 8 years in respect of licences mentioned at Sr. No. 1 to 4 in Table – D above. It is to be mentioned here that, except in r/o EPCG licence No. 0530167259/28.03.2016 (Sr. No. 5 of Table D) for which, the export obligation period is extended till 28.09.2024, the rest of the EPCG licences (Sr. No. 1 to 4 of Table D), the export obligation period was till 08.12.2023, which is over.

**5.3** The details of the exports made by M/s JJF Castings Ltd. till date from Mundra Port in respect of the afore-mentioned licences are as under:

| Sr. No. | Bill of Lading No. | Bill of Lading Date | Container No. | S/b No./ Date | Value | Qty | INR | Licence Nos. endorsed on the S/B's |
|---|---|---|---|---|---|---|---|---|
| 1 | AHLMUNJEA23016 | 29.04.2023 | NIDU2204365 | 9277085/ 13.04.23 | (USD) 741000 | 2850 | 6,00,95,100 | 0530166482 dtd. 08.12.2015 |
| 2 | AHLMUNJEA23021 | 11.05.2023 | EOLU2227578 | 9692104/ 01.05.23 | (AED) 2730300 (AED) 546060 | 2850 570 | 5,93,84,025 1,18,76,805 | 0530166482 dtd. 08.12.2015 0530167259 dtd. 28.03.2016 |
| 3 | AHLMUNJEA23050 | 05.06.2023 | CLHU2968913 | 1174464/ 20.05.23 | (AED) 2293452 (AED) 982908 | 2394 1026 | 4,98,82,581 2,13,78,249 | 0530166482 dtd. 08.12.2015 0530166485 dtd. 08.12.2015 |
| | | | | | | **9690** | **20,26,16,760** | |

**5.4** The issue pertaining to fraudulently availing the benefits of EPCG licences and non-fulfilment of Export Obligation is being dealt with separately, for which separate SCNs will be issued. The same is not the subject matter of the present Notice.

**6. <u>RECORDING OF STATEMENTS:</u>**

Further, the facts of statements of persons whose statements were recorded have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under:-

(i) Statement of Shri Mohammed Parvez Rehmatullah Shaikh, Proprietor & IEC holder of M/s M.F. International was recorded on 18.07.2023 under section 108 of the Customs Act.

(ii) Statement of Shri Nasir Hussain, Manager-Import of M/s Aahil Shipping Pvt. Ltd was recorded on 19.07.2023 under section 108 of the Customs Act.

(iii) Statement of Shri Amit Kithania, CFO - M/s Jay Ushin Ltd. was recorded on 21.07.2023, 27.09.2023 and 11.03.2024 under section 108 of the Customs Act.

(iv) Statement of Shri Moatasim Karjikar, brother-in-law of Sh. Mohd. Parvez Rehmatullah, was recorded on 24.07.2023 under section 108 of the Customs Act.

(v) Statement of Shri Gaurav Kumar representative of M/s A.K. Engineering, was recorded on dated 23.11.2023 under section 108 of the Customs Act.

(vi) Statement of Shri Sunny Ahuja, Cost Accountant was recorded on 15.12.2023 under section 108 of the Customs Act.

(vii) Statement of Shri Hitesh Tahiliani, the mediator between Shipping Liner and CHAs was recorded on 09.02.2024 under section 108 of the Customs Act.

(viii) Statement of Shri Inder Bhojwani, Partner of M/s D.L. Shipping Services, Custom House Agent, was recorded on 15.02.2024 under section 108 of the Customs Act.

(ix) Statement of Shri Sagar Kamlesh Thakker, Partner of M/s B.N. Thakker and Sons, Custom House Agent was recorded on 21.02.2024 under section 108 of the Customs Act.

(x) Statement of Shri Anil Gupta, Assistant Manager, M/s Jay Ushin Limitedwas recorded on 23.02.2024 under section 108 of the Customs Act.

(xi) Statement of Shri Bharat Bhushan Mathur, Director, M/s JJF Castings Limited was recorded on 15.03.2024 under section 108 of the Customs Act.

(xii) Statement of Shri Gautam, Proprietor of M/s Gautam Udyog was recorded on 01.04.2024 under section 108 of the Customs Act.

**7. <u>OTHER CORRESPONDENCES & EVIDENCES</u>**:-

**7.1** An email query was raised by M/s MF International to M/s Aahil Shipping & Logistics Pvt. Ltd., India & UAE, which was replied to by Sh. Zahid on behalf of the UAE counterpart of M/s Aahil Shipping & Logistics, wherein they have stated that M/s Llyod & Traf (supplier) had booked the container from UAE to Nhava Sheva and the said shipment was under CIF. The details of the consignee were provided by Sh. Moatasim Karjikar and the Delivery Order (D.O.) have not been issued by M/s Aahil Shipping, India. M/s Llyod & Traf had further informed that the subject container arrived in UAE for local distribution, however, as the local buyer cancelled the

order and denied taking delivery of the cargo which was held at the port and incurring heavy demurrage & detention charges, re-labelling and re-packaging was required in order to sell it to a new buyer but the local customs didn't give them the permission for the same. Then he contacted Sh. Moatasim for arranging a new consignee in order to send the said goods for the sole purpose of re-labelling & re-packing and the business terms were not finalised and due to oversight by the Dubai team, the container was despatched without confirmation. These details were provided by M/s M.F. International vide their letter dated **21.07.23**.

**7.2. Shri Zahid of M/s Aahil Shipping, UAE** vide his email dated **24.07.2023** submitted by M/s M.F. International vide their **letter dated 24.07.2023** [RUD NO. 19], informed that he was in touch with Sh. Nitin Sood of M/s Llyod & Traf Global FZCO, Dubai; that the consignee details were received from Sh. Moatasim Karjikar which was forwarded to M/s Llyod & Traf & since the business terms were yet to be finalized, the shipping line was instructed to proceed for shipment and parallelly the business terms were to be finalized. However, due to Eid holidays in Dubai, the container was mistakenly released to avoid port storage.

**7.3 Shri Nasir Hussain, Manager-Import of M/s Aahil Shipping & Logistics Pvt. Ltd**., vide their letter dated **21.07.2023 (received on 24.07.23)** [RUD NO. 20] submitted the reply received from their counterpart in Dubai stating that the booking was provided by M/s Llyod & Traf; that there was no payment done between the shipper & consignee; that the copy of the Packing list & Invoice was attached with the letter; that Polaris-CFS was a regular CFS & Bond area and to save the cost on local transport from CFS to a new bond area, this CFS was chosen; that the container was held for 3 months at JEA & returned with same seal by changing the shipper details which was M/s JJF Castings since the container was not cleared due to some payment issue between M/s Llyod & Traf and the local buyer; that as discussed with M/s Llyod & Traf regarding ROB, the reason was for re-labelling and re-export back to Dubai hence, not informed to M/s JJF Castings as the cargo belonged to M/s Llyod & Traf.

**7.4 M/s Aahil Shipping & Logistics Pvt. Ltd.,** the Shipping liner vide their letter dated **01.08.2023**, have requested to provide an NOC for the subject consignment as no prohibited or any mis-declared cargo was recovered from the shipment. Further, they have also requested to hand over the custody of the shipment to them so as to send them back to the shipper. They also requested to allow fumigation and change of pallets/package boxes if not in healthy condition so as to avoid future implications of the shipment [RUD NO. 21].

**7.5** Consequent to the issuance of Summons **to M/s JJF Castings Ltd., Sh. Mannu Parsad, one of the Directors of M/s JJF Castings Ltd. & Sh. Amit Kithania,** appeared in person and, vide their letters dated **11.09.23** [RUD NO. 22], reiterated that they have not violated any Customs law or GST law in exporting their goods to M/s Llyod & Traf Global & have done in full compliance with the provisions. All the related documents have already been submitted & presently, submitting the technical literature of the goods exported vide S/b No. 9277085 dated 13.04.23. The export has been done in pursuance of the P.O. No. LTG052031 dated 29.01.23 under LUT without payment of IGST. They have received the payment against the Invoices & have submitted the Bank Realisation Certificates [BRCs]. M/s MF International is unknown to M/s JJF Castings Ltd. & they have never entered into any transaction with them. M/s JJF Castings Ltd., was not aware about the reason for sending back the exported shipment to M/s M.F. International. The transaction between M/s JJF Castings Ltd. & M/s Llyod & Traf was completed when the goods reached the destination port at the time of export. M/s Llyod & Traf is responsible for the clearance of the goods & selling or shipping the said goods to any customer or anywhere. Hence, M/s JJF Casting Ltd. is not related to or concerned about the re-sending of the said goods to M/s MF International.

**7.6 Vide letter dated 26.09.2023, M/s JJF Castings Ltd.** have submitted a Statement of Cost of Production and Sales – Calliper Pin Caterpillar duly certified by Ahuja Sunny & Co., Cost Accountants. They also submitted details of Imports under EPCG License No. 530166482 dated 08.12.2015. [RUD NO. 23].

**7.7 M/s Aahil Shipping & Logistics,** vide their letter dated **02.09.2023,** have requested to provide NOC for the said shipment as no prohibited substance or any mis-declared cargo was recovered from the shipment. Further, they also enclosed a letter dated 30.08.23 of M/s Llyod & Traf Global FZCO which stated that their initial intention upon dispatching the container to India was to re-package its contents, with the purpose of safeguarding the identity of the original manufacturer from the prospective buyer. Due to unforeseen circumstances, the container became stranded in India for a substantial duration. They also highlighted about comprehensive investigation & meticulous examination wherein, no contraband or illicit material was detected. The cargo within the container is exhibiting signs of rust as a consequence of the prolonged period spent in India. Hence, request for requisite NOC to the concerned shipping line for facilitating the re-export to Jebel Ali so as to uphold the integrity of the cargo as well as to prevent financial losses due to deterioration of the merchandise [RUD NO. 24].

**7.8** **M/s A.K. Engineering** submitted a copy of Invoices raised by them against M/s JJF Castings Limited for the supply of 3000 small & big gears as well copy of the bank statement evidencing the receipt of payments from M/s JJF Castings Ltd., for the sale of the subject product. Similarly, a copy of the bank statement was also obtained from the bank of M/s A.K. Engineering viz. Central Bank of India, Balroh, 100 Ft Road, Sham Colony Ballabhgarh, Faridabad, Haryana [RUD NO. 25].

**7.9** A request was made to **M/s Gattani & Co., Chartered Engineer** on **21.08.23** [RUD No. 26] by handing over relevant import documents viz. Invoices to carry out the valuation of the goods imported by the alleged importer viz. M/s M.F. International. M/s Gattani & Co. inspected the goods so as to verify, assess & give opinions on the goods inspected in the "*as is where is condition*". A Certificate on physical & visual verification of the cargo, summarising the details was given as under:-

i. The cargo consisted of gears & pins. Each box was opened & found to be identical in nature consisting of two gears & a pin. They are a mixture of new, old and used parts. There are no marks or identity. The 3 pcs set as declared are not uniform in nature and were in used condition.
ii. The parts of brakes shown/inspected appear to have been retrieved from discarded items (gears) and the pin in it was new. Thus, as there is no description & uniformity of the parts except the PIN, it doesn't appear to be parts as declared in the present condition.

ii. The value declared in the import invoice appears fair.

Considering the Certificate of the Chartered Engineer which states that the value in the import invoice appears to be fair, the invoice value shown was **USD 5.30 unit price** for a quantity of **2850** which comes to **USD 15105**.

**8.** Information was sought from M/s JJF Castings Ltd., regarding the copy of all the purchase Invoices pertaining to small & big gears, which were subsequently exported to M/s Llyod & Traf, Dubai vide email dated 08.01.2024. M/s JJF Castings Ltd. in response to the said email have forwarded the copy of the purchase invoice vide their letter dated 11.01.2024, wherein, they have forwarded copies of invoices raised by M/s Tarun Enterprises and M/s Gautam Udyog. Summons dated 19.01.2024 were issued to M/s Tarun Enterprises and M/s Gautam Udyog for appearing before, DRI, in order to give their statement regarding the sale to M/s JJF Castings Limited. However, M/s Tarun Enterprises failed to appear even after the issuance of another summons dated 16.02.2024. M/s Tarun Enterprises vide their letter dated 16.02.2024 [RUD No. 28]

and letter received on 03.04.24, has forwarded copies of sale invoices raised by them to M/s JJF Castings Limited for the sale of 'SS Round' at the rate of Rs. 306/- per Kg. and confirmed the same. M/s Gautam Udyog, vide their letter dated 19.02.2024 & 06.04.2024 [RUD No. 29], has forwarded copies of sales invoices raised by them to M/s JJF Castings Limited in respect of 'HUB Brake Assembly Blank' at the rate of Rs. 10/- per Kg. and also appeared in person for tendering his statement.

**9 GIST OF STATEMENTS AND EVIDENCES:-**

**9.1** The statement(s) tendered by **Sh. Mohammed Parvez Rehmatullah Shaikh, Proprietor of M/s M.F. International**, the impugned importer/IEC holder, revealed that he doesn't know anything about M/s JJF Castings Ltd. nor about M/s Llyod & Traf Global FZC, Dubai, the alleged exporter, who has exported the goods to M/s M.F. International, nor have dealt with them at any point of time. It was Sh. Moatasim Karjikar, his brother-in-law, who was working with a freight forwarder, who knew an agent in Dubai, who had informed him about the requirement of M/s Llyod & Trad Global FZC for clearing their goods.

**9.2** The Statement(s) tendered by **Sh. Moatasim Karjikar** revealed that he was approached by Sh. Zahid Shengre of M/s Aahil Shipping & Logistics, Dubai and offered him the work of re-labelling & re-packaging the goods which were to be exported from Dubai to India and thereafter, to be exported to some other country from India. This fact was shared with his brother-in-law viz. Sh. Mohammad Parvez Rehmatullah Shaikh, Proprietor of M/s M.F. International, who agreed for the same. Accordingly, he shared the details of M/s M.F. International with Sh. Zahid but did not confirm the import of the said shipment with him and was still under discussion. However, when confronted with Sh. Zahid on arrival of the consignment in India in the name of M/s M.F. International, Sh. Zahid informed that there was some mis-communication between their office & that of M/s Llyod & Traf Global, Dubai, due to which the goods have been wrongly despatched to India.

**9.3** The statement(s) tendered by **Sh. Nasir Hussain, Manager-Import of M/s Aahil Shipping & Logistics Pvt. Ltd.** revealed that his firm (M/s Aahil Shipping) had earlier handled three (03) export consignments of M/s JJF Castings Ltd. and gave details thereof. The present consignment imported vide B/L No. AHLJEANSA23016 dated 28.06.2023 was also handled by their firm which was a ROB, viz. container returned to India with the same goods, having same bottle seal No. under which it was exported. However, the present consignment, which was earlier exported by M/s JJF Castings Ltd., has now come back to India on ROB consigned to another importer

viz. M/s M.F. International, instead of going back to M/s JJF Castings Ltd., the original exporter. This was done on the instructions of the exporter M/s Llyod & Traf Global FZCO, Dubai, who approached the Dubai office of M/s Aahil Shipping.

**9.4** The statement tendered by **Sh. Gaurav Kumar of M/s A.K. Engineering** revealed that they don't have GST registration and hence, not generating any E-way bills. They had purchased the small & big gear from local traders in cash without Invoices. The small gears were purchased @ Rs. 200 – Rs. 250/- per piece whereas, the big gears @ Rs. 500 – Rs. 550 per piece. M/s JJF Castings Ltd. had placed order on the basis of the examination of the samples by them. They have sold 3000 pieces each of small & big gears to M/s JJF Castings Ltd. @ Rs. 345/- and Rs. 695/- per piece respectively, totalling to Rs. 31,20,000/-. They have received the amount in different tranches in their bank account and that also after the commencement of the investigation by DRI.

**9.5** The statement tendered by **Sh. Sunny Ahuja, Cost Accountant for M/s JJF Castings Ltd.** revealed that he was the group Auditor for M/s Jay Ushin Ltd. He was approached to give the costing of a product. He was given documents such as purchase bills, and signed financial statements & was explained the technical process. He was never shown the product nor he had visited the factory. The costing was made on the basis of the financial statements handed over to him.

**9.6** **M/s Gattani & Co., Chartered Engineer** on physical & visual verification of the cargo, has summarised the details as under:-

i. The cargo consisted of 3 pcs set of two gears & a pin, identical in nature and are a mixture of new, old and used parts with no marks or identity. They are not uniform in nature and were in used condition.

ii. The parts of brakes shown/inspected appear to have been retrieved from discarded items (gears) and the pin in it was new. Thus, as there is no description & uniformity of the parts except the PIN, it doesn't appear to be parts as declared in the present condition.

iii. The value declared in the import invoice appears fair.

**9.7** The statement(s) tendered by **Sh. Hitesh Tahiliani, the mediator between Shipping Liner and CHAs** revealed that the value of the goods seemed to be a bit overvalued to him at the time of export as he thought that the value of the raw material i.e. Iron could not be that high.

**9.8** The statement(s) tendered by **Sh. Inder Bhojwani, Custom House Agent,** revealed that as per his knowledge and after giving a thought to the valuation angle, he was not satisfied with the said valuation and the goods

appeared to be over-valued to him and due to this reason, he has not undertaken the clearance work of any further exports made by M/s JJF Castings Limited.

**9.9** In the statement(s) tendered by **Sh. Sagar Kamlesh Thakker, Custom House Agent,** he did not comment on the valuation of the goods as the value of the goods exported viz. 'Calliper Pin Caterpillar Set' is subjective and as it is not a regular item dealt by their firm.

**9.10** In his statement(s) tendered by **Sh. Anil Gupta, Assistant Manager, M/s Jay Ushin Limited**, he agreed that as M/s JJF Castings Limited does not have a cost auditor, the services of cost audit were arranged by him for the cost audit of a product under investigation by DRI. He, however, did not comment on the fact, whether the process of arriving at the cost of a product on the basis of documents like Sale and Purchase invoice, Balance Sheet etc. without seeing the actual product or by visiting the factory in order to look at the manufacturing process of the product is correct or otherwise.

**9.11** The statement(s) of **Sh. Amit Kitania, CFO of M/s Jay Ushin Ltd.** who looks after the accounts & balance sheet related work of M/s Jay Ushin Ltd. as well as that of M/s JJF Castings Ltd., which are the group companies of M/s J.P. Minda Group, stated that, till date they have exported only three (03) consignments, all of them were to M/s Llyod & Traf Global FZCO, Dubai. The goods were Parts of Brakes and they have received the export remittances in advance. He also submitted a certificate from M/s Ahuja Sunny & Co., a Cost Accountant firm certifying the cost of the exported goods. He also stated that the goods viz. small & big gears have been purchased locally (bought out item) from M/s A.K. Engineering and the shaft has been manufactured by them. He also submitted some copies of the purchase Invoices. He has further informed that the working Director of M/s JJF Castings Limited is Sh. Bharat Bhushan Mathur and the letter dated 18.04.2023 [RUD NO. 30] submitted as a reply to the query raised by Customs was signed by him, on the request of Sh. Bharat Bhushan Mathur.

**9.12** The statement of **Sh. Bharat Bhushan Mathur,** one of the Directors of M/s JJF Castings Limited revealed that he was the person responsible for the activities in M/s JJF Castings Ltd. and was well aware of the exports taken place. He was aware about the purchase of goods from M/s A.K. Engineering who is not registered with GST. He also failed to get the GST payments made through RCM and generating E-Way bills, deliberately. He was also aware of the query raised by the Customs at the time of export and had instructed Sh. Amit Kitania to send the reply in a

vague manner instead of producing the purchase documents which were available with them. Further, he also refused to offer any comments regarding the higher valuation made at the time of export. He confirmed that they have not made any exports other that three Shipping Bills filed in the year 2023.

**9.13** Sh. Gautam, proprietor of M/s Gautam Udhyog, in his statement, has informed that he has taken up the work of cutting of SS Rounds supplied by M/s Tarun Enterprises on behalf of M/s JJF Castings Limited. However, on being shown the small gear, big gear and the shaft exported by M/s JJF Castings Limited, he informed that the small gear and the big gear had not been manufactured by his company, and only the shaft which is made of SS Rounds of 19 mm has been cut by him. He further clarified that apart from cutting of SS Rounds of 19 mm, 75 mm and 199 mm, he had not done any other work on the SS Rounds supplied to his company by M/s JJF Castings Limited.

**9.14** The invoices raised by M/s Tarun Enterprises to M/s JJF Castings Limited for the sale of 'SS Round' at the rate of Rs. 306/- per Kg and M/s Gautam Udyog has raised invoices to M/s JJF Castings Limited in respect of 'HUB Brake Assembly Blank' at the rate of Rs. 10/- per Kg.

## 10. ANALYSIS OF STATEMENTS AND EVIDENCE:-

**10.1** The goods in Container No. **NIDU2204365** which have been earlier exported by M/s JJF Castings Ltd., Rajasthan to M/s Llyod & Traf have been attempted to be illegally imported into India by M/s Llyod & Traf in the guise of Return on Board (ROB) but in the name of a different entity viz. M/s M.F. International, who have disowned it, as they have never given consent for the same.

**10.2** The valuation by the cost accountant of M/s Jay Ushin Limited, which is a group company of M/s JJF Castings Limited, has been done only on the basis of the documents such as purchase bills, signed financial statements & by explaining the technical process for the manufacture of the said goods in theory. He was given documents such as purchase bills pertaining to purchase of big gears & small gears, copy of signed financial statements and was explained the technical process. He was never shown the product nor had visited the factory. Thus, he was not in a position to confirm as to whether the said composite goods consisting of big gears, small gears and a shaft was manufactured by M/s JJF Castings Ltd. or otherwise. The costing was made on the basis of the financial statements

handed over to him. The said method cannot be considered as a proper way for arriving at the cost of the said goods.

**10.3** Sh. Amit Kitania, CFO of M/s Jay Ushin Ltd. stated that, till date they have exported only three (03) consignments, all of them were to M/s Llyod & Traf Global FZCO, Dubai. The goods were Parts of Brakes viz. 'Calliper Pin Caterpillar' consisting of a set of 3 pieces big gear, small gear & a shaft, out of which big & small gears are bought out items whereas shaft is a manufactured item and that they have received the export remittances in advance. However, he wasn't able to produce any contemporaneous evidence certifying that the shaft was manufactured by M/s JJF Castings Ltd. He also submitted a certificate from M/s Ahuja Sunny & Co., a Cost Accountant firm certifying the cost of the exported goods on the basis of the documents provided to him and without paying any visit to the factory/manufacturing site. He further informed that the letter dated 18.04.2023 [RUD NO. 30] submitted as a reply to the query raised by Customs was signed by him, on the request of Sh. Bharat Bhushan Mathur, director of M/s JJF Castings Ltd.

**10.4** M/s Gattani & Co., Chartered Engineer on physical & visual verification of the cargo, has submitted that the value of the goods as shown in the import invoice appears to be the proper value of the goods. On thorough visual inspection of the said cargo, he has also informed that some of the goods in the said cargo are a mixture of old and new parts.

**10.5** The invoices raised by the two firms viz. M/s A.K. Engineering and M/s Tarun Enterprises from whom the goods have been purchased do not correspond in value that has been considered at the time of export of the said goods and Sh. Bharat Bhushan Mathur also failed to comment in his statement on the fact as to how they have arrived at a value of ₹21,000/- (approx.) per set, when they purchased the small and big gears at a price of Rs. ₹345/- and ₹695/- per piece from M/s A.K. Engineering. The statement by Shri Amit Kithania revealed that he had no proper justification for how they had replied to the query of Customs, Mundra Port, related to overvaluation of the said goods. The investigation also revealed that they had no GST proof i.e the GST payment under RCM or E-way bill, in relation to goods purchased from M/s A. K. Engineering.

**10.6** Thus, from the above, it appears that they have exported only three (03) consignments, all of them to M/s Llyod & Traf Global FZCO, Dubai consisting of *Parts of Brakes viz. 'Calliper Pin Caterpillar'* having a set of 3 pieces viz. big gear, small gear & a shaft, out of which big & small gears are bought out/traded items purchased from a trader who isn't registered under GST whereas, shaft is a manufactured item as stated by M/s JJF

Castings Ltd. However, they weren't able to produce any contemporaneous evidence certifying that the shaft was manufactured by them. Further, M/s Ahuja Sunny & Co., a Cost Accountant firm who had certified the cost of the exported goods on the basis of the documents provided to him had also stated that, he had never paid any visit to the factory/manufacturing site to oversee any manufacturing activities.

**10.7** Furthermore, there is a huge price difference in the Export Invoice price and the Import Invoice price even though the goods happened to be ROB. Therefore, it appears that M/s JJF Castings Ltd., while exporting their goods (under Shipping Bill No. 9277085 dtd. 13.04.2023) to M/s Llyod & Traf have grossly inflated the value. This can also be evidenced by considering the Certificate of the empanelled Chartered Engineer which states that the value in the import invoice appears to be fair, the invoice value shown was USD 5.30unit price for a quantity of 2850 which comes to USD 15105 whereas, while exporting, the Invoice value shown was USD 260 unit price for a quantity of 2850 which comes to USD 7,41,000. Thus, if the current USD value is taken @ 83.05 (As per exchange rate Notification No. 44/2023 - Customs (N.T.) dated 15th June 2023), the total value of good exported is only Rs. 12,54,470.25 as compared to the value shown at the time of export by M/s JJF Castings Ltd., which was to the tune of Rs. 6,00,95,100/-. Thus, it appears that the export amount has been grossly over-valued and inflated.

**10.8** Similarly, it has been confirmed by Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited in his statement dated 15.03.2024 that the goods exported under the other two (02) Shipping bills were same & identical to the goods which have returned to India under ROB. Also, the description of the goods mentioned in the Bill of Lading and the three shipping Bills is also more or less the same. If the unit price as shown in the import invoice as 5.30 USD is considered for valuation, the actual valuation of the goods at the time of export under the two (02) shipping bills, on the basis of the said unit price, is as given in the following table:

| **Sr. No.** | **Shipping Bill No. and Date** | **Qty. (in Pcs)** | **Unit Price** | **Exchange Rate Notn.** | **Exchange Rate** | **Total Value (in Rs.)** |
|---|---|---|---|---|---|---|
| 1. | 9692104 dtd. 01.05.2023 | 3420 | 5.30 USD | 29/2023-Customs (N.T.) dtd. 20th April 2023 | 81.40 | 14,75,456.40 |
| 2 | 1174464 dtd. 20.05.2023 | 3420 | 5.30 USD | 36/2023-Customs (N.T.) dtd. 18th May 2023 | 81.55 | 14,78,175.30 |
| **Total** | | **6840** | | | | **29,53,631.70** |

Accordingly, the total value of the goods exported in respect of all the three (03) Shipping bills was only to the tune of Rs. 42,08,102/- instead of Rs.

20,26,16,760/-, which was shown by M/s JJF Castings Ltd., in the Shipping Bills.

**11. <u>OVER-VALUATION OF GOODS AT THE TIME OF EXPORT</u>:-**

**11.1** In the instant case, the goods which had been exported vide Shipping Bill No. 9277085 dated 13.04.2023 have been imported back to India in the same container and with the same bottle seal number affixed on it. The value of the goods at the time of export has been declared in the Shipping Bill as Rs. 6,00,95,100/- and the value of the goods declared at the time of import is Rs. 12,54,470.25/-. If the same calculations are applied to the other two containers exported by M/s JJF Castings Limited vide Shipping Bill Nos. 9692104 dated 01.05.23 and 1174464 dated 20.05.23, the value declared in the Shipping Bills is Rs. 14,25,21,660/- whereas the actual value is only Rs. 29,53,631.70/. Thus, the total declared value of the goods exported by M/s JJF Castings Limited vide three Shipping Bills is Rs. 20,26,16,760/- whereas, the actual value of the goods appears to be Rs. 42,08,102/-, which amounts to gross over-valuation by M/s JJF Castings Limited.

**11.2** The valuation of the said goods was also done by a Cost Auditor, having a firm by the name of M/s Ahuja Sunny & Co., who is also the group auditor for the company M/s Jay Ushin Ltd., a group company of M/s JJF Castings Limited. As per the valuation certificate submitted by him, the value of the goods viz. Parts of MV (Set of 3) has been found to be Rs. 10,614/- per set and the value of the goods in respect of all the three Shipping Bills comes to Rs. 10,28,49,660/-.

**11.3** The said valuation done by M/s Ahuja Sunny & Co., has however been done on the basis of past clearances depending on the documents like purchase bills, balance sheet etc. in respect of the said goods, oral conversations with the technical person related to the manufacture of the said goods, and the goods have not been seen by the cost auditor for valuation nor the purchase documents of the goods available with M/s JJF Castings Ltd. have been shown to him. Therefore, the said valuation does not appear to be proper.

**11.4** Valuation of the said goods has also been done by a Chartered Engineer by the name of M/s Gattani and Co., who has submitted a valuation certificate on the basis of physical and visual verification of the said goods. He has stated that the cargo consisted of 3 pcs set of two gears and a pin, identical in nature and the same are a mixture of new, old and used parts with no marks or identity. As per M/s Gattani and Co., the value declared in the import invoice appears to be proper.

**11.5** Therefore, the value declared by the exporter on the Shipping Bills

has to be rejected and the proper transaction value has to be re-determined in terms of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007:

***Rule 3 Customs Valuation (Determination of Value of Export Goods) Rules, 2007, states that,***

*(1) Subject to rule 8, the value of export goods shall be the transaction value.*
*(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.*
*(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.*

***Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007,*** *provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value. Further, where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.*

***Rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007,*** *provides a mechanism for determination of export value by comparison with goods of like kind and quality.*

***Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007,*** *provides a mechanism for determination of export value by using the computed value method.*

***Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007,*** *states that where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.*

**11.6** In view of the above, Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 is subject to Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 through which the value declared by the exporter may be rejected in cases where there is reasonable doubt that the declared value does not represent the transaction value. Since in this case, as discussed in this para hereinabove, there is a reasonable doubt on the basis of the value

declared in the export consignment and valuation certificates received from the cost auditors that the value declared in the Shipping Bills is not proper transaction value, the declared value has to be rejected. As per Rule 8, the value shall be re-determined by proceeding equentially from Rules 4 to 6.

**11.7** Rules 4 ibid provide for valuation based on "identical" or "similar" goods. Since there is no export data available which matches all the identified parameters simultaneously viz. description, make etc. as the 'Parts of Brakes (MV Parts) calliper pin cater pillar set of 3 pieces, it appears to be inapplicable. Similarly, Rule 5 ibid refers to "computed value method". However, in the subject case, two out of the three (03) pieces confined in a box are bought out/purchased goods and the third piece is a manufactured item. However, no contemporaneous evidence has been provided by the manufacturer regarding the manufacturing of the third piece viz. shaft nor the Cost Accountant was able to provide any evidence substantiating the said claim. Hence, Rule 5 appeared to be inapplicable. If the value of imported goods cannot be determined under the provisions of Rules 3, 4 or 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Rule 6 ibid, provides that the value shall be determined under the provisions of Rule 7 ibid or, when the value cannot be determined under Rule 7 ibid or Rule 8 ibid. Thus, the value has to be re-determined on the basis of Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

**11.8** In terms of Rule 6 i.e. residual method, the value is to be determined by using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods. In the said case, the goods exported by M/s JJF Castings Limited vide Shipping Bill No. 9277085 dated 13.04.2023, have been imported by M/s MF International in the same Container No. with the same bottle seal No., without any change. The valuation of the goods imported has been done by a Chartered Engineer viz. Gattani and Co. and as per the certificate submitted by him, the valuation at the time of import has been considered to be fair and proper. The shipping line, M/s Aahil Shipping & Logistics Pvt, which was common for both import and export, has confirmed that the container was ROB and the same goods which were exported have returned. The value mentioned in the Invoice & Bill of Lading during the time of import has also been confirmed by the Government-approved Chartered Engineer. Therefore, the value of the goods exported can be determined as per the provisions of Rule 6.

**11.9** Further, Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited, in his statement, had agreed to the fact that the goods exported

in the other two containers are same and identical inasmuch as the goods exported in the Container which have been imported in the name of M/s MF International. Also, it is observed that descriptions mentioned in all the shipping bills are also similar.

**11.10** In view of the same, on the basis of the value declared at the time of import and the valuation certificate issued by M/s Gattani and Co., the value of the goods in the said case appears to be **Rs. 42,08,102/-** instead of **Rs. 20,26,16,760/,** which is gross over-valuation at the time of export.

## 12. LIABILITY TO CONFISCATION OF THE GOODS

**12.1** M/s JJF Castings Ltd. have, on earlier occasions, exported (03) consignments to M/s Llyod & Traf Global, FCZ, Dubai [including the present, which has now been imported on ROB]. All the goods were similar & identical in nature. M/s JJF Castings Ltd. had declared the goods vide the three (3) Shipping Bills mentioned in **Table-B above** (re-produced below for sake of convenience):-

**Table-B**

| Sr. No. | Bill of Lading No | Bill of Lading Date | Container No. | S/b No./ Date | Value | Qty | INR |
|---|---|---|---|---|---|---|---|
| 1 | AHLMUNJEA23016 | 29.04.2023 | NIDU2204365 | 9277085/ 13.04.23 | (USD) 741000 | 2850 | 6,00,95,100 |
| 2 | AHLMUNJEA23021 | 11.05.2023 | EOLU2227578 | 9692104/ 01.05.23 | (AED) 2730300<br>(AED) 546060 | 2850<br>570 | 5,93,84,025<br>1,18,76,805 |
| 3 | AHLMUNJEA23050 | 05.06.2023 | CLHU2968913 | 1174464/ 20.05.23 | (AED) 2293452<br>(AED) 982908 | 2394<br>1026 | 4,98,82,581<br>2,13,78,249 |
| _ | _ | _ | _ | _ | _ | **9690** | **20,26,16,760** |

**12.2** However, out of the above-mentioned three (03) Shipping bills, the one at Sr. No. 01 has been re-exported from Dubai under ROB. However, instead of going to the actual exporter viz. M/s JJF Castings Ltd., it was consigned to a new entity by the name M/s M.F. International, a proprietary concern, who had never agreed for the import of the said cargo. Accordingly, the goods at Sr. No. 1 of the Table B mentioned above were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 20.10.2023 under a reasonable belief that the same are liable for confiscation under the provisions of Customs Act, 1962.

**12.3** Section 113 (i) of the Customs Act, 1962, provides that any

goods entered for exportation, which do not correspond in respect of value or in any material particular with the entry made under this Act or in case of baggage with the declaration made under section 77 are liable for confiscation.

**12.4** The above discussed investigation has revealed that the firm M/s JJF Castings Ltd. has exported goods viz. M.V. Parts to M/s Llyod & Traf Global FZC, Dubai vide three (03) Shipping bills out of which one has come back under ROB. Instead of sending it back to the original exporter viz. M/s JJF Castings Ltd., it was consigned to another importer viz. M/s M.F. International who have shown their ignorance of importing any goods nor aware of the exporter from outside India viz. M/s Llyod & Traf Global FZC. However, the value shown in the Import Invoice to M/s M.F. International was USD 15105 whereas, the value shown in the export Invoice of M/s JJF Castings Ltd. was USD 741000. A certificate was obtained from a certified/empanelled Chartered Engineer who examined the goods and certified that the value mentioned in the Import Invoice was fair. Thus, it appears that the value mentioned on the Invoice by M/s JJF Castings Ltd. at the time of export has been grossly over-valued and inflated. Similarly, vide the other two Shipping Bills, the exporter had also exported identical & similar goods to the same importer viz. M/s Llyod & Traf, Dubai and thus, have grossly over-valued and inflated these consignments also. However, the said cargo remained to be brought as ROB.

**12.5.** In view of the foregoing, it appears that the subject imported goods, valued at USD 15105 (earlier exported goods valued at Rs. 6,00,95,100) as tabulated in Table-B above (Sr. No. 1) and seized by DRI vide Seizure Memo dated 20.10.2023, are liable to confiscation under section 113 (i) of the Customs Act, 1962.

**12.6.** Similarly, in view of the investigation made with the exporter and the underlying facts that emerged during the course of investigation, the goods exported vide Shipping Bills, detailed in **Table-B above (Sr. No. 2 & 3), valued at Rs 7,12,60,830/- each** are also liable to confiscation under section 113(i) of the Customs Act, 1962. However, the said goods are not available for confiscation as the

same had been cleared and remained to be brought into India as ROB.

## 13. CULPABILITY OF PERSONS INVOLVED

### 13.1 M/s JJF Castings Limited:

Based on the aforementioned facts, it is apparent that M/s JJF Castings Limited has consciously and voluntarily exported M.V. Parts by grossly over-valuing and inflating the exported goods, even though, they have been purchased at a very nominal rate. This act on the part of M/s JJF Castings Ltd. has been done deliberately and with a clear mindset, in order to erroneously fulfil the export obligation in respect of the EPCG Licences issued to them. Further, the goods exported vide the three Shipping Bills are also liable to confiscation under Section 113 of the Customs Act, 1962 and has rendered M/s JJF Castings Limited liable for penalty under Section 114(iii) and 114AA of the Customs Act, 1962.

### 13.2 Shri Bharat Bhushan Mathur:

Sh. Bharat Bhushan Mathur, Director of M/s JJF Castings Limited in his statement dated 15.03.2024, has agreed that he is the main working Director of M/s JJF Castings Limited and responsible for all the decisions related to Administration, Human Resources, Production, Legal, Purchase, compliances with government organisations etc. He, however, did not comment on the aspect related to the valuation of the said goods exported vide the three Shipping Bills and also did not comment on the fact with respect to the fulfilment of the export obligation of the EPCG Licence, if the valuation as per the import invoice is considered. The acts of Sh. Bharat Bhushan Mathur have rendered the goods exported under the three (03) Shipping Bills liable to confiscation under Section 113 of the Customs Act, 1962. He has, in turn rendered himself liable for penalty under Sections 114 (iii) and 114AA of the Customs Act, 1962.

**13.3 Shri Amit Kithania:** (Employee of M/s Jay Ushin Limited, a group company of M/s JJF Castings Limited and was involved in exports done by M/s JJF Castings Limited)

Sh. Amit Kithania, in his various statements, has tried to derail the investigation by stating different facts each time. He earlier stated that he looks after the accounts and balance sheet-related work of M/s JJF Castings Limited, however, later on, it was learnt that he is the CFO of a group company viz. M/s Jay Ushin Limited and has no relation to the work of M/s JJF Castings Limited and has no authority in the said

company. In spite of the said statement, he has signed a letter submitted to the Customs authorities in response to the query raised on the valuation angle by them. In the said letter, he made no mention of the value of the small and big gears purchased by them and instead, gave vague mention of the prices available at various online sellers such as Globalpartszone, yantralive or ebay. M/s JJF Castings Limited, being one of the group companies of M/s Jay Ushin Limited, it appears that Sh. Amit Kithania was very well aware of the over-valuation of the goods at the time of export by M/s JJF Castings Limited and has tried to hoodwink the Customs authorities by stating the facts in a roundabout manner. His acts have rendered the goods exported under the three Shipping Bills liable to confiscation under Section 113 of the Customs Act, 1962 and he has, in turn, rendered himself liable for penalty under Section 114 (iii) of the Customs Act, 1962.

**13.4 Shri Inder Bhojwani: (CHA, Partner in M/s D.L. Shipping Services)**

In his statement dated 15.02.2024, Sh. Inder Bhojwani has agreed to the fact that being a CHA, it was his responsibility to verify the KYC of his client and to advise his client properly in respect to all matters related to Customs. However, in the said case, as the client was brought to him by Sh. Hitesh Tahiliani, who was known to him, due diligence was not followed. The said act of negligence on the part of Sh. Inder Bhojwani has rendered the goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 liable for confiscation under Section 113 of the Customs Act, 1962 and has in turn rendered him liable for penalty under Section 114(iii) of the Customs Act, 1962.

**13.5 Shri Sagar Kamlesh Thakker: (CHA, Partner in M/s B.N. Thakker and Sons)**

In his statement dated 15.02.2024, Sh. Sagar Kamlesh Thakker has agreed to the fact that being a CHA, it was his responsibility to verify the KYC of his client and to advise his client properly in respect to all matters related to Customs. However, in the said case, as the client was brought to him by Sh. Hitesh Tahiliani, who was known to him, due diligence was not followed. The said act of negligence on the part of Sh. Sagar Kamlesh Thakker has rendered the goods exported vide Shipping Bill No. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023 liable for confiscation under Section 113 of the Customs Act, 1962 and has in turn rendered him liable for penalty under Section 114(iii) of the Customs Act, 1962.

**1 4 . <u>EXTENSION OF TIME LIMIT FOR ISSUANCE OF SHOW CAUSE</u>**

**NOTICE:**

As there was more scope for investigation in the matter, the DRI vide letter dated 03.01.2024 sought an extension of time limit for issuance of Show Cause Notice to M/s JJF Castings Ltd. in terms of proviso to Section 110 (2) of the Customs Act, 1962 from the competent authority on the grounds that; certain personnel of M/s JJF Castings Ltd., whose names were revealed during the course of investigation were yet to be examined and some of the crucial/incriminating documents were yet to be received & scrutinised. Further, the persons who were involved in getting the goods cleared for export undertaken by M/s JJF Castings Ltd. also remained to be examined. The competent authority, vide letter No. GEN/ADJ/ADC/16/2024-Adjn dated 05.01.2024 granted an extension for SCN issuance which was duly informed to M/s JJF Castings Ltd., the exporter, M/s M.F. International, the impugned importer and M/s Aahil Shipping & Logistics Pvt. Ltd., the shipping liner.

**15.** Accordingly, Show cause Notice GEN/ADJ/ADC/1240/2024-Adjn-O/o Pr Commr-Cus-Mundra dated 10.07.2024 was issued to M/s JJF Castings Ltd. (IEC: 0515034517, GSTIN: 08AACCJ4227B1Z0), wherein they were called upon to show cause, in writing, to the Additional/Joint Commissioner of Customs, Custom House, Mundra, as to why:

i. The value declared in the three (03) Shipping Bills as detailed in Table-B above should not be rejected in terms of Section 14 and Section 50 (3) of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Export Goods) Rules, 2007 as the value declared therein is inaccurate in as much as, they have been grossly over-valued and inflated;

ii. The subject goods as detailed in Table-B above (at Sr. No. 1), exported vide Shipping Bill No. 9277085 dated 13.04.2023 having declared assessable value of Rs. 6,00,95,100/- which were subsequently imported into India under B/L No. AHIJEANSA23016 dated 28.06.2024 in the name of M/s M.F. International should not be confiscated under the provision of Section 113 (i) read with Sections 118 and 120 of the Customs Act, 1962. (The said goods are presently lying at the premises of M/s Polaris Logistics Park Private Limited – CFS located at CWC Logistics Park, Sector – 10, Dronagiri Node, Navi Mumbai, Maharashtra – 400 707);

iii. The goods as detailed in Table-B above (at Sr. No. 2 & 3), exported vide Shipping Bill Nos. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, having declared assessable value of Rs. 7,12,60,830/- each, should not be confiscated under the provision of Section 113(i) of the Customs Act, 1962. However, the said goods are not available for confiscation as the same had been cleared outside India and remained to be ROB;

iv. Penalty under Sections 114(iii) and 114AA of the Customs Act, 1962, should not be imposed on M/s JJF Castings Ltd.;

**16.** Vide SCN dated 10.07.2024, Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited was called upon to show cause, in writing, to the Additional/Joint Commissioner of Customs, Custom House, Mundra, as to why:

i. Penalty under Sections 114(iii) and 114AA of the Customs Act, 1962 should not be imposed on Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited;

**17.** Further Vide SCN dated 10.07.2024, Sh. Amit Kithania, Employee of M/s Jay Ushin Limited, a group company of M/s JJF Castings Limited was called upon to show cause, in writing, to the Additional/Joint Commissioner of Customs, Custom House, Mundra, as to why:

i. Penalty under Section 114(iii) of the Customs Act, 1962 should not be imposed on Sh. Amit Kithania, Employee of M/s Jay Ushin Limited, a group company of M/s JJF Castings Limited;

**18.** Further Vide SCN dated 10.07.2024, Sh. Inder Bhojwani, CHA, Partner in M/s D.L. Shipping Services, was called upon to show cause, in writing, to the Additional/Joint Commissioner of Customs, Custom House, Mundra, as to why:

i. Penalty under Section 114(iii) of the Customs Act, 1962 should not be imposed on Sh. Inder Bhojwani, CHA, Partner in M/s D.L. Shipping Services;

**19.** Further Vide SCN dated 10.07.2024, Sh. Sagar Kamlesh Thakker, CHA, Partner in M/s B.N. Thakker and Sons was called upon to show cause, in writing, to the Additional/Joint Commissioner of Customs, Custom House, Mundra, as to why:

i. Penalty under Section 114(iii) of the Customs Act, 1962 should not be imposed on Sh. Sagar Kamlesh Thakker, CHA, Partner in M/s B.N. Thakker and Sons.

20. **Written Submissions:-**

**20.1 M/s. JJF Casting Limited submitted their reply which was received in this office on 13.10.2025, wherein they have, *inter alia*, submitted that:**

20.1.1 THE IMPUGNED SCN SUFFERS FROM INCONSISTENCIES WHICH INDICATE BIAS AGAINST THE NOTICEE. THE ENTIRE ISSUE

APPEARS TO BE PREDETERMINED IN ORDER TO ALLEGE OVERVALUATION ON THE PART OF THE NOTICEE:- The Noticee submits that the Impugned SCN has proceeded only on the basis of selective averments and documents. Instead of considering all the facts and evidence holistically, the Impugned SCN has selectively relied upon only those averments/facts/documents which can be used to support the allegation of over valuation against the Noticee. Thus, the Noticee submits that the Impugned SCN suffers from bias against the Noticee, and it appears that the Impugned SCN has already pre-judged the issue.

The Noticee submits that the Impugned SCN has proceeded on the presumption that the value declared in the import invoice of Lloyd, Dubai is the correct value of the goods. In proceeding under the said presumption, it has overlooked obvious facts which were on record as explained *infra*.

20.1.2 The Noticee submitted that the import invoice has been raised by Lloyd, Dubai. From the Statements relied upon in the Impugned SCN, it is clear that there is no importer in the said transaction (M.F. International has not accepted for importing the goods) and there is no agreement in respect of the price of the said goods. In fact, the Impugned SCN has not disputed the statements of Mr. Moatasim Karjikar (RUD-7) to the effect that the proposed importer, viz., M/s. M.F. International has not finalized the terms of the commercial agreement with Lloyd, Dubai for the import of the goods covered under the import invoice. The Impugned SCN has not done any investigation as to who decided the value of the said goods or the basis on which the value mentioned in the import invoice arrived at. Instead, it has proceeded directly to presume that the Noticee has overvalued the subject goods because the value of the subject goods exported by the Noticee was higher than the value of goods in the import invoice. This shows the bias against the Noticee.

20.1.3 The Noticee submitted that it is not clear as to how the Impugned SCN gave sanctity to the value in the import invoice, when the import transaction itself is unilaterally done by Lloyd, Dubai. On the other hand, the Noticee's export transaction with Lloyd, Dubai, is based on a valid agreement wherein the value of the subject goods was clearly agreed between the parties. However, for reason best known to the Department, the Impugned SCN has decided to agree that the value in the import invoice is the correct transaction value and has more sanctity than the negotiated price of the Noticee.

Further, the Impugned SCN did not consider whether the reduced value adopted by Lloyd, Dubai could be for any other valid reason. For example, the fact that the goods were being sent only for re-labelling or re-packing which will have no customs duty implication could have been a factor in deciding the valuation of the goods under the import invoice. Alternatively, the fact of deterioration of quality of the goods as they were lying in warehouse for close to 3 months could have been a reason for showing reduced value in the import invoice. The Impugned SCN has not attempted to understand the reason for declaring a lower value in the import invoice by Lloyd, Dubai. It has directly proceeded to assume that the Noticee had overvalued it.

20.1.4 The Impugned SCN has also overlooked the submission of the Noticee in their Reply dated 18.04.2023, to the query raised by the Department (in respect of Shipping Bill No. 9277085 dated 13.04.2023) that the value adopted by them is in line with the market value adopted by the other online sellers. Instead of giving credence to such evidence, the Impugned SCN has relied upon the opinion of CHAs on the valuation of the subject goods.

Even though the aforesaid details of online sellers were submitted by the

Noticee, and the same was evidently available with the Department in the Customs portal, the Impugned SCN has still proceeded to apply Rule 6 of the CVR, Exports and has applied the value of the goods in the import invoice as the correct value of the subject goods exported by the Noticee. No reason was given in the Impugned SCN as to why the value of the import invoice, which is dated 3 months after the export of the subject goods by the Noticee, was considered over the market value existing at the time of export.

20.1.5 The Impugned SCN has rejected the valuation done by the Cost Accountant, alleging that it was done in an improper manner merely because the goods were not physically examined. However, it has not stated any basis as to how the lack of physical examination can render the valuation incorrect or the process of valuation improper. On the contrary, it has accepted the value in the CE Certificate even though only visual examination was done on selective pallets without analyzing any other document associated with the export of subject goods by the Noticee.

20.1.6 Further, the Impugned SCN has ignored the acceptance of the value of the subject goods exported by the Noticee *vide* one of the disputed Shipping Bills, viz., 9277085 dated 13.04.2023, alleging that the details of cost of inputs were not produced before the authority. It appears that as per the Impugned SCN, the value of the subject goods could not be verified without the said details. However, the Impugned SCN has conveniently overlooked the fact that the said details were also not shared with the CE. However, it proceeds to accept the CE Certificate issued basis visual examination of samples. The Impugned SCN has blindly relied upon the alleged opinion of the CHAs on the valuation of the subject goods and no question was raised as to their qualification to give such an opinion.

20.1.7 The Noticee submits that that the above inconsistences and discrepancies, indicate a clear case of bias against the Noticee. It appears that the Impugned SCN has selectively relied upon the averments of persons whose statements were recorded and the documents available on record, which helps in furthering the allegation of overvaluation of goods against the Noticee.

20.1.8 The Noticee submits that if all the evidence available on record is considered holistically and the statements made by the persons were not blindly accepted as facts, it will be clear that there is no overvaluation of the subject goods by the Noticee. It is settled legal position that Impugned SCN containing element of bias is not sustainable. Reliance in this regard is placed on the following –

a. ***Union of India vs. Naman Singh Sekhawat, 2008 (225) E.L.T. 161 (S.C.)***
b. ***Oryx Fisheries Private Limited, 2011 (266) E.L.T. 422 (S.C.)***

In view of the above, the Noticee submits that the Impugned SCN suffers from bias against the Noticee and therefore, is not sustainable. Therefore, the Impugned SCN merits to be dropped on this ground alone.

20.2.1 THE VALUE OF SUBJECT GOODS DECLARED BY THE NOTICEE IS THE CORRECT TRANSACTION VALUE. THE SAME OUGHT TO BE ACCEPTED BY THE DEPARTMENT:- The present dispute pertains to the valuation of the subject goods exported by the Noticee to Lloyd, Dubai vide the disputed Shipping Bills. It is the case in the Impugned SCN that the value of the subject goods declared by the Noticee in the disputed Shipping Bills is higher than the value adopted by Lloyd, Dubai in the import invoice and therefore, the said declared value ought to be rejected in terms of Rule 3 of

CVR, Exports.

20.2.2 The Noticee submits that the allegations in the Impugned SCN is incorrect, and the value of the subject goods declared by the Noticee in the disputed Shipping Bills is the correct transaction value in terms of Section 14 of the Customs Act, 1962. Section 14(1) of the Customs Act 1962 read with Rule 3 of the Customs Valuation (Determination of Value Of Export Goods) Rules, 2007 provides that the value of export goods shall be the transaction value, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

According to Rule 3(1) of Valuation Rules, the value of export goods shall be the transaction value, subject to Rule 8 of the Valuation Rules.

Further, Rule 2(2) of CVR, Export provides for the conditions under which the persons (Indian exporter and the foreign importer) shall be deemed to be 'related'. It can be seen from the above that only in case of relationship mentioned in Rule 2(2), the parties shall be deemed to be related for the purposes of CVR, Exports.

In the present case, the value of the subject goods declared by the Noticee in the disputed Shipping Bills squarely qualifies to be the transaction value in terms of Section 14 of the Customs Act.

i) The declared price is the price actually paid or payable by Lloyd, Dubai for sale of subject goods by the Noticee.

The Noticee submits that the export of the subject goods, vide the disputed Shipping Bills, was made by them directly and against the Purchase Orders dated 29.01.2023 issued by Lloyd, Dubai, details of which are tabulated below.

| **Purchase Order No. and date** | **Description of goods to be purchased** | **Quantity (in Sets)** | **Value (in Foreign Currency) per unit** | **Total (in Foreign Currency)** |
|---|---|---|---|---|
| LTG052038 dated 29.01.2023 | Calliper Pin Caterpillar set of 3 Pcs (Model 797) | 6000 | AED 958.00 | AED 7,48,000.00 |
| LTG052031 dated 29.01.2023 | HSN Code 870830 Duly packed in carton and Euro pallets | 4000 | USD 260.00 | USD 10,40,000.00 |

Copy of Purchase Orders dated 29.01.2023 are already enclosed herewith as **Annexure-3(colly).**

Bare perusal of both the Purchase Orders dated 29.01.2023 indicates that the order for the purchase of subject goods has been duly placed by Lloyd, Dubai *vide* the said Purchase Orders dated 29.01.2023 at price agreed upon by both parties.

Basis the Purchase Orders, the Noticee has shipped the goods *vide* the 3 disputed shipping place at the agreed prices only. This fact can be seen from the value of the subject goods declared in the disputed shipping bills and the corresponding Invoices raised by the Noticee on Lloyd, Dubai for sale of the subject goods. The copies of the disputed Shipping Bills and the corresponding Invoices have already been annexed as **Annexure- 4 and 5** respectively.

Further, the said agreed price was actually paid by Lloyd, Dubai to the

Noticee pursuant to the sale of goods. In other words, the price agreed in the Purchase Orders dated 29.01.2023 was duly paid by Lloyd, Dubai and the said amount was received through banking channels by the Noticee towards sale of the subject goods exported against the disputed Shipping Bills, as explained in para-B.44. to B.54. *infra*. *None of the above facts have been disputed in the Impugned SCN.*

Thus, the Noticee submits that the value declared by the Noticee is the price actually paid or payable by Lloyd, Dubai for sale of the subject goods exported by the Noticee at the time and place of exportation.

ii) The declared value is the sole consideration for the sale of the subject goods

Further, the amount received from Lloyd, Dubai is the sole consideration received by the Noticee for sale of the subject goods under the disputed Shipping Bills. In other words, the price agreed as per the Purchase Orders dated 29.01.2023 was the only amount received by the Noticee pursuant to the export of the subject goods. The above fact is also not disputed in the Impugned SCN.There is also no allegation of flowback of any amount from the Noticee to Lloyd, Dubai in the Impugned SCN.

Thus, the Noticee submits that the value declared by the Noticee is the price actually paid by Lloyd, Dubai to the Noticee for sale of the subject goods exported vide the disputed Shipping Bills and such price is the sole consideration for such sale.

iii) The Noticee and Lloyd, Dubai are not related to each other

Also, the Noticee and Lloyd, Dubai are independent parties and are not related to each other in any manner stipulated in Rule 2(2) of the CVR, Exports. Therefore, the Noticee submits that the parties in the present transaction are also not related with each other.

Thus, the Noticee submits that the value of the subject goods declared by them in the disputed Shipping Bills is the agreed price actually paid by Lloyd, Dubai to the Noticee for export of the subject goods, such price is the sole consideration for such sale and the Noticee and Lloyd, Dubai are not related parties.

In view of the above, the Noticee submits that the value of the subject goods declared by the Noticee in the disputed Shipping Bills is the correct transaction value under Section 14 of the Customs Act.

iv) Rule 8 of CVR, Exports is not invokable in the present matter.

According to Rule 3(1) of CVR, Exports, the value of exported goods shall be the transaction value, subject to Rule 8 *ibid*.

As submitted *supra*, the value of the subject goods declared by the Noticee in disputed shipping bills is the correct transaction value. Therefore, in terms of Rule 3(1) *ibid*, the declared value ought to be accepted as the transaction value for the purpose of customs valuation.

In the present case, the Noticee submits that Rule 8 *ibid.* is not attracted.

Rule 8 provides for the rejection of declared value by the proper officer if he has the reason to doubt the truth or accuracy of the same.

Further, the explanation (1) (iii) to Rule 8 of the CVR, Exports indicate the

circumstances wherein the proper officer can doubt the declared value of the exports goods as follows:

*'(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.*
*(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.*
*(c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.'*

20.2.3 The Noticee submits that none of the above circumstances are present in the instant case. It is not the case in the Impugned SCN that there is variation in value of the goods of like quantity and quality exported at the same time. Nor is it the case in the Impugned SCN that the price declared is significantly higher than market value of the like kind and quality of the goods. It is also not the case of the Department in the Impugned SCN that the Noticee has mis-declared the subject goods. Thus, none of the scenario enumerated under Rule 8 of CVR, Exports is attracted in the facts of the present case warranting rejection of value of the subject goods declared by the Noticee in the disputed shipping bills.

20.2.4 It is settled legal position that the transaction value can be discarded only under the circumstances mentioned in the CVR, Exports. In this regard, the Noticee places reliance on the decision in *Eicher Tractors Ltd. vs. CC, Mumbai reported at 2000 (122) E.L.T. 321 (SC)*, wherein the Hon'ble Supreme Court held that the transaction value can be discarded only under the circumstances mentioned in rule 4(2) of Customs Valuation Rules, 1988 and not otherwise. Provisions of Rule 4(2) of the Valuation Rules, 1988 are *pari materia* with Rule 3(2) of the CVR, Exports.

The Noticee also places reliance on the following, wherein the Hon'ble Supreme Court followed its decision in Eicher Tractors case (supra):

a. *Tolin Rubbers vs. CC, Kochi – 2004 (163) E.L.T. 289 (SC)*
b. *Commissioner vs. Bureau Veritas – 2005 (181) E.L.T. 3 (SC)*
c. *CC, Mumbai vs. J.D. Orgochem – 2008 (226) E.L.T. 9 (SC)*

Further, in *CC vs. Aggarwal Industries – 2011 (272) E.L.T. 641 (SC)*, the Supreme Court held as under:

*"11. On a plain reading of Sections 14(1) and 14(1A), it is clear that the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in Section 14(1) of the Act. Section 14(1) is a deeming provision as it talks of deemed value of such goods. The determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1) of the Act. Conjointly read, both Section 14(1) of the Act and Rule 4 of CVR, 1988 provide that in the absence of any of the special circumstances indicated in Section 14(1) of the Act and particularized in Rule 4(2) of CVR 1988, the price paid or payable by the importer to the vendor, in the ordinary course of international trade and commerce, shall be taken to be the transaction value.* ***In other words, save and except for the circumstances mentioned in proviso to Sub-rule (2) of Rule 4, the invoice price is to form the basis for determination of the transaction value. Nevertheless, if on the basis of some contemporaneous evidence, the revenue is able to demonstrate that the invoice does not reflect the correct price, it would be justified in rejecting the invoice price and determine the transaction value in***

***accordance with the procedure laid down in CVR, 1988.*** *It needs little emphasis that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports, which obviously would include the date of contract, the time and place of importation, etc., were at a higher price. In such a situation,* ***Rule 10A of CVR, 1988 contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Needless to add that 'reason to doubt' does not mean 'reason to suspect'. A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject it as evidence of the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation.*** *We may hasten to add that although strict rules of evidence do not apply to adjudication proceedings under the Act, yet the Adjudicating Authority has to examine the probative value of the documents on which reliance is sought to be placed by the revenue.* ***It is well settled that the onus to prove undervaluation is on the revenue*** *but once the revenue discharges the burden of proof by producing evidence of contemporaneous imports at a higher price, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct."*
(Emphasis Supplied)

Even though the above decisions were rendered in the context of valuation of the imported goods, the same shall be applicable for CVR, Exports also since the provisions are *pari materia*.

Therefore, the decisions relied upon above are equally applicable to the present case and the declared value is the correct transaction value.

Thus, the Noticee submits that there is no reason for the proper officer to doubt the correctness of the declared value of the subject goods. Consequently, in terms of Rule 3(1) *ibid.*, the value declared by the Noticee as the value of the subject goods in the disputed Shipping Bills shall be accepted as the transaction value by the Department.

In view of the above, the Noticee submits that the proposal in the Impugned SCN to reject the declared value of the subject goods exported by the Noticee vide the disputed Shipping Bills is incorrect and not sustainable.

20.2.5 The Noticee submitted that without prejudice, it may be noted that Rule 8 is a subset to the valuation provisions laid down under Customs Act and CVR, Exports, which provides the circumstances wherein the value of export goods declared by the Exporter may be rejected by the Proper Officer. From the explanation to Rule 8 of CVR, Exports as extracted in Para B.25. above for ready reference, it is clear that for invocation of Rule 8 of the CVR, Exports and for rejection of transaction value determined in terms of Rule 3(1), following conditions need to be fulfilled:

a. Proper Officer has reasonable doubt about the truth and accuracy of the value declared by the Exporter; and
b. Reasonable doubt could be in terms of significantly higher value compared to the market value of goods of like kind and quality at the time of export.

The Noticee hereinunder submits that Rule 8 of the CVR, Exports was

not invokable in the present case, and the value of goods could not have been re-determined under any of the rule of CVR, Exports, which is the basic ingredient of the Para (1)(iii)(b) of the Explanation to Rule 8.

Also, as evident from the above, it is understood that Rule 8 of the CVR, Exports is invokable only when there is a reasonable doubt about the valuation adopted by the exporter that the value of goods adopted by it is significantly higher than the market value of similar goods.

Thus, reasonable doubt or reason to doubt on the part of the proper officer is necessary to invoke Rule 8 of the CVR, Export. In this regard, it is pertinent to mention that the terms 'reasonable doubt' or 'reason to doubt' have not been defined anywhere in the Customs Act or Rules made thereunder. Further reliance is placed upon the case of ***Century Metal Recycling Private Limited vs. Union of India, 2019 (367) E.L.T. 3 (SC),*** wherein the Hon'ble Supreme Court has held that 'reason to doubt' the valuation under Valuation Rules should be reasonable, based on certain definite reasons. The relevant extract of the same is reproduced hereunder:

*"17. The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence.* ***The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'****.*
*18. The expression 'proof beyond reasonable doubt' in criminal law requires the prosecution to establish guilt and secure conviction of the accused by proving the charge 'beyond reasonable doubt'. In Ramakant Rai v. Mad an Rai & Ors. - (2003) 12 SCC 395 referring to the expression 'reasonable doubt' in criminal law it was held as under :*
*"24.* ***Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."***
*(Emphasis Supplied)*

Thus, in view of the above, it is a settled principle of law that the transaction value declared by an exporter cannot be rejected merely on suspicion. There should be cogent evidence to reject the same.

Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise & Service Tax, Noida vs. Sanjivani Non- Ferrous Trading Pvt. Ltd., 2019 (365) E.L.T. 3 (Supreme Court),*** wherein it was held in order to reject the transaction value, it is

incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the bills of entry were being rejected and to establish that the price was not the sole consideration.

20.2.6 It is most humbly submitted that in the present case, the department lacks both material as well as cogent evidence for having a reasonable doubt as to why the transaction value declared by the Noticee is incorrect. The only basis for the Impugned SCN to reject the valuation adopted by the Noticee was that it did not match the value of allegedly the same goods at the time of import by a third party i.e. M/s M. F. International. Therefore, in the absence of any basis for the application of Rule 8 of the CVR, Exports to the instant case, it can be said that the transaction value declared by the Noticee at the time of export holds good and ought to be accepted.

20.2.7 The declared value has been duly realized by the Noticee as export proceeds. This fact is not disputed in the Impugned SCN. This being the case, the declared value cannot be rejected by the Department as proposed in the Impugned SCN.

In the instant case, the export price declared in the disputed Shipping Bills were fair and true, which were at arm's length. The Noticee has realized the said amount in full (in advance) from Lloyd, Dubai through banking channels.

The details of the realization of export proceeds are tabulated below for ready reference:

| **Shipping Bills** | | | | | | **Bank Realization Certificates** | | |
|---|---|---|---|---|---|---|---|---|
| **S. No.** | **Shipping Bill No.** | **Shipping Bill Date** | **Value Declared in Foreign Currency** | **Total Value declared (in Foreign Currency)** | **Foreign Currency** | **Realization in Foreign Currency** | **Foreign Currency** | **Total Foreign Currency realized** |
| 1 | 9277085 | 13.04.2023 | 7,41,000 | 7,41,000 | USD | 3,22,130<br>2,45,390<br>54,480<br>1,19,000 | USD | 7,41,000 |
| 2 | 9692104 | 01.05.2023 | 27,30,300<br>5,46,060 | 32,76,360 | AED | 1,10,827.50<br>12,18,623.75<br>19,46,908.75 | AED | 32,76,360 |
| 3 | 1174464 | 20.05.2023 | 22,93,452<br>9,82,908 | 32,76,360 | AED | 2,85,823.47 USD<br>10,72,373.75 AED<br>10,60,366.25 | AED | ---- |

Copy of the BRCs evidencing the realization of export proceeds have already been marked and enclosed herewith as Annexure-6(colly).

Bare perusal of the above table will show that the value as declared in each disputed shipping bill has been realized in full through the banking channels and the same has been evidenced through the corresponding BRCs.

It is a settled legal position that if the declared value has been realized in full, the correctness of the said value ought not to be challenged by the Department. This view has been entertained by various forums in various precedents.

Reliance in this regard is placed upon ***Kaka Carpets vs. Commr. of C. Ex. (Adjudication), New Delhi, 2020 (373) E.L.T. 286 (Tri.-All.)***, wherein it

was held that the declared value must be accepted when there is evidence available for the total realization of goods. The relevant extract of the same is reproduced hereunder for easy reference:

*"It is worth noticing that the appellant has placed on record BRC's indicating and evidencing the total realization of the exported goods. The said fact has not been disputed by the Adjudicating Authority. In this scenario, the value of the goods cannot be doubted and the declared value has to be accepted. The drawback claim would be calculated at the declared value and the appellant would be entitled to the same."*
***(Emphasis Supplied)***

Reliance in this regard is further placed upon *Shilpi Exports vs. Collector of Customs, Calcutta, 1996 (83) E.L.T. 302 (Tribunal),* it was held that the declared export value, if realized in full through proper legal channels, cannot be disputed. The department was also questioned about the benefit of such allegations on the Appellant in light of the fact that the entire export proceeds have been remitted. The relevant extract of the same is reproduced hereunder for ready reference:

*"16. It is, therefore, clear that whatever value the appellants had declared as export value, was realised by them in full foreign exchange remittance through the proper legal channels. If that is so, we fail to understand as to how the appellants can be penalised when they have realised the full foreign exchange remittance back through the proper legal channels which value they had declared to the Customs Authorities. It is also not discussed in the impugned order as to what was the advantage which they had obtained in view of this declaration of value made by them. There is no discussion on this aspect. On the contrary, it only shows that the country earned a larger foreign exchange which was realised through proper legal channels as admitted in the impugned order. In such circumstances, the imposition of penalty on all the above-said grounds is not tenable and accordingly, we set aside the same. In the result, both the appeals are allowed."*
**(Emphasis supplied)**

20.2.8 The Noticee submitted that in the present case, there is nothing to indicate that the price as declared by the Noticee is influenced. Further, it is not the case of the department that the transaction between the Noticee and the Buyer is not genuine or that there was flowback of money from Noticee to Lloyd, Dubai. In other words, the genuineness of the transaction value is also not a doubt. It is also not the case that the description of the goods has been mis-declared or mis-described. Hence, the transaction value in the present case has to be accepted in the light of the above decisions.

The aforesaid fact of receipt of the declared value as export proceeds was available with the Department as recorded in para 6.4, 8.11 and 9.3 of the Impugned SCN. The details along with evidence were submitted by Mr. Amit Kithania during the investigation also. However, the Impugned SCN has not considered the said fact while alleging overvaluation on the part of the Noticee.

20.2.9 The Noticee submits that when the declared value has been realised by the Noticee, then it is not clear as to how the said value can be said to be overvalued. No reason for such conclusion has been given in the Impugned SCN also. Therefore, the doubting of the declared value in the Impugned SCN is incorrect and not sustainable for this reason also.

In view of the above submissions, the proposal to reject the declared

value of the subject goods in the Impugned SCN merits to be dropped.

20.3.1 DECLARED VALUE CANNOT BE DISPUTED MERELY BECAUSE IT INCLUDES HIGHER PROFIT MARGIN. CUSTOMS DEPARTMENT CANNOT DICTATE THE PRICE AT WHICH EXPORTERS SHALL EXPORT THE GOODS:- The entire case made out against the Noticee in the Impugned SCN is that the subject goods have been over-valued by the Noticee. According to the Impugned SCN, the subject goods ought to have been exported @USD 5.30 per set as against the price of USD 260 per set at which the Noticee exported the goods to Lloyd, Dubai. In other words, the Impugned SCN is questioning the price of the goods exported by the Noticee merely because the same is not in line with the price in the view of the Department. In other words, by alleging overvaluation basis the import invoice, the Impugned SCN is attempting to control the price at which the Noticee can export the subject goods.

i) The Customs Department ought to accept the commercially negotiated price of the subject goods as the transaction value.

It may be noted that the value of the subject goods declared by the Noticee is the price negotiated and agreed between the parties after considering various commercial parameters such as additional costs, services and the Noticee's profit margin, etc. The price at which the subject goods are sold is a commercial decision of the Noticee and the Department has no role to play in such determination.

It is a settled legal position that the negotiated price is a price in the course of international trade and the same must be accepted. Reliance in this regard is placed on the decision of the Apex Court in ***Basant Industries – 1996 (81) E.L.T. 195 (SC)***. The relevant portion of the decision is extracted below:

*"It is essential to bear in mind the fact that in the business world consideration of relationship with the customer is also a relevant factor. Thus, the Supreme Court held that even the negotiated price is a price in the course of international trade and the same is acceptable."*

The above decision was also followed by the Apex Court in ***Mirah Exports – 1998 (98) E.L.T. 3 (SC).***

In the present case, as explained in detail supra, the price agreed between the Noticee and Lloyd, Dubai is commercially negotiated price and the same ought to be accepted by the Department. The Impugned SCN does not allege that the said transaction/export agreement is not genuine or that the entire value has not been realized by the Noticee as export proceeds.

Thus, the commercial price agreed between the parties ought to be accepted by the Department. The same cannot be controlled or substituted with lower value by the Customs Department on grounds of over-valuation of the goods.

ii) Export of goods at a higher profit is not prohibited under the Customs Act

Without prejudice, the inclusion of profits and cost by the Noticee is not a novel practice. Rather, it is merely a business decision, which is subjective for every individual organization.

Customs Laws nowhere restrict the quantum of profit margin which any organization may add up to its costs. It varies depending on the ability of the

persons to negotiate and reach the final price. It also does not quantify the proportion of cost which may be added as profit. Once the price is accepted by the parties to the agreement, it is not for the Department to sit over judgment on the correct price of the goods unless there is any dispute over the genuineness of the agreement itself. This is especially so in cases where the entire amount agreed between the parties is duly realized by the exporter.

Reliance in this regard is placed on the decision in the case of ***S. Chandra Sekharan vs. Comm. Of Customs and Excise Hyderabad, 2001 (132) E.L.T. 751 (Tri-Chennai)***, wherein, Hon'ble Chennai Tribunal has held that excessive mark-up is normal elementary market strategy and further said that export values are not dependent on processing costs. The court relied on the fact that the assessee proved full realization of the export value. Relevant portion of the decision is extracted below for ready reference –

*"excessive mark up would be normal elementary marketing strategy and nothing much should be read into the same, when proof that bank remittance equivalent to declared FOB values have been received without demur has been placed on record. Therefore, FOB values have to be accepted to be genuine until the export contract is found fault with and material evidence is brought on record that the FOB prices were manipulated, for purposes of money laundering".*

The said view of the Tribunal has been affirmed by the Hon'ble Supreme Court reported at ***2003 (154) E.L.T. 353 (S.C.).***

Reliance is also placed on the decision of Hon'ble Tribunal in ***Mitexco vs. CC - 2003 (155) E.L.T. 69 (Tri.-Bom)***, wherein it was observed that the principle of "cost of manufacture plus reasonable profit margin" cannot be applied in every case. In that case, the Revenue alleged that the Appellants had overvalued the FOB value of fashion garments with a view to claim a higher rate of duty drawback. Negativing the contentions of the Revenue, the Hon'ble Tribunal emphasized that profit margin is dependent on the negotiation between the seller and the foreign customer. Relevant paragraphs are extracted for reference:

*"**38**. … Fashion garments do not subject themselves to normal rules of valuation. A shirt stitched from the same material would cost anywhere from Rs. 500/- to Rs. 1800/- depending upon the brand name attached thereto. In the case of cosmetics the value addition between the manufacturing costs to the brand name price is some time over 400%. If one is to go by the cost of material and cost of manufacture plus a "reasonable margin of profit" then the value of every commodity would be much lower than the actual value in the market. In the case of readymade garments the profit margins are tremendous and the margin would depend upon many causes including on the skill of the seller and the gullibility of the buyer.*

***39.** What is the effect of the over-valuation? The Government on one hand may have to give a higher quantum of drawback but at the same time the country is getting a significant amount of foreign exchange. Where the exports are suggestive of being intended for the purpose of hawala transactions, where the goods are not physically present or in cases where the sales proceeds are not realized penal action on the exporter would be justifiable. But merely by turning a blind eye on the capacity of the exporters in generating high profits on exports, it is the Government which is ultimately going to lose."*
*(Emphasis supplied)*

Thus, the value of the export goods cannot be disputed merely because they were sold at a higher price, i.e., with higher profit.

In the present case, the value of the subject goods declared is in line with the price agreed between the Noticee and Lloyd, Dubai in normal business circumstances. The entire value declared has been realised by the Noticee as export proceeds through banking channels. The Impugned SCN casts no doubt over the genuineness of the export agreement, viz., Purchase Orders dated 29.01.2023.

This being the case, the value of the subject goods declared by the Noticee ought to be taken as the correct value for the purposes of customs duty and the same cannot be disputed by the Department.

iii) The declared value of the subject goods exported were in line with the market value of similar goods. This fact is undisputed. Therefore, the said declared value cannot be rejected as incorrect.

The Noticee further submits that the value adopted by them is also in line with the market value of similar goods at the time of export as tabulated below:

| **S.No.** | **Seller name** | **Product name** | **Price at which the goods were sold** |
|---|---|---|---|
| 1 | Global Part Zone | Hub Assem. 8v6387 3089868 1v8608 for Caterpillar (cat) | AED 1828.51+tax AD |
| 2 | AVSpare.com | Hub-Brake 2G6337-Caterpillar | $224.36 |
| 3 | AfterMarket.Express | Hub Assy, Brake fits Caterpillar | $214.36 |
| 4 | Walmart.com | 2G6336- HUB-Brake 8D8804 2826551 for Caterpillar (CAT) | $237.18 |

The above fact show that the value of the subject goods declared by the Noticee in the disputed shipping bills were in line with the value of similar goods in the market at the time of export. On the other hand, the import invoice relied upon in the Impugned SCN was issued after a period of 2 months from the export of the subject goods. Both the above documents were available with the Department at the time of issuance of the Impugned SCN inasmuch as the same has been recorded in para 7.3, 9.7 and 12.4 therein.

However, without any reason, the Impugned SCN has chosen to rely upon the value declared in the impugned invoice (which is abnormally low) instead of the market value prevalent at the time of export.

Further, on the basis of the above evidence, the value of the subject goods exported by the Noticee vide one of the disputed shipping bill, viz., Shipping Bill No. 9277085 dated 13.04.2023 was accepted by the Customs Officials at the time of their export and only upon the satisfaction of the officer, were the subject goods permitted to be exported. This fact is evidenced by the following:-

a. The query raised by the Department in respect of the aforesaid Shipping Bill and the Noticee's Reply Letter dated 18.04.2023

b. The statement of Mr. Inder Bhojwani, Partner of M/s D.L. Shipping Services (the CHA handling the aforesaid consignment), **(RUD-12)** that the goods were examined by the Customs Officer at the time of stuffing in the container.

The above facts show that the Customs Officials at the port were satisfied with the value of the subject goods as declared by the Noticee basis the explanation provided by the latter. This being the case, there is no reason to rely on the import invoice to reject the said declared value of the subject goods.

Thus, the reliance placed on the import invoice in the Impugned SCN and adoption of the value in the import invoice by applying Rule 6 of the CVR, Exports ignoring the market value prevailing at the time of export of the subject goods by the Noticee is misplaced and incorrect.

iv) The declared value of the subject goods exported by the Noticee is also supported by the Certificate issued by the Cost Accountant

The declared value of the subject goods in the disputed shipping bills is also supported by the Certificate dated 20.09.2023 issued by the Cost Accountant, Mr. Sunny Ahuja. The Certificate is enclosed as **Annexure-9.**

However, the Impugned SCN disputes the same on the ground that the Cost Accountant has not physically inspected the subject goods. Instead, it has been alleged that the Certificate was issued based on the signed financial statements and other purchase documents provided to him and the technical processes in manufacturing the subject goods as explained by the technical team of the Noticee. He has never physically inspected the goods.

It is submitted that the Cost Accountant is justified in determining the value of the subject goods on the basis of the financial statements and understanding the technical parameters of the subject goods. This is especially so since the Certificate was issued after the subject goods were exported by the Noticee. The Noticee submits that considering the transaction value under the Customs Law is the price paid or payable for the export goods, it is certainly fair on the part of the Cost Accountant to certify the value of the goods basis the financial documents and technical parameters of the subject goods.

Also, the Impugned SCN has not stated as to why such approach is improper or as to why the physical examination is the only way of ascertaining the value of the subject goods. It merely avers that the certification done by the Cost Accountant is improper. Such rejection of expert view without any reason is arbitrary and not sustainable.

Hence, the value of the subject goods declared by the Noticee in the disputed shipping bills, which is also certified by the Cost Accountant is correct and ought to be accepted.

Therefore, the proposal in the Impugned SCN to reject value ascertained by the Cost Accountant and consequentially reject the declared value of the subject goods is baseless and is liable to be dropped.

20.4.1 THE EVIDENCE RELIED UPON IN THE IMPUGNED SCN AND THE REASONING CONTAINED THEREIN ARE INCORRECT AND THE DECLARED VALUE CANNOT BE REJECTED ON SUCH GROUNDS.:- The Noticee submits that the Impugned SCN has relied upon the following facts/documents to allege overvaluation on the part of the Noticee.

a. A substantial difference in value of the goods has been observed in

the export documents filed by the Noticee and the invoice value of the goods imported vide the subject Bill of Lading in the name of M/s M.F. International.

b. The empaneled Chartered Engineer, in the CE Certificate, has certified that the invoice value is the fair value of the goods verified by him.
c. The cost of the subject goods per set, computed based on the input cost, arrives to Rs. 10,614 per set as against the price of Rs. 21,000/- per set at which the subject goods were exported by the Noticee.
d. The value of the subject goods exported by the Noticee was on the higher side in the opinion of the Mr. Hitesh Tahiliani (Mediator between the Shipping liner and the CHAs) and Mr. Inder Bhojwani (CHA), as recorded by them in their Statements.
e. The Noticee could not explain the difference in the value of export documents and import documents.

The Noticee submits that the reliance placed on the above facts/documents is incorrect and misplaced as explained in detail *infra*.

i) Reliance placed by the Impugned SCN on the value declared by Lloyd, Dubai in the import invoice is misplaced.

The Impugned SCN has proceeded on the premise that the lower value i.e. USD 5.30 per set of the subject goods as declared by Lloyd, Dubai in import invoice, i.e. Invoice No. INV/05062023 dated 15.06.2023, is the correct value of the subject goods exported by the Noticee and the same ought to have been declared by the Noticee in the disputed Shipping Bills.

As explained in detail in foregoing paragraph, the value of the subject goods declared by the Noticee for export, vide the disputed Shipping Bills is commercially agreed price and ought to be accepted by the Department as the transaction value of the subject goods. Therefore, the above allegation in the Impugned SCN is incorrect for this ground alone.

Further, as submitted *supra*, the value of the subject goods was in line with the market value of similar goods at the time of export. This fact was accepted by the Department at the time of export. This being the case, the said declared value cannot be rejected on the ground that it was higher than the value of goods in the import invoice issued after a gap of close to 3 months.

**ii**) Department itself, on one hand agrees that reason for re-import is repackaging and relabeling of subject goods, and on the other hand proceeded to attribute the value of deteriorated goods to subject goods

The Noticee submitted that without prejudice, the Noticee submits that the value of the goods, allegedly attempted to be imported by Lloyd, Dubai, cannot be extrapolated and adopted as value of the subject goods exported by the Noticee vide the disputed Shipping Bills as explained *infra*.

The Noticee submits that the Impugned SCN proceeds on the premise that the goods imported into India by Lloyd, Dubai are the same as the subject goods exported by the Noticee. It also presumes that the goods imported by Lloyd, Dubai continue to remain in the same form and condition in which they were exported by the Noticee. The Noticee submits that the above assumption in the Impugned SCN is inconsistent with and contrary to following facts already available on record – The subject goods were exported by the Noticee to Lloyd, Dubai on FOB basis, viz., the responsibility of the Noticee is limited to handing over the subject goods to the shipping liner at port. The shipping liner was

engaged by Lloyd, Dubai and the Noticee had no role to play in the same. (RUD-4 of the Impugned SCN). As per the Statement of Mr. Amit Kithania and the mail dated 21.07.2023 of Mr. Nitin Sood, the contact person on behalf of Lloyd, Dubai, the subject goods were stored in warehouse for a period of 3 months since the customer of Lloyd, Dubai refused to purchase the goods from Lloyd, Dubai. (RUD-6 to the Impugned SCN). The subject goods were required repackaging and relabeling before they can be sold to any other customers by Llyod, Dubai. (RUD-6 to the Impugned SCN). It is to be noted that the above facts were mentioned in the Impugned SCN basis the statements given by the respective parties, viz., the representative of the Shipping Liner, M/s. M.F. International and the Customs Clearing Agents. No independent efforts were made by the Department to ascertain the correctness of the above facts as stated by the relevant parties during the investigation. This is especially so, when the goods were sent back to India requiring repackaging and relabeling. The Noticee submits that even going by the statements of the relevant parties and the alleged facts recorded in the Impugned SCN, the goods covered under subject Bill of Lading were of goods which are of deteriorated quality. This fact can be seen from the following statements made by the persons relied upon in the Impugned SCN –

Vide the Letter dated 30.08.2023, the Shipping Liner, Dubai requested the Ld. Intelligence Officer, DRI for a No Objection Certificate to the Container No. NIDU2204365 for clearance of the same in India as the cargo therein was exhibiting the signs of rust. Vide a Letter dated 02.09.2024, the Shipping Liner, Mumbai made a similar request to the Ld., Intelligence Officer, DRI. (RUD-24)

The said goods were brought into India for the purpose of repackaging and relabeling since the subject goods exported by the Noticee were lying in the warehouse in Dubai for considerable period of time causing its quality to deteriorate. Further, there is no allegation in the Impugned SCN that the subject goods exported by the Noticee were of inferior quality.

The Impugned SCN has not considered the fact that the deterioration in the quality of the goods would also have resulted in a reduction in their value. In other words, once the Impugned SCN accepts the fact that the subject goods were brought to India for repackaging due to their deteriorated quality, then, it follows that the price of the deteriorated quality of the goods cannot be compared with the quality of the subject goods exported. However, the Impugned SCN conveniently ignores the above fact and proceeds to apply the value of the said goods to the value of the subject goods exported by the Noticee vide the disputed Shipping Bills. Thus, the Impugned SCN has alleged overvaluation of the subject goods exported by the Noticee by comparing it with the goods of lower quality. Therefore, the allegation in the Impugned SCN that the value of the subject goods exported by the Noticee shall be the same as the value of the goods covered under subject Bill of Lading is misplaced.

On one hand the Department itself appreciates that the subject goods were imported in the name of M/s M.F. International for the purpose of refurbishment as the subject goods were subject to rust and the quality of the same has declined, and contradictorily, on the other hand proceeds to allege overvaluation of the fresh subject goods. Hence, the comparison of similar goods in different conditions at different points of time, is arbitrary. In view of the above, the allegation of overvaluation of the subject goods exported by the Noticee cannot sustain on this ground.

iii) The subject goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 were duly examined by the Customs Officers and the value thereof

was accepted by the Department at the time of export. The same cannot be questioned at this stage.

As submitted supra, the Noticee submits that an online query was raised regarding the valuation of the subject goods exported *vide* the Shipping Bill No. 9277085 dated 13.04.2023 prior to its clearance. The query is extracted below for ready reference –

*"Value appears higher in comparison to similar export. Please justify the value in terms of Customs Valuation (Determination of value of Export goods) Rules, 2007."*

*Vide* its letter dated 18.04.2023, the Noticee had clarified that the same reflects the fair market value of the goods, taking into account various factors such as quality, specifications, packaging, transportation and other related costs. The Noticee also relied upon the other reputable online sellers of the same goods such as globalpartszone, yantralive or ebay etc. to derive the fair value of the subject goods. A copy of the Noticee's Letter dated 18.04.2023 is marked and enclosed herewith as Annexure-10.

It is only after being satisfied by the response of the Noticee to the query raised by it, the department allowed the clearance of the goods. It is also noteworthy that the goods exported vide the remaining two Shipping Bills i.e. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, were allowed to be exported without any dispute i.e. no query was raised at or before the time of clearance. Thus, the Noticee submits that only after satisfaction of the Customs Officials over the valuation of the subject goods that they were exported by the Noticee. This being the case, the valuation cannot be disputed again on the basis of some value adopted by another person after a period of 3 months.

Further, the Impugned SCN is also silent as to why the value of the goods adopted after a period of 3 months is considered and the contemporary value of goods relied upon by the Noticee in its Reply dated 18.04.2023 is conveniently ignored. The Impugned SCN therefore, is unjustified and arbitrary. It merits to be dropped.

iv) Reliance placed in the Impugned SCN on the belated opinion of the CHA on valuation of the subject goods is misplaced.

The Impugned SCN, in para 8.4, 8.7 and 13.4, places reliance on the statement of Mr. Hitesh Tahiliani (Mediator between the Shipping Liner and CHA) and Mr. Inder Bhojwani (CHA), wherein they had commented on the value of the subject goods exported by the Noticee. It was stated therein that both the persons had doubt over the valuation of the subject goods and felt that the value seemed to be on the higher side.

The Noticee submits that no reliance can be placed on the opinion of the CHAs, stated belatedly in statements recorded by them before the Customs Officials for the following reasons –

The said statement is contrary to the facts on record. No dispute was raised by the CHAs at the time of export of the subject goods vide the disputed shipping bills even if they felt the value is on the higher side. Having been silent at that time, they cannot now aver that they felt at the time of export that the value of the subject goods was higher.

The Impugned SCN has not gone into the qualifications of the CHAs to

give such an opinion to the extent that their opinion can be taken at face value. In fact, no question about their qualification and capacity to give such an opinion was asked during the recording of the statement also.

The Impugned SCN has presumed their statements to be true without ascertaining whether they are afterthought on the part of the CHAs.

Even if it is assumed that the statements of the CHAs were true, they are just opinions of the CHAs without any legal basis.

The Noticee submits that in view of the above, the opinions of the CHAs are not reliable and therefore, reliance placed on them in the Impugned SCN is misplaced. In case the Impugned SCN intends to rely on the said statement of the CHAs, the Noticee requests that they may be permitted to cross examine them before any order is passed in the present case.

v) The allegation that the Noticee could not explain the difference between the declared value of the subject goods in the disputed shipping bills and the value of the goods in the import invoice is baseless.

The Impugned SCN alleges that the Noticee could not explain the difference in the value of export documents and import documents, viz., import invoice and therefore, the value of the subject goods declared by the Noticee in the disputed Shipping bills ought to be rejected.

The Noticee submits that the Noticee cannot give any reason inasmuch as the basis of the valuation of goods in the import invoice itself was unclear. It is undisputed that the Noticee was not aware of the import of the goods vide the subject Bill of Lading. In fact, as recorded in para 7.3 of the Impugned SCN, it was confirmed by Mr. Nasir Hussain, Manager-Import of Shipping Liner. In his statement (RUD – 20) that Noticee was not informed of the import since Lloyd, Dubai is the owner of the goods covered in the import invoice.

It was for the Department to identify the basis of valuation of goods in the import invoice. This was not done by the Department in the instant case. No efforts were made to summon Lloyd, Dubai or their agent in India, if any, to seek details on the basis of valuation. Further, no question was asked to Mr. Nasir Hussain of the Shipping Liner regarding the valuation adopted in the import invoice.

Instead of fulfilling its duty as part of the investigation, the Impugned SCN sought the Noticee to explain the difference in value. Since the Noticee also had no information on the valuation aspect of the goods in the import invoice, there is no way they could explain the difference. This practical impossibility ought not to be misused as a reason to assume that the Noticee has overvalued the subject goods exported by them.

Therefore, the Impugned SCN proposing to reject the value of the subject goods declared by the Noticee is incorrect and merits to be dropped.

vi) Onus is on the Department to prove that the valuation of the subject goods declared by the Noticee was incorrect. The Department has not discharged the onus in the present case.

The Noticee submits that the onus to prove that the valuation of the subject goods declared by them is incorrect is on the Department.

The Noticee submits that the department must serve evidence to discharge its burden to prove the allegations of over valuation on the Noticee. The value declared by an exporter cannot be disputed based on presumption and assumptions and documentary evidence is a must to substantiate the

same.

Reliance in this regard is placed upon ***Akshay Exports & Inds. vs. Commissioner of Customs, Mumbai, 2003 (156) E.L.T. 268 (Tri.-Kolkata)*** wherein it was held that there must be available material on the basis of which the valuation declared by the Appellant is challenged i.e. when any allegation of mis-declaration of goods in value is levelled against the goods, the onus of proving the same rests with the department. The export invoice value can be disproved only by adducing documentary evidence of contemporary export of such or like goods at a price lower than the price declared by them. The relevant extract of the same is extracted below:

*"4. ……. A perusal of the impugned Order does not reveal any material on the basis of which the Revenue came to the conclusion that the Appellants have over valued the impugned goods. There is neither any evidence of any market enquiry made in this behalf nor any contemporaneous export of the such or like goods at a lower price…..*
*…. It is well settled that* ***the onus to prove a charge of undervaluation (sic) is on the Department by bringing on record the material evidence****. In the present matter for want of any material evidence or document, the charge of under valuation (sic) merely on the basis of confessional statement which has also been retracted the next day, cannot stand"*
*(Emphasis supplied)*

Further, in the case of ***Mirah Exports Pvt. Ltd. vs. Collector of Customs, 1998 (98) E.L.T. 3 (Supreme Court)***, it was held that the burden of proving a charge of under-valuation lies upon Revenue and Revenue has to produce the necessary evidence to prove the said charge.

Reliance is also placed on the following cases:

i. *Union of India vs. Jayshree Metal Corporation, 2015 (325) E.L.T. 210 (Supreme Court);*
ii. *Commissioner of Customs, New Delhi vs. Prodelin India (P) Ltd., 2006 (8) TMI 186 – Supreme Court*
iii. *Sempertrans Nirlon Pvt. Ltd. vs. Commissioner of Customs (Import), Mumbai, 2013 (9) TMI 619 – CESTAT Mumbai*
iv. *SKS Ispat & Power Ltd. vs. Commissioner of Customs, Raipur, 2018 (364) E.L.T.378 (Tribunal-Delhi)*
v. *Pushpak Metal Corpn. vs. Commissioner of Customs, Kandla, 2014 (312) E.L.T. 381 (Tribunal- Ahmedabad)*

Reliance is placed on the case of *Commissioner of Customs vs. J. D. Orgochem Ltd., 2008 (226) E.L.T. 9 (Supreme Court)*, wherein it was held that conclusion of undervaluation is not premised on any legal principle and the revenue, having not brought on records any contemporaneous evidence to the contrary, cannot be said to have discharged its burden.

Reliance is also placed on the case of ***Commissioner of Customs, Calcutta vs. South India Television (P) Ltd., 2007 (214) E.L.T. 3 (Supreme Court),*** wherein it was held by the Hon'ble Apex Court that if the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. Relevant portion of the decision is extracted below for ready reference:

*"6. … In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real.*
*…Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured.*
*… Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted."*
*(Emphasis Supplied)*

Further, reliance is also placed on the case of ***BBS Pens (India) Pvt. Ltd. vs. Commissioner of Customs, Bangalore, 2002 (142) E.L.T. 435 (Tri.-Bang.).*** wherein the Tribunal refused to reject the transaction value in the absence of any proof of the same.

Reliance in this regard is also placed by the Noticee on ***Commissioner of Cus., Vishakhapatnam vs. Aggarwal Industries Ltd., 2011 (272) E.L.T. 641 (S.C.),*** wherein it was held that a mere suspicion upon the correctness of the invoice imported by an importer is not sufficient to reject it as evidence of the value of the imported goods. The doubt held by the Customs Officers has to be based on some material evidence and is not to be formed on a mere suspicion or speculation.

Though the above decisions were rendered in the context of undervaluation, the ratio shall squarely apply to the present case involving overvaluation also.

The Noticee submits that the Department has not fulfilled the above onus in the facts of the present case and therefore, the Impugned SCN merits to be set aside.

20.5 RELIANCE PLACED BY THE IMPUGNED SCN ON THE CE CERTIFICATE IS MISPLACED:- The Impugned SCN, para 8.6 and 10.6 has relied upon the valuation made by CE, M/s Gattani & Co. *vide* Certificate dated 02.09.2023. In the said Certificate, the CE has observed as follows:

a. The cargo consisted of gears & pins. Each box was opened & found to be identical in nature consisting of two gears and a pin. They are a mixture of new, old and used parts. There are no marks or identity. The 3 pcs set as

declared are not uniform in nature and were in used condition.

b. The parts of brakes shown/ inspected appear to have been retrieved from discarded items (gears) and pin in it was new. Thus, as there is no description & uniformity of the parts except the PIN, it doesn't appear to be parts as declared in the present condition.
c. The value declared in the import invoice appears to be fair.

The CE Certificate dated 02.09.2023 is marked and already enclosed herewith as **Annexure- 8.** The Noticee submits that the CE Certificate is not reliable, and the reliance placed in the Impugned SCN in the same is misplaced. The Noticee submits that the CE Certificate is not clear as to which goods were examined by the CE. The CE Certificate nowhere mentions the container number or the bill of entry number relating to the goods under examination. It only states the description of the goods and the import invoice number. In fact, the first condition of the Terms and Conditions of the CE Certificate indicates that *"This certificate is being issued for Customs purpose without prejudice is specific to the above-mentioned **BE/ Container** mentioned only."*

Thus, the identity of the goods examined by the CE itself is unclear and therefore, the CE Certificate cannot be taken as basis for valuation of the subject goods exported by the Noticee vide the disputed Shipping bills.

No other evidence on record indicates that the subject goods were the ones examined by the CE. Even the Department's request letter to CE dated 21.08.2023 **(RUD-26)** does not mention the container number or the bill of entry number. It contained no reference to the goods sought to be examined by the CE. It only mentioned that the goods were imported by M.F.International. In the absence of specific consignment which was to be examined/examined, the CE Certificate cannot be a basis to conclude that the subject goods exported by the Noticee was the one examined by the CE and that the CE Certificate on valuation pertains to the subject goods *ibid*.

Further, the CE Certificate itself records that the valuation was done on the basis of visual examination of goods on sample basis. It follows that the CE could not verify all the goods before issuance of the CE Certificate. Therefore, the opinion of the CE in the CE Certificate cannot be applied to all the goods in the consignment.

Furthermore, the CE Certificate does not mention as to how the value of the goods were arrived at. It is not clear as to how merely on visual examination, the value of the goods was ascertained. It does not specify any scientific methodology adopted in the valuation of the goods. The CE Certificate, therefore, can utmost be treated as arbitrary opinion of the CE rather than a reasoned opinion which can be relied upon as evidence.

Therefore, the CE Certificate is not without doubts and therefore, cannot be treated considered as reliable evidence to allege that the Noticee has overvalued the subject goods exported by them.

Without prejudice, **even if it is assumed, without admitting** that the goods examined by the CE was the subject goods exported by the Noticee vide the disputed shipping bills, the Noticee submits that even then it cannot prove overvaluation on the part of the Noticee.

The CE had examined the goods, as per the CE Certificate, on 02.09.2023 which is more than 5 months from the date of export of the subject goods by the Noticee. The CE Certificate clearly states that the goods were examined on *as is where is* basis, i.e., goods which are at least 5 months old.

The CE Certificate itself records that the goods were, *inter alia* in old condition. Further, the said fact was also recorded in the Letters dated 30.08.2023 and 02.09.2023 filed by the Shipping Liner seeking provisional release of the goods wherein it was stated that the rust has set in, and the products are deteriorating.

This being the case, the value opined in the CE Certificate applies to the condition and form of the goods as it was at the time of examination, i.e., on 02. 09.2023 and not the goods as it was exported by the Noticee. Naturally, the value of the goods would have reduced with time.

Therefore, the CE Certificate dated 02.09.2023 cannot be applied for valuation of the subject goods exported by the Noticee for this reason also.

i) The findings with respect to valuation of subject goods exported vide one Shipping Bill shall not be extrapolated to the other two Shipping Bills :- Further and without prejudice, the CE Certificate dated 02.09.2023 allegedly provides a view on the value of subject goods exported by the Noticee vide Shipping Bill No. 9277085 dated 13.04.2023. It does not provide any view on the subject goods exported by the Noticee vide the other two disputed Shipping Bills, viz., No. 9692104 dated 01.05.2023 and No. 1174464 dated 20.05.2023. Even assuming without admitting that the CE is an authority on the value of the subject goods exported by the Noticee, the same cannot be extrapolated to reject the value of the subject goods exported by the other two disputed Shipping Bills, viz., No. 9692104 dated 01.05.2023 and No. 1174464 dated 20.05.2023.

In view of the above, the allegation of overvaluation of subject goods based on the Certificate of the CE dated 02.09.2023 is not sustainable and merits to be dropped.

ii) The Department has taken contradictory stands with respect to 'physical verification' of subject goods at the time of export and import :- The department *vide* the Impugned SCN has thrusted the allegations of overvaluation of subject goods on the Noticee while considering the valuation done by the Independent Cost Accountant i.e. M/s. Ahuja Sunny and Co. as incorrect on a premise that the goods being valued were not inspected by him.

Even if it is assumed that for valuation purposes, physical inspection is mandatorily required, the allegations of overvaluation of the subject goods covered under Shipping Bill 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023 will not be sustainable. This is because the CE has not physically verified the goods exported vide the 2 other disputed Shipping Bills, viz., Shipping Bill 9692104 dated 01.05.2023 and Shipping Bill No. 1174464 dated 20.05.2023.

Thus, the Impugned SCN on one hand requires physical verification by Cost Accountant for valuing the goods but dispenses the same requirement from the CE in respect of the goods exported vide Shipping Bill Nos. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023.

Thus, the stand of the Department in the Impugned SCN is inconsistent and incorrect. Therefore, the Impugned SCN proposing to reject the value of the subject goods exported by the Noticee is incorrect and not sustainable.

20.6 THE SUBJECT GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 113(I) OF THE CUSTOMS ACT:- The Impugned SCN has proposed to confiscate the goods covered under the import invoice under Section 113 of the Customs Act. At the outset, the Noticee submits that the

goods covered under the import invoice do not belong to the Noticee. The Noticee is admittedly not the importer of the said goods and certainly did not hold himself as an importer in respect of the said goods. Therefore, the proposal in the Impugned SCN to confiscate the said goods cannot be directed against the Noticee.

Without prejudice, the Noticee is making the following submissions only to the extent that they have not overvalued the subject goods exported by them vide disputed shipping bills and none of their acts of omission or commission has rendered the subject goods exported by them liable for confiscation.

Section 113 of the Customs Act provides for the "Confiscation of improperly exported goods". In terms of Section 113(i), goods shall be liable for confiscation if the goods do not correspond to any material particular with the information furnished by the exporter. The Noticee submits that the subject goods are not liable for confiscation as the above provision is not attracted to the facts of the present case.

i) Subject goods are not liable to confiscation in absence of *mens rea* on the part of the Noticee: - It is submitted that the Noticee while filing the disputed shipping bills, was and is still of the *bona fide* belief that the value declared by it was correct. The value agreed to between Lloyd, Dubai and the Noticee has only been declared in the export documents and the same have been duly realized as well. The intention of any loss to the exchequer is not indicated in the entire transaction. It may be noted that to invoke the provisions of Section 113(i) of the Customs Act, the two basic ingredients must be present: i) non-correspondence with value or in any material particular, ii) *mala fide* intention on the part of the Noticee. If even one of the two components is missing, the goods shall not be rendered confiscable.

T h e Hon'ble CESTAT, in the decision rendered in ***Kirti Sales Corporation vs. CC, Faridabad***, ***2008 (232) E.L.T. 151 (Tri.-Del.),*** gave the following interpretation of an act amounting to "misdeclaration" for confiscation:

***"6.*** *We are inclined to accept the case of the Revenue that the goods imported were texturized fabric. However, whether the declaration in the Bill of Entry amounts to 'misdeclaration' so as to attract the provisions of Section 111(m) of the Customs Act in a given case depend upon the facts of the case. To constitute 'misdeclaration', the declaration must be intentional. Misdeclaration cannot be understood as same as wrong declaration, of course, made bona fide, the possibility of which cannot be ruled out altogether. The question, therefore, is whether the appellant had intentionally and deliberately mis-declared the goods as non-texturized fabric rather than texturized fabric. On this point, we are inclined to accept the case of the appellant that the declaration had been made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part so as to attract the mischief of Section 111(m) of the Customs Act.*
*(*Emphasis supplied)

A bare perusal of the extract, as reproduced above, very clearly shows that for invoking the misdeclaration proceedings for confiscation, it is necessary to show the evidence of *mens rea*, or *mala fide* intention. In the cases wherein the evidence does not bring out any manifestation of *mens rea,* the act does not amount to a 'wrong declaration' and shall not attract the harsh provisions of Section 113(i) of the Customs Act.

The Noticee places its reliance on ***P Ripakumar and Company vs. Union of India, 1991 (54) E.L.T. 67 (Bom.)***, wherein demand of confiscation

and redemption fine in lieu thereof was set aside on the ground that the importer had acted in a *bona fide* manner. It may be noted that the goods can be treated as 'goods attempted to be improperly exported' under Section 113(i) of the Customs Act, in the event they do not correspond with the value or any material particular made in the entry therefore.

In the present matter, there is no dispute over mismatch in the material particulars/ description of the subject goods. The value declared by the Noticee in the disputed shipping bills is the correct transaction value. One of the disputes in the context of valuation that may arise may relate to the difference between the value declared in the export documents and the proceeds actually realized, which is utterly contrary to the present scenario. There are three values in question:

- The value agreed to between both parties. i.e. the one mentioned in the Purchase Orders issued by Lloyd, Dubai.
- The value declared by the Noticee in the Shipping Bills at the time of export.
- The value actually realized in the form of export proceeds.

Had there been any one differing value among all the three mentioned above, the 'misdeclaration in terms of value' could have been established here. However, all the three values are equal in the present case.

Reliance in this regard is placed upon *Commissioner of Customs, Noida vs. Ess Aar Automotive Pvt. Ltd. 2019 (369) E.L.T. 727 (Tri.- All.)* wherein it was held that the charge of overvaluation could be imposed only in the case if the export proceeds could not have been realized. The relevant extract of the same is reproduced hereunder:

*"5. ……. We also note that the charge of overvaluation is presumptive in nature and such charge could have been proved only if goods could be exported with declared value and export proceeds could not have been realized to the extent of such value. We further note that the report of the Chartered Engineer also did not prove to be correct in view of the fact that the export proceeds equal to amended FOB value were realized."*
*(*Emphasis supplied)

Therefore, *mens rea* could have been alleged on the Noticee had there been a case of non-realization of the export proceeds equal to the declared values and the Noticee had a pre-determined intention to mislead the exchequer by declaring a higher value in the export documents and at the same time, not been able to realize the same.

However, as may be comprehended from the submissions made above, the value declared is equivalent to the export proceeds and therefore, *mens rea* is not attributable to the present situation.

Therefore, the proposal for confiscation of the subject goods merits to be dropped.

20.7 NO PENALTY UNDER SECTION 114(iii) OF THE CUSTOMS ACT LIABLE TO BE IMPOSED ON THE NOTICEE:- The Impugned SCN has imposed penalty on the Noticee under Section 114 (iii) of the Customs Act on account of overvaluation of the subject goods. In this regards the Noticee submits the following.

i) No penalty can be imposed under Section 114(iii) of the Customs Act as the subject goods are not liable to confiscation under Section 113 (i) of the Customs Act

*(Emphasis supplied)*

The Noticee submitted that Section 114(iii) prescribes for penalty on any person who, in relation to any other goods, does or omits to do any act which act, or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act. As already submitted above, the subject goods are not liable for confiscation, therefore, penalty is not imposable on the Noticee and deserves to be set aside.

Therefore, since the subject goods are not liable for confiscation under section 113(i) of the Customs Act as alleged in the Impugned SCN, as submitted in the aforementioned ground, the question of imposition of penalty under Section 114 of the Customs Act upon the Noticee does not arise in the present case.

In this regard, reliance is placed on the case of ***P & B Pharmaceuticals (P) Ltd. vs. Collector of Central Excise, 2003 (153) E.L.T. 14 (SC)*** wherein the Hon'ble Supreme Court has held that in the absence of any liability for confiscation, penalty shall not be imposed on the assessee. Also, in the case of ***Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II vs. G.M.K. Products Pvt. Ltd., 2020 (373) E.L.T. 692 (Tri. Hyd.)***, the Hon'ble Tribunal held that the confiscation under Section 113 was not sustainable as per law in respect of exported goods. Consequently, the penalty under Section 114 also cannot sustain.

ii) Penalty cannot be imposed on the Noticee as there was no intention of loss to the revenue exchequer

Without prejudice to the above submissions, it is submitted that in terms of various judgments of the Hon'ble Supreme Court, High Courts and Tribunals, penalty cannot be imposed on the assessee in the absence of mens rea on part of the assessee.

The Hon'ble Supreme Court in the landmark case of ***Hindustan Steel Ltd. vs. State of Orissa, 1978 (2) E.L.T. (J159) (SC)*** has held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Relevant portions of the judgment are reproduced below:

*"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*
***(Emphasis Supplied)***

The Noticee submits that the element of *mens rea* us absent in the present case. The subject matter of the Impugned SCN is the valuation of the goods which is a subjective concept. Two distinct people may not hold a similar view pertaining to the valuation of the same product.

Furthermore, the concept of *mens rea* was attributable to the present matter, had the export proceeds not been realized. The export proceeds have been duly realized by the Noticee and there is no loss of Foreign Exchange in

any manner to the revenue exchequer. Therefore, the penalty under Section 114(iii) merits to be dropped.

It is submitted that the decision of the Hon'ble Supreme Court in ***Hindustan Steel Ltd. (Supra)***, is apposite. The Hon'ble Supreme Court has held that penalty will not ordinarily be imposed unless the assessee either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. This decision was followed by the Apex Court under the Customs law in the case of ***Akbar Badruddin Jiwani vs. Collector of Customs, 1990 (47) E.L.T. 161 (SC)*** wherein the Hon'ble Supreme Court has specifically held that penalty is not imposable in the absence of *mens rea*. Relevant portion has been extracted below for reference:

*"58. In the present case, the Tribunal has itself specifically stated that the Appellant has acted on the basis of bona fide belief that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation required to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.*
*59. We refer in this connection the decision in Merck Spares v. Collector of Central Excise & Customs, New Delhi - 1983 E.L.T. 1261, Shama Engine Valves Ltd. Bombay v. Collector of Customs, Bombay - 1984(18)ELT E.L.T.533 and Madhusudan Gordhandas & Co. v. Collector of Customs, Bombay - 1987 (29)ELT E.L.T.904 wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in Hindustan Steel Ltd. v. State of Orissa - 1978 (2) E.L.T. (J 159) (S.C.) = 1970 (1) SCR 753 - by this Court that :-*
*"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*
*60.In the instant case, even if it is assumed for arguments sake that the stone slabs imported for home consumption are marble still in view of the finding arrived at by the Appellate Tribunal that the said product was imported on a bona fide belief that it was not marble, the imposition of such a heavy fine is not at all warranted and justifiable."*
(Emphasis Supplied)

Similarly, the Hon'ble Mumbai Tribunal in the case of ***K. K. Arora vs. Commissioner of Customs, Mumbai, 2007 (212) E.L.T. 33 (Tri-Mumbai)*** held as follows:

*"4. On adjudication of the matter, the benefit of duty free clearance of 1050 kgs. of pivaloyl chloride imported against advance license was denied, customs duty of Rs. 48,716/- along with interest @ 24% under Section 28AB was confirmed, the penalties were imposed on the two Directors namely, Shri Sandeep Aurora and Shri K.K. Arora to the tune of Rs. 50,000/- each of them and a penalty of Rs. 25,000/- each on two firms. The facts reveal that the imports have taken place from different Ports i.e. Chennai and Mumbai on the same advance license.*

*Therefore, proceedings have been initiated separately at both the places. The South Zonal Bench at Bangalore heard the appeals filed by both the Directors, namely, Shri Sundeep Aurora and Shri K.K. Arora aggrieved by the Order-in-Original No. 3133/2004, dated 30-9-2004 and set aside the penalties imposed on them vide its Final Order Nos. 1176-1177/2005 and the same has been reported at 2005 (190) E.L.T. 53 (T-Bang.). It is observed in the aforesaid decision that there were several extenuating circumstances which prevented the Appellant from fulfilling the export obligation. As chemical was likely to lose shelf-life, therefore in view of the same they were left with no alternative but to sell the same in the local market.* ***The orders itself clearly brings out that Appellant had no mens rea in not fulfilling export obligations. The penalty is not imposable on the Appellant consequently set aside the same.****"*
(Emphasis Supplied)

In view of the above settled position of law and considering the fact that there is complete absence of *mens rea* in the present case, it is most humbly requested that the Impugned SCN imposing such penalty be dropped.

20.8 PENALTY IS NOT IMPOSABLE UNDER SECTION 114AA OF THE CUSTOMS ACT:- The Impugned SCN has proposed to impose penalty on the Noticee under Section 114AA of the Customs Act. However, no justification whatsoever, has been given therein as to why or how the penalty is imposable on the Noticee under the said provision. The Noticee submits that the proposal to impose penalty under Section 114AA merits to be dropped on this ground alone.

Without prejudice, the Noticee submits that no penalty is imposable under Section 114AA in the light of the facts of the present case. For ease of reference, the section is extracted herein below:

***"Section 114AA. Penalty for use of false and incorrect material.-*** *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

So, in order to invoke the above section a person must fulfill all of the following conditions cumulatively:

- knowingly or intentionally
- make, sign or use
- or cause to make sign or use
- any declaration, statement or document
- which is false or incorrect in any material particular transaction of any business for the purposes of the Customs Act.

As is evident from the above, the knowledge of any declaration, statement or document that is being made or signed or used must be possessed by the person against whom the said section is being invoked.

The Noticee submits that they made bona fide declarations as the Noticee was and is still of the view that the subject goods are correctly valued. This legal position is also upheld by the Hon'ble CESTAT and other judicial forums. Therefore, it cannot be said that the Noticee has done any act attracting the provisions of Section 114AA.

It is further submitted that the penalty under Section 114AA is imposable only in those situations where export benefits are claimed without actually exporting the goods and by presenting the forged documents. In support of this argument, reliance is placed upon the **Twenty Seventh Report of the Standing Committee of Finance** wherein insertion of Section 114AA was discussed at Paragraph 62.

*63. The information furnished by the Ministry states as follows on the proposed provision:*
*"Section 114 provides for penalty for improper exportation of goods.However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."*

*64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh which might lead to harassment of industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under:*
*"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefit under various export promotion schemes**.** The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."*

*65. The Ministry also informed as under:*
*"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."*
*66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."*
***(Emphasis Supplied)***

The aforesaid extract from the report of the standing committee explains

the purpose for which Section 114AA has been inserted in the Customs Act. The purpose is to punish those people who avail export benefits without exporting anything. Such cases involve serious criminal intent, and it cannot be equated with cases where the department holds a different view with respect to the valuation of the exported goods.

The perusal of the aforesaid extract makes it clear that Section 114AA was inserted to penalize the circumstances where export benefits are availed without actually exporting any goods. According to the legislatures, Section 114 of the Customs Act provided penalty for improper exportation of goods, and it was not covering situations where the goods were not exported at all. Such serious manipulators could have escaped penal action even when no goods were actually exported. Therefore, it is submitted that penalty under Section 114AA is imposable only in those circumstances where export benefits are availed without exporting any goods.

Further, the wordings of Section 114AA suggests that penalty under this Section is imposable only on natural individuals and not on juristic entities. Such an interference comes out from the use of the expression *'if a person knowingly or intentionally make, signs or uses.'* Only an individual can make or sign any declaration or statement. A company cannot do such an act on its own. In support of this argument, reliance is placed on the judgement of ***ITC Ltd. vs. Commissioner of Central Excise. Bangalore, 1998 (104) E.L.T. 151 (Tribunal).*** In this case, the Hon'ble Tribunal was dealing with Rule 52A(5)(c) of the Central Excise rules which reads as follows:

*"If any person-*

a. ***carries or transports excisable goods from a factory without valid gate pass, or***
b. *while carrying or removing such goods from the factory does not on request by an officer, forthwith produce a valid gate pass, or*
c. *enters particulars in gate pass which are, or which he has reason to believe to be false,*

*he shall be liable to a penalty not exceeding one thousand rupees, and the excisable goods in respect of which the offence is committed shall be liable to confiscation.*

In the light of the aforesaid provision, the question before the Hon'ble Tribunal was whether the term "person" included ITC or not. The Hon'ble Tribunal holding that the penalty was not imposable on ITC observed as follows:

*"Thus we find the Board circular and trade notices do not help Revenue to establish that ITC was required to show the correct PP in G.P.1, delivery invoice etc. and had shown false PP in the said document. Hence Rule 52A(5)(c) of the Rules could not have been invoked against ITC. Further, penalty under Rule 52A(5)(c) is on any person who enters false particulars in the gate pass. It appears that the sub-rule (5)(c) seeks to rope in individuals who are responsible for gate passes with false particulars and not the manufacturer as such, unless the manufacturer is an individual and has personally entered such false particulars in the gate pass. For these reasons, we hold that the penalties imposed on ITC under Rule 52A(5)(c) of the Rules are unsustainable."*

In the light of the aforesaid decision, it is submitted that the penalty under Section 114AA is imposable only on individuals who actually makes or signs such forged documents and not on the Noticee i.e. a Company by its

organizational structure. Therefore, it is submitted that under Section 114AA, penalty cannot be imposed on the Noticee.

20.7.2 It is further submitted that the penalty under Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. In the present matter, the exports have been made by furnishing all the relevant documents which justifies the value declared by the Noticee i.e. Purchase Orders which indicate the prices agreed to by Lloyd, Dubai.

The Department has also failed to appreciate that the agreed value has been duly realised by the Noticee for all the 3 disputed Shipping Bills and the detailed submissions in this regard have already made supra, in para-A.38 to A.46.

Even if the Department has a different view about the valuation aspect of the subject goods, the penalty under Section 114AA cannot be imposed considering the absence of allegation of forged exports in the Impugned SCN. Valuation is a subjective matter, as may be worked out on the basis of various factors and department and the Noticee may have a different view regarding the valuation of the subject goods which were intended to be exported. But such difference in valuation does not indicate forged documentation in any manner, which further shall not be attributed to the *mala fide* intention on the part of the Noticee. Therefore, the imposition of penalty under Section 114AA cannot sustain and merits to be dropped.

In this regard, the Noticee relies upon the case of ***Commissioner of Customs, Sea Chennai vs. Sri Krishna Sounds and Lightings, 2018 (7) TMI 867- CESTAT Chennai,*** wherein penalty under Section 114AA was dropped on the ground that the transaction was in relation to imports and not a situation of paper transaction. The relevant portion has been extracted below for reference:

*"6. The ld. AR has submitted that the Commissioner (Appeals) has set aside the penalty under section 114AA for the reason that penalty has been imposed by the adjudicating authority under section 112(a) and therefore there is no necessity of further penalty under section 114AA. I find that this submission is incorrect for the reason that in the impugned order in para 7 and 8, the Commissioner (Appeals) has discussed in detail the provision with regard to Section 114AA. It is seen stated that as per the Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12.5.2005, the Standing Committee has examined the necessity for introducing a new Section 114AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AA is excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason hat penalty under Section 112(a) is imposed. After considering the ingredients of Section 114AA and the rationale behind the introduction of Section 114AA, the Commissioner (Appeals) has set aside the penalty under Section 114AA.*

*7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides****, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper***

***transaction***. *I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed."*

In this regard, reliance is also placed on the decision of the Hon'ble Tribunal in the case of ***Bosch Chassis systems India Ltd. vs. Commissioner of Customs, New Delhi (ICD, TKD), 2015 (325) E.L.T. 372 (Tri-Del.),*** where while where while setting aside the penalties imposed under Section 114A and Section 114AA of the Customs Act, the Hon'ble Tribunal held the imposition of penalty as unsustainable since there was no mala fide intention or wilful misrepresentation on the part of the assessee.

Further, the Noticee also places reliance on the following cases wherein it has been held that no penalty can be imposed under Section 114AA of the Act in absence of any mala fide intention on the part of the assessee.

- *Parag Domestic Appliances vs. Commissioner of Customs, Cochin, 2017 (10) TMI 812- CESTAT Bangalore-*

*"20. The next point is imposition of penalty under Section 114AA on both the importers as well as Director of one of the importer. We note that while there is no contest regarding the imposition of penalty under Section 112(a) except for prayer to reduce the same, the imposition of penalty under Section 114AA is strongly contested. We note that the provisions of Section 114AA will apply in cases where a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. As discussed elaborately above, we find that there is no situation of any false document submitted by the importer or by the Director of the importer. As such, we find that the application of provisions of Section 114AA is not fully justified by the impugned order and accordingly, we set aside the penalties imposed under Section 114AA."*
*(Emphasis Supplied)*

- *Premax Logistics vs. Commissioner of Customs, Chennai, 2017 (4) TMI 483- CESTAT Chennai-*

*"5.4 Nonetheless, nowhere in the notice or even in the impugned order has there been any attempt made to demolish the depositions of said Shri Nagasundaram or Shri Suresh. Even more interestingly, in the entire impugned order spanning 16 pages in 31 paragraphs, there is just one (para-30), which even refers to the role of the Noticee. Even this para which has been relied by Ld. A.R comes to an abrupt conclusion without any discussions or findings, that the Noticee has committed acts*
*of omission and commission and actively aided and abetted the main player. Having done this, adjudicating authority goes ahead to confirm the proposals made in the notice and inter alia impose the penalties appealed against. There is no reasoned analysis as to what was the part played by Noticee and how that has resulted in acts of 'omission and commission'. I do not find any basis for imposition of the penalty for the raison d'etre for the high quantum of the penalty imposed has also not been brought out. Viewed in this context, it is but obvious that the adjudicating authority has been unjudicious and peremptory in imposition of the impugned penalty under section 114AA, since, unless it is proved that the person to be penalized, has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for*

*penalty under that section. This requirement has not been satisfactorily met either in the notice or in the impugned order and hence I do not have any hesitation in setting aside the same."*
*(Emphasis Supplied)*

In view of the above, it is submitted that since the present case neither involves any fraud nor has there been any mala fides on the part of the Noticee, imposition of penalty under Section 114AA of the Customs Act is not warranted and therefore the same is liable to be dropped.

20.8 THE IMPUGNED SCN IS INVALID IN THE ABSENCE OF THE VALID APPEAL AGAINT THE OUT OF CHARGE/ SHIPPING BILLS. :- It is submitted that the subject goods exported by the Noticee were cleared on the strength of duly assessed Shipping Bills and 'Out of Charge' orders issued by the proper officer under the authority of the provisions of Section 17 and Section 50 of the Customs Act. There is no dispute on this factual position. It is submitted that these orders were passed on the satisfaction of the proper officer that the said goods have been properly assessed before clearance for home consumption.

It is humbly submitted that the assessment orders being quasi-judicial orders can only be set aside by an order of the competent appellate authority in appellate proceedings. Quasi-judicial orders cannot be sought to be set aside by mere issuance of a show cause notice, proposing to modify the assessment orders in the instant case.

This view was upheld by the Hon'ble Punjab and Haryana High Court in ***Jairath International vs. Union of India, 2019 (10) TMI 642***. The Hon'ble High Court was addressing the issue of recovery of erroneous sanction of drawback claim with respect to goods already exported out of India on account of alleged overvaluation. The shipping bills in question were self-assessed and pertained to period post amendment vide Finance Act, 2011. The Hon'ble Court held that the department does not have power to reassess the value of goods already exported in absence of challenge to the original assessment and consequently, no recovery is possible with respect to duty drawback already sanctioned.

Further, in the case of ***Vittesse Export Import vs. Commissioner of Customs (EP), Mumbai, 2008 (224) E.L.T. 241 (Tri.-Mumbai)***, it was held that once the shipping bills have been assessed, they attain finality and cannot be re-assessed on the grounds of mis-declaration. Relevant portion of the judgment has been reproduced below:

*"In the present case before us, where it is a case of export, the assessment have become final, as the shipping bills were assessed, FOB value and PMV was reduced by the assessing officer. If this assessment is not challenged by the Revenue by way of filing an appeal, it attained finality and by invoking the charge of mis-declaration, the Revenue cannot ask for re-assessment of the consignment. Respectfully following the decision of the Division Bench in the case of Commissioner of Customs (Imports), Mumbai v. Lord Shiva Overseas (supra), we hold that the confiscation of the consignment by the authorities is not correct and the same is set aside. Since confiscation is set aside, the consequent penalties imposed on the Noticee are also liable to be set aside and we do so."*
***(Emphasis Supplied)***

Further, the Hon'ble Tribunal in the case of ***Ashok Khetrapal vs. Commissioner of Customs, Jamnagar, 2014 (304) E.L.T. 408 (Tri.-Ahmd.)***

has held that once the bills of entry have been assessed, they gain finality, and assessment cannot subsequently be reopened by the department by way of demand under Section 28 of the Customs Act.

20.8.2 The Noticee submitted that the ratio of the aforesaid judgement is equally applicable to the present case, as herein, the Department has sought to propose the rejection of the value declared in the Shipping Bills and resultant out of charge orders without challenging the same by way of an appeal. In absence of any such appeal against the said out of charge orders/ Shipping Bills which have been assessed by proper officers, it must be understood that the assessment has gained finality, which cannot be challenged or negated by a mere issuance of a Show Cause Notice.

Reliance in this regard is placed on the case of ***Axiom Cordages Ltd. vs. Commissioner of Customs, Nhava Sheva-II, 2020 (9) TMI 478- CESTAT Mumbai*** wherein, it was held that since the Department did not appeal before the Commissioner (Appeals) against the assessment orders passed on the shipping bills under Section 128 of the Customs Act, therefore the classification of the goods exported have already attained finality and any issue arising out of finalization of such shipping Bills cannot be questioned or agitated by the Department subsequently by initiating show cause proceedings against the exporter.

In view of the above, it is submitted that the Impugned SCN is invalid in absence of appeal against the Shipping Bills/ out of charge orders.

20.9 The Noticee prayed that :-

i. Drop the proceedings initiated vide Show Cause Notice No. GEN/ADJ/ADC/1240/2024-Adjn-O/o Pr Commr- Cus- Mundra Dated 10.07.2024;
ii. Hold that the subject goods exported vide the 3 disputed Shipping Bills are correctly valued and drop the proceedings alleging overvaluation of the same;
iii. Hold that the subject goods exported are not liable for confiscation under Section 113(i) of the Customs Act, 1962;
iv. Drop the proposal for penalty under Section 114(iii) of the Customs Act, 1962;
v. Drop the proposal for penalty under Section 114AA of the Customs Act, 1962;

**21. Shri Bharat Bhushan Mathur, Director of M/s. JJF Casting submitted their reply which was received in this office on dated 13.10.2025 wherein they have, *inter alia*, submitted that:**

21.1 The Noticee submitted that the Principal Noticee has filed a detailed reply against the allegations contained in the Impugned SCN. The Noticee craves leave to refer to and rely upon the arguments and submissions made by the Principal Noticee in the main reply against the Impugned SCN and the same may be considered as arguments and submissions of the Noticee in so far as they relate to the Noticee. It is settled legal position that when the proposal to demand the duty is not sustainable, penalty is not imposable. Reliance in this regard is placed on the decision in ***Ashish Kumar Agarwal vs. Commissioner of C. Ex., Ahmedabad, 2012 (284) E.L.T. 529 (Tri. - Ahmd.).*** Reliance is also placed on the following decisions wherein it was held that when the main proceeding demanding duty is dropped, penalty is not imposable:

- ***Collector of Central Excise vs. H.M.M. Limited, 1995 (76) E.L.T. 497 (SC)***
- ***CCE, Aurangabad vs. Balakrishna Industries, 2006 (201) E.L.T. 325 (SC).***

In view of the above, the proposals against the Noticee in the Impugned SCN are not sustainable and merits to be dropped on this ground alone.

21.2 In para 16 of the Impugned SCN, it is proposed to impose penalty on the Noticee under Section 114(iii) and Section 114AA of the Customs Act. At the outset, the Noticee does not agree with the allegation. Detailed submissions are made in the following paras:

**a) Penalty is not imposable on the Noticee under Section 114(iii) of the Customs Act**

It is humbly submitted that no penalty can be imposed on the Noticee under section 114(iii) of the Customs Act. It is evident from the Section 114(iii) of the Customs Act, penalty is imposable on any person who does or omits or abets any act or omission **which renders the goods liable for confiscation.** Thus, the penalty is contingent upon the goods being held liable for confiscation under Section 113 of the Customs Act. Corollary to the above would mean that if the subject goods are not liable for confiscation under Section 113 of the Customs Act, penalty is also not imposable under Section 114(iii) of the Customs Act. For the reasons elaborated in the following sub-ground, the Noticee submits that the subject goods are not liable for confiscation under Section 113 of the Customs Act, and consequently penalty cannot be imposed on the Noticee.

21.3 Para No. 13.3 of the Impugned SCN alleges that despite holding no position at the Principal Noticee, the Noticee had signed the response letter dated 18.04.2023 to the query raised by the Department with respect to the valuation of the subject goods shipped vide the Shipping Bill No. 9277085 dated 13.04.2023, wherein allegedly vague submissions regarding the valuation of the subject goods. Also, the Noticee being an employee at group Company, was aware about the overvaluation of the subject goods. Such acts of the Noticee have rendered the subject goods liable for confiscation under Section 113 of the Customs Act, but the exact sub-clause (which further specifies the reasoning/ condition based on which any good attempted to be exported be held liable for confiscation) is not specified.

The Noticee submits that the proposal of confiscation of goods suffers from procedural fatality and is in gross violation of the principles of natural justice since it vaguely mentions the Section under which confiscation has been proposed without specifying the specific sub-clause under Section 113 of the Customs Act. The Ld. Additional Commissioner has not mentioned the sub-clause under which the Impugned SCN proposes to confiscate the goods. It is an established principle of law that every show cause notice must clearly bring out the specific allegations and the particular provisions under which the authority seeks to take action and confiscate. A vague proposal for confiscation without specific provision under show cause notice is not just and proper and therefore merits to be dropped on the grounds of impropriety.

In the case of ***Bank of Baroda vs. Commissioner of Central Excise, Jaipur-I, 2014 (35) S.T.R. 359 (Tri. - Del.)*** it was held that a show cause notice must set out_clear attribution of the charge and the appropriate provision of law under which the alleged liability of an assessee, is alleged to have arisen. Reliance is placed by the Noticee on ***Atul Dhawan vs. Commissioner of***

***Customs*, *2022 (11) TMI 1160 - CESTAT NEW DELHI***, wherein the Hon'ble Tribunal held that the show cause notice issued is vague as it did not specify the particular clause of Section 111 under which the goods are liable for confiscation.

It is a settled position of law that a show cause notice must set out the allegations and the appropriate provision of law under which it seeks to take action against the Noticee. Reference is made to the judgment of ***P.S. Dutta Wing CDR (Retd.) vs. CC, New Delhi, 2013 (293) E.L.T. 127 (Tri. – Del.),*** The Noticee further places reliance on ***Amrit Foods vs. Commissioner of Central Excise, U.P., 2005 (190) E.L.T. 433 (S.C.),*** wherein it was held that it is necessary to for the assessee to be informed about the exact nature of contravention for which the assessee was liable. In the light of the above legal provisions, the Noticee submits that non-mentioning a specific sub-clause under Section 113 (the provisions of which are pari-materia with those under Section 111 of the Customs Act), the proposal for confiscation cannot be sustained.

Thus, in view of the above submissions, the Impugned SCN is unsustainable and is liable to be dropped forthwith.

21.4 The Noticee submitted that the Noticee does not extract each and every submission herein and requests that the submissions made on behalf of the Principal Noticee under the main reply to the Impugned SCN with regard to the confiscation of goods and penalty against the Principal Noticee be read as part and parcel of the submissions made herein by the Noticee. In addition to the submissions made with respect to confiscation in the main reply of the Principal Noticee, the Noticee submits that Section 113 of the Customs Act is attracted only when the assessee has contravened one or more of the sub-clauses od Section 113. The Department is duty bound corroborate the allegations on any assessee under a specific sub-clause under Section 113 to propose confiscation of any good. It may be noted that all the sub-clauses of Section 113 of the Customs Act, provide for a distinct nature of contravention, only based on which the goods attempted to be exported can be held liable for confiscation and penalty can be imposed. Additionally, none of the sub-clauses of Section 113 empowers the Customs Officials to hold that the goods are liable for confiscation, based on the different valuation of the same goods adopted by a different assessee. The Department has erroneously gone beyond the ambit of Section 113 to hold the subject goods liable for confiscation. Without prejudice to the above, the Noticee assumes that the penal provisions are imposed on him for alleged violation of Section 113(i) of the Customs Act. The said section provides for confiscation of goods which do not correspond in value or in any other particular with the entry *inter alia* made under this act. The Noticee submits that the Impugned SCN does not adduce any evidence to show how the value declared of the subject goods in the disputed Shipping Bills is incorrect. The same just relies on an import invoice, which is not issued to or by the Principal Noticee, thereby making the attribution of the value mentioned therein to the subject goods unjustifiable and arbitrary. Further, the Impugned SCN does not provide any evidence to demonstrate as to how the Noticee in his individual capacity has rendered the subject goods liable for confiscation. For the submissions made in the Principal Noticee's reply, it has been sufficiently demonstrated that how the reliance by the Department up on the and the Import Invoice Chartered Engineer Certificate to allege overvaluation is misplaced. It is humbly submitted that the Noticee has neither done nor omitted to do any act which would render the Impugned goods liable for confiscation under Section 113(i) of the Customs Act.

21.5 It may be noted that Section 112 and 114 are *pari-materia*, to the extent that both these sections relate to the imposing of penalty on any person who attempts to improperly import or export the goods respectively. Therefore, the Noticee places reliance on the case of ***Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 401 (SC)***, Reliance is also placed in this regard on ***Atul Dalpatram Pandya vs. Commissioner of Customs (EP), Mumbai, 2019 (366) E.L.T. 876 (Tri.-Mumbai),*** The above judgment was also admitted by the Bombay High Court in ***2019 (366) E.L.T. A179 (Bombay High Court).***

Thus, in light of the above-mentioned settled position of law, the Impugned SCN ought to have established a positive deliberate act by the Noticee to allege that the Noticee has rendered the subject goods liable for confiscation. The Impugned SCN drastically fails to do. The Impugned SCN merely alleges the overvaluation of the subject goods by misplacing reliance upon the documents which actually hold no relevance in the instant case. Thus, the said allegation is insufficient and untenable to allege that the act of the Noticee has rendered the subject goods liable for confiscation under Section 113(i) of the Customs Act. Therefore, the proposal to impose penalty on the Noticee under Section 114(iii) of the Customs Act is not sustainable and is liable to be dropped.

21.6 The second limb of Section 114 of the Customs Act covers the abetment of commission/ omission of any act which would render the goods liable for confiscation under Section 113(i) of the Customs Act. In the following paras, it is submitted that the Noticee has not abetted the doing of an act/ omission which would render the subject goods liable for confiscation: As the words 'abet' or 'abetment' are not defined in the Customs Act, it is pertinent to refer to the General Clauses Act, 1897. Section 3(1) of the General Clauses Act, 1897 defines "Abet" as under:

> *"Abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860)"*
> (Emphasis Supplied)

Further, Section 107 of the Indian Penal Code, 1860 defines 'abetment' as under:

> ***"107. Abetment of a thing –***
> *"A person abets the doing of a thing, who—*
> ***Instigates any person to do that thing; or***
> ***Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or***
> ***Intentionally aids, by any act or illegal omission, the doing of that thing****.*
> *Explanation 1 – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to dis-close, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."*
> (Emphasis Supplied)

The Hon'ble Courts have in various cases enlisted the basic ingredients which must be present for an act to constitute 'abetment'. The main ingredients collated from various judicial pronouncements are as under:

a. There must be *mala fide* intention on the part of the accused to provoke, incite or encourage the doing of an offence.
b. There must be positive act on the part of the accused.
c. A person should facilitate the commission of the act.
d. Mere negligence is not sufficient to constitute abetment.
e. Mere lack of care and diligence is not sufficient to constitute abetment, and
f. The accused must be proved to have derived a pecuniary benefit from such an act.

Furthermore, in the case of ***Tata Oil Mills Company Ltd. and Another vs. Union of India and Another, 1986 (26) E.L.T. 931 (Bom.)***, the Hon'ble High Court applied the definition of 'abetment' as appearing in the Indian Penal Code, 1860 while deciding whether the petitioners could be said to have abetted the unauthorized import of tallow wherein the petitioners merely acted as *bona fide* purchasers. Reliance is also placed on the case of ***Trade Wings Ltd. vs. Commissioner of Customs, Mumbai 2009 (243) E.L.T. 439 (Tri.-Mumbai)*** Thus, the definition of 'abetment' as defined under Section 107 of the Indian Penal Code is relevant even for the purpose of the Customs Act. The judicial precedents have also held the presence of *mens rea* as an essential prerequisite for establishing abetment and for imposition of penalty under Section 114(iii) of the Act. In support of the above, reliance is placed upon ***Subhrabrata Chattaraj vs. Commissioner of Customs, Indore, 2024 (388) E.L.T. 327 (Tri.- Del.)***,. In support of the above, reliance is also placed on ***V. Lakshmipathy vs. Commissioner of Customs, 2003 (153) E.L.T. 640 (Tri-Bang)***, The Noticee also places reliance on the judgment of ***Owens Corning Enterprises (I) P. Ltd. vs. Commissioner of Customs (Export), Nhava Sheva reported in 2011 (270) E.L.T. 547 (Tri.- Mumbai)*** for the aforesaid proposition.

It is submitted that an act of abetment if any must be intentional. An act committed without knowledge that an offence is being committed does not entail punishment under the law. Reliance is also placed on the decision of the Hon'ble Tribunal in ***Harbhajan Kaur vs. Collector of Customs, 1991 (56) E.L.T. 273 (Tri-Del)***, As per the afore-mentioned precedents, an act/omission which aids in the commission of an offence cannot be straightaway categorized as abetment, but the same has to be supported by knowledge of offence as well a s *mens rea* for proving abetment. Without prejudice and without admitting, even if it is assumed that the subject goods have been overvalued, it is submitted that the Noticee had no intention to aid / abet the Principal Noticee for alleged overvaluation of the subject goods.

As discussed in the preceding paragraph no cogent evidence or justification for penalty upon the Noticee has been adduced in the Impugned SCN. Thus, penalty is not imposable on the Noticee under Section 114(iii) of the Customs Act.

21.7 The Noticee in addition to the foregoing submissions, submits that no penalty can be imposed under Section 114 of the Customs Act where there has been no element of *mala fide* intention, which further leads to confiscation of goods. As elaborated hereinabove, no *mala fide* intention can be attributed to the Noticee for the alleged acts of commission or omission. In this regard, reliance is placed on the case of ***Nazir-ul-Rehman vs. Commissioner of Customs, Mumbai, 2004(174) E.L.T.493(Tri.-Mum)*** Considering that the Impugned SCN does not highlight any *mala fide* or suppression on the part of the Noticee, the Impugned SCN proposing penalty upon the Noticee under

Section 114(iii) is untenable. Also, it must be noted that, the instant case is not a case where some information pertaining to the subject goods has been concealed/ suppressed from the Customs Officials at the time of export of the goods and the same have been unearthed at a later stage. It may further be noted that the clearance of the subject goods exported vide the Shipping Bill No. 9277085 dated 13.04.2023 was allowed only pursuant to query pertaining thereto being resolved and being satisfied with respect to valuation of the subject goods. Now, the Department has conveniently turned around to allege overvaluation on the part of the Principal Noticee, with the involvement of Noticee, by misplacing reliance on the documents which no where relate to the Principal Noticee. The Noticee submits that he has acted in the most *bona-fide* manner and has complied with all applicable rules and provisions so far as the export of subject goods is concerned. Further, he has no say at all in the transaction wherein the goods have been imported to India for the purpose of repackaging and relabeling. Therefore, the Noticee denies all allegations of deliberate overvaluation of the subject goods. The Hon'ble Supreme Court in the landmark case of ***Hindustan Steel Ltd. vs. State of Orissa, 1978 (2) E.L.T. (J159)*** has held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the *bona-fide* belief that the offender is not liable to act in the manner prescribed by the statute. The Noticee submits that the elements of *mens rea* is absent from the case in point. Therefore, penalties under Section 114 of the Customs Act cannot be imposed on the Noticee. It is submitted that the decision of the Hon'ble Supreme Court in ***Hindustan Steel Ltd. (Supra)***, is apposite. The Hon'ble Court has held that penalty will not ordinarily be imposed unless the assessee either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligations. This decision was followed by the Apex Court under the Customs law in the case of ***Akbar Badruddin Jiwani vs. Collector of Customs, 1990 (47) E.L.T. 161*** wherein the Hon'ble Supreme Court specifically held that penalty is not imposable in the absence of *mens rea*. Similarly, the Hon'ble Mumbai Tribunal in the case of ***K. K. Arora vs. Commissioner of Customs, Mumbai, 2007 (212) E.L.T. 33 (Tri-Mumbai)*** The acts of the Noticee are purely *bona fide* acts and even the Impugned SCN has failed to establish any *mala fide* intention on the Noticee. The Impugned SCN is vague insofar as it does not discuss the role of the Noticee for it to attract penal provisions under the Customs Act. The Impugned SCN does not provide even a shred of evidence or justification with regards to the involvement of the Noticee in alleged overvaluation.

The Noticee submitted that a mere allegation in Para 13.2 of the Impugned SCN that despite being the main working director of the Principal Noticee, his inability to comment on the aspects related to valuation of the subject goods has rendered the goods liable for confiscation and consequentially the Noticee is liable for penalty under Section 114(iii) of the Customs Act is grossly inadequate to establish that the Noticee had *mens rea/* direct involvement in the alleged act of overvaluation. For sufficient reasoning given in the main reply, it has been substantiated that the agreed price was only declared by the Principal Noticee in the disputed Shipping Bills and subsequently, the same has been realized also. Therefore, there is nothing on record to reject the value as grossly inflated. Without prejudice, even if the Department has a view that the subject goods were overvalued, the Impugned SCN has failed to establish the direct involvement of the Noticee in the alleged overvaluation. Thus, in view of the above, the Impugned SCN is liable to be dropped to this extent.

21.8 It is submitted that the Impugned SCN also proposed to impose penalty on the Noticee under Section 114AA of the Customs Act. At the outset, it is submitted that the penalty under Section 114AA of the Customs Act can be imposed only when a person **knowingly or intentionally** makes, signs, uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Reliance in this regard is placed on the decision of Hon'ble Tribunal in ***M/S MS EXIM Services vs. Commissioner of Customs, Ludhiana, 2021 (2) TMI 205 - CESTAT Chandigarh***, wherein the penalty imposed under Section 114AA of the Customs Act was set aside on the ground that *mens rea* was absent. A similar view was taken in ***M/S. Sea Queen Shipping Services Private Limited vs. The Commissioner of Customs, Chennai – VIII, Commissionerate, 2019 (12) TMI 248 - CESTAT Chennai***.

Reliance is also placed on the decision of Hon'ble Delhi High Court in the case o f ***Commissioner of Customs (Import) vs. M/S. Trinetra Impex Pvt. Ltd., 2019 (11) TMI 72 - Delhi High Court*** wherein, the ingredients of Section 114AA of the Customs Act was discussed. Reliance is further placed on ***Sameer Santosh Kumar Jaiswal vs. Commr. of Cus. (Import-II), Mumbai, 2018 (362) E.L.T. 348 (Tri.- Mumbai),*** wherein it was held that penalty under Section 114AA is not imposable if the Director has not done any act as specified under Section 114AA. It is submitted that the elements of *mens rea,* is absent in the instant case and the Impugned SCN has failed to attribute any degree of *mens rea* on the Noticee. The Noticee has acted under a *bona fide* belief to appropriately value the goods and realize the agreed/ declared value according to his best potential. The facts and circumstances with respect to *bona fide* belief and the absence of *mens rea* has been adequately dealt with hereinabove and in the main reply to the Impugned SCN and is not repeated hereinafter for the sake of brevity. Penalty under Section 114AA of the Customs Act can be imposed only when a person uses false or incorrect material. In the present case, no evidence has been produced in the Impugned SCN to support that the Noticee has made use of false or incorrect material. It may be noted that an online query was raised by the department regarding the valuation of the subject goods exported *vide* the Shipping Bill No. 9277085 dated 13.04.2023 prior to its clearance. *Vide* its letter dated 18.04.2023, the Principal Noticee had clarified that the same reflects the fair market value of the goods, considering various factors such as quality, specifications, packaging, transportation and other related costs. The Principal Noticee also relied upon the other reputable online sellers of the same goods such as globalpartszone, yantralive or ebay etc to derive the fair value of the subject goods. It is only after being satisfied by the above response; the subject goods were granted clearance. It is also noteworthy that the goods exported *vide* the remaining two Shipping Bills i.e. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, were allowed to be exported without any dispute i.e. no query was raised at or before the time of clearance. This demonstrates the bona fide intention of the Noticee as against the allegation made in the Impugned SCN in this regard. Further, it is requested that the submissions made in the main reply with regards to the penalty proposed upon the Principal Noticee under Section 114AA be treated as submissions on behalf of the Noticee insofar as those relate to the Noticee. Therefore, it is humbly submitted that penalty under Section 114AA is not imposable on the Noticee and the Impugned SCN to this extent is liable to be dropped.

21.9 The noticee submitted that it is alleged that despite being the main director of the Principal Noticee who is responsible for all decisions related

to administration, Humar Resources, Legal, purchase etc, he was not able to comment on the valuation aspect of the subject goods. According to the Impugned SCN, the said act renders the Noticee liable for penalty under the Customs Act. The Noticee submits that the above allegation in the Impugned SCN is incorrect. Further, it is submitted that there is no rule/ law mandating that an entity against whom, a proceeding is pending has to inform about the same to the department along with every correspondence it undertakes. It is submitted that the value of the subject goods has been derived based on the verbal commercial negotiations between the representatives of Principal Noticee and Lloyd, Dubai. It is noteworthy that the on the basis of verbal negotiations/ agreed prices only, purchase orders were issued by Lloyd, Dubai to the Principal Noticee, and the same was declared in the disputed Shipping Bills at the time of export. The same has been realized as advance payment by the Principal Noticee. To this extent, imposing an allegation against the Noticee claiming that this act has rendered the Impugned goods liable for confiscation is blatantly incorrect. Also, no mens rea can be attributed to the actions of the Noticee who acted in a consistent and bona fide manner. In any case, it is the department who acted inconsistently by sticking to two different views, i.e. on one hand accepting the value of the subject goods pursuant to the addressing of the online query raised in respect of Shipping Bill No.9277085 dated 13.04.2023 and on the other hand, alleging overvaluation of the subject goods in the Impugned SCN. In such cases, invoking penal provisions is not sustainable.The Department has harped upon the fact that the Noticee was unable to comment on the valuation of the subject goods and fulfilment of export obligation under the EPCG licenses held by the Principal Noticee. The Department, without any basis, has incorrectly attempted to correlate the fulfilment of Export obligation vis-à-vis the value of the goods declared in the import documents in the name of M/s. M.F. International. The Department has itself recorded that the Noticee is not aware of any firm in the name of M/s. M.F. International. On the other hand, in the Impugned SCN it is alleged that the Noticee was unable to respond to the questions related to the valuation adopted by M/s. M.F. International, which the department believes to be correct. Hence, the assumption of the department that the Principal Noticee has grossly inflated the subject goods, relying on the values shown in the import documents of M/s M.F. International is a mere unsustainable speculation. Therefore, it is submitted that the allegation in para 13.2 of the Impugned SCN is inconsistent in the light of the facts of the present case and is liable to be dropped. Thus, penalty is not imposable on the Noticee.

21.10 The Noticee submitted that apart from proving active involvement in the alleged offence and existence of a *mala fide* intention on the part of the Noticee, penalty cannot be imposed if there is no evidence of any pecuniary benefit flowing to the assessee. Reference is made to the order of the Hon'ble Tribunal in the case of ***Commissioner of Customs, Mumbai vs. M. Vasi, 2003 151 E.L.T. (312)*** wherein it has been held that for imposing penalty for abetment, knowledge of the proposed offence and also the benefit to be derived from the abetment has to be demonstrated. Further, in the case of ***Commissioner of Customs, Bangalore vs. M. Naushad, 2007 (210) E.L.T. 464 (Tri. - Bang.)***, the Hon'ble Tribunal has held that penalty cannot be imposed on the officers of customs who have not benefitted in any way from the offence. The said proposition has been further upheld in the case of ***Commissioner of Customs vs. Hargovind Export, 2003 (158) E.L.T. 496 (Tri. - Delhi).*** Further, in the case of ***Commissioner of Customs (EP) vs. P.D. Manjrekar, 2009 (244) E.L.T. 51 (Bom.),*** and ***B. Lakshmichand vs. Government of India 1983 (12) E.L.T. 322 (Mad.)*** the Hon'ble Bombay and the Madras High Courts have held that the

onus of establishing the essential ingredients of the penal provision is on the Department. In view of all the aforesaid judgments, it is very clear that to allege abetment the department must prove that the Noticee had a guilty mind and that there was deliberate and conscious suppression of information with intent to derive some benefit out of the entire transaction. It is submitted that in the present case, the Impugned SCN has not proved any conscious or intentional act of collusion, wilful mis-statement or suppression of any facts on the part of the Noticee except making a bald statement that Noticee has grossly inflated the goods, the actual cost of which was very low, to fulfill the export obligation of the Principal Noticee in respect of the 5 EPCG licenses held by it. To substantiate the same, the Department has misplaced reliance on documents which are not related to the Principal Noticee. The Noticee does not agree with the allegations. It is already sufficiently submitted in the main reply as to how the transaction value of the subject goods has been rightly derived i.e. on the basis of commercial negotiations and just because the Noticee was not in a position to comment on the valuation of the subject goods at the time of recording of statement, overvaluation shall not be alleged against him.

In view of the aforesaid submissions, it is submitted no penalty can be imposed on the Noticee under Section 114(iii) and 114AA of the Customs Act.

21.11 The Noticee submitted that penalty is not imposable in the present case, it is submitted that the Impugned SCN proposes to impose penalty on the Principal Noticee under Section 114(iii) and Section 114AA of the Customs Act. In this regard, it is submitted that in case where penalty is already imposed on the Principal Noticee, there cannot be any justification for imposition of penalty on the Noticee. It is submitted that it would be totally unjust and improper to impose penalty for the same event on the company and on its employees. To similar effect are the judgments of the Hon'ble Tribunal in the cases of ***Globe Rexine Pvt. Ltd. vs. Commissioner of Central Excise, Chennai, 2006 (203) E.L.T. 632 (Tri. - Chennai)***. In this regard, the Noticee further places reliance on the following decisions:

- ***Rutvi Steel & Alloys vs. Commissioner of Central Excise, Rajkot, 2009 (243) E.L.T. 154 (Tri. - Ahmd.)***;
- ***Mahindra & Mahindra Ltd. vs. Commissioner of Customs (Import), Mumbai, 2014 (312) E.L.T. 545 (Tri.-Mumbai)***.
- ***Shipping Corporation of India vs. Commissioner of Customs (Import), Mumbai. 2014 (312) E.L.T. 305 (Tri. -Mumbai);*** which was affirmed in ***2017 (351) E.L.T. 247 (Bombay High Court)***

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Without prejudice, in view of the above, since the Impugned SCN has already proposed to impose penalty on the Principal Noticee under Section 114(iii) and 114AA of the Customs Act, it is respectfully submitted that no penalty can be imposed upon the Noticee.

21.12 The Noticee prayed that the Ld. Additional Commissioner of Customs, Customs House, Mundra Port, Kutch, Gujarat-370421 may be pleased to**:**

a. drop the proceedings initiated vide the Show Cause Notice No. GEN/ADJ/ADC/1240/2024-Adjn-O/0 Pr Commr-Cus-Mundra dated 10.07.2024;
b. hold that no penalty is imposable on the Noticee under Section 114(iii) and 114AA of the Customs Act;

**22. Shri Amit Kithania, Employee of M/s Jay Ushin Limited submitted their reply which was received in this office on dated 13.10.2025 wherein they have, *inter alia*, submitted that:**

22.1 The Noticee submitted that the Principal Noticee has filed a detailed reply against the allegations contained in the Impugned SCN. The Noticee craves leave to refer to and rely upon the arguments and submissions made by the Principal Noticee in the main reply against the Impugned SCN and the same may be considered as arguments and submissions of the Noticee in so far as they relate to the Noticee. It is settled legal position that when the proposal to demand the duty is not sustainable, penalty is not imposable. Reliance in this regard is placed on the decision in ***Ashish Kumar Agarwal vs. Commissioner of C. Ex., Ahmedabad, 2012 (284) E.L.T. 529 (Tri. - Ahmd.).*** The relevant extract of the same is reproduced hereunder:

*"9. It can be seen from the above reproduced C.B.E. & C. Circular that EOU trading units were allowed to supply the goods to other EOU/STP units against valid advance licence or specific customs entitlements. In the case in hand, it is undisputed that M/s. Evergreen Exim Pvt. Limited had cleared the goods imported by them on which the customs duty was foregone to advance licence holders EOU. If that be so, the C.B.E. & C. Circular would squarely cover the issue inasmuch as, there cannot be any duty liability on the said M/s. Evergreen Exim Pvt. Limited.* ***In the absence of any duty liability on the main company, the provisions of Sections 112 and 117 for imposition of penalties on the Directors cannot be invoked.*** *In such a case, we hold that impugned order to that extent it imposes penalty on the appellants herein, is liable to be set-aside and we do so."*

(Emphasis Supplied)

Reliance is also placed on the following decisions wherein it was held that when the main proceeding demanding duty is dropped, penalty is not imposable:

- ***Collector of Central Excise vs. H.M.M. Limited, 1995 (76) E.L.T. 497 (SC)***
- ***CCE, Aurangabad vs. Balakrishna Industries, 2006 (201) E.L.T. 325 (SC).***

In view of the above, the proposals against the Noticee in the Impugned SCN are not sustainable and merits to be dropped on this ground alone

22.2 In Para 17 of the Impugned SCN, it is proposed to impose penalty on the Noticee under Section 114(iii) and Section 114AA of the Customs Act. At the outset, the Noticee does not agree with the allegation. Detailed submissions are made in the following paras:

**b) Penalty is not imposable on the Noticee under Section 114(iii) of the Customs Act**

It is humbly submitted that no penalty can be imposed on the Noticee under section 114(iii) of the Customs Act. It is evident from the Section 114(iii) of the Customs Act, penalty is imposable on any person who does or omits or abets any act or omission **which renders the goods liable for confiscation.** Thus, the penalty is contingent upon the goods being held liable for confiscation under Section 113 of the Customs Act.

Corollary to the above would mean that if the subject goods are not liable for confiscation under Section 113 of the Customs Act, penalty is not imposable under Section 114(iii) of the Customs Act.

22.3 Para No. 13.3 of the Impugned SCN alleges that despite holding no position at the Principal Noticee, the Noticee had signed the response letter dated 18.04.2023 to the query raised by the Department with respect to the valuation of the subject goods shipped vide the Shipping Bill No. 9277085 dated 13.04.2023, wherein allegedly vague submissions regarding the valuation of the subject goods. Also, the Noticee being an employee at group Company, was aware about the overvaluation of the subject goods. Such acts of the Noticee have rendered the subject goods liable for confiscation under Section 113 of the Customs Act, but the exact sub-clause (which further specifies the reasoning/ condition based on which any good attempted to be exported be held liable for confiscation) is not specified.

The Noticee submits that the proposal of confiscation of goods suffers from procedural fatality and is in gross violation of the principles of natural justice since it vaguely mentions the Section under which confiscation has been proposed without specifying the specific sub-clause under Section 113 of the Customs Act. The Ld. Additional Commissioner has not mentioned the sub-clause under which the Impugned SCN proposes to confiscate the goods. It is an established principle of law that every show cause notice must clearly bring out the specific allegations and the particular provisions under which the authority seeks to take action and confiscate. A vague proposal for confiscation without specific provision under show cause notice is not just and proper and therefore merits to be dropped on the grounds of impropriety.

In the case of ***Bank of Baroda vs. Commissioner of Central Excise, Jaipur-I, 2014 (35) S.T.R. 359 (Tri. - Del.)*** it was held that a show cause notice must set out_clear attribution of the charge and the appropriate provision of law under which the alleged liability of an assessee, is alleged to have arisen. Relevant portions of the judgment are extracted below:

*"12. Principles of law are too well established to warrant an idle parade of familiar authority, that a show cause notice* ***must set out succinct statement of the relevant facts and circumstances; a clear attribution of the charge and the appropriate provision of law under which the alleged liability of an assessee, is alleged to have arisen****. These two fundamental attributes and non-derogable indicia of a valid show cause notice. The law is also well settled that failure of natural justice at the primary level cannot be cured by affording due process at the appellate stage. Since the show cause notice dated 23-10-2009 has clearly and unambiguously alleged the appellant provided only Business Auxiliary Service (in paragraphs 2 and 3), no conclusion could be recorded either at the primary or the appellate proceedings, that the transactions in issue are classifiable as Banking or other"*

(Emphasis Supplied)

Reliance is placed by the Noticee on ***Atul Dhawan vs. Commissioner of Customs****,* ***2022 (11) TMI 1160 - CESTAT NEW DELHI***, wherein the Hon'ble Tribunal held that the show cause notice issued is vague as it did not specify the particular clause of Section 111 under which the goods are liable for confiscation. Relevant portions of the judgment are extracted below:

*"18……Thus, I find that the seizure is bad under the provisions of Section 110 of the Act.* ***I also find that the show cause notice is vague as it does not specify the particular clause of Section 111, under which the goods are***

***liable for confiscation**. Further, in the facts and circumstances, I find that imposition of penalty under Section 112 and 114 AA is bad."*

(Emphasis Supplied)

It is a settled position of law that a show cause notice must set out the allegations and the appropriate provision of law under which it seeks to take action against the Noticee. Reference is made to the judgment of ***P.S. Dutta Wing CDR (Retd.) vs. CC, New Delhi, 2013 (293) E.L.T. 127 (Tri. – Del.),*** wherein the following has been held:

*"2. We find that when the charges were brought at page 12 under para 18(c) of the show cause notice, the authority did not bring out under which sub-section or clause of Section 112 of Customs Act, 1962 the appellant was required to lead defence. We are conscious that a show cause notice should not be read with hypertechnicality. Therefore, we tried to find out from para 11 of the show cause notice as to whether revenue brought out its case. That para shows that the appellant defended at the pre-charge stage itself adducing evidence of job register claiming no involvement. It is only grievance of revenue in para 11 of the show cause notice that due diligence was not exercised. We would have appreciated such an observation had the manner and basis been brought out through appropriate violation of enacted provision of the law. For the misuse of name of appellant, it had pleaded that complaint was filed with Deputy Commissioner of Police, South District on 30-6-2008. The enacted provision of Section 112 of the Customs Act, 1962 has provided two situations to penalize. Those are embodied in clause (a) and (b) of the said section.* ***Nothing is whispered in the show cause notice in what manner the appellant was either to fall under Section 112 (a) or 112(b). In absence of clear evidence against appellant attracting the charge as per law, the show cause notice itself is misconceived and that failed to provide cause of natural justice to the appellant to lead evidence. Such an observation alone is enough to allow the appeal. Penalty proceedings are quasi criminal in nature. No one shall be dealt without clear charge in the show cause notice to lead defense. When show cause notice does not provide basis for defense that is violative of principles of natural justice."***

(Emphasis Supplied)

The Noticee further places reliance on ***Amrit Foods vs. Commissioner of Central Excise, U.P., 2005 (190) E.L.T. 433 (S.C.),*** wherein it was held that it is necessary to for the assessee to be informed about the exact nature of contravention for which the assessee was liable. The relevant portion of this judgement is reproduced below for easy reference:

***"5.*** *The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. The Tribunal has set aside the order of the Commissioner on the ground that neither the show cause notice nor the order of the Commissioner specified which particular clause of Rule 173Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173Q contains six clauses the contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the 173Q. This not having been done the Tribunal's finding cannot be faulted. The appeal is, accordingly, dismissed with no order as to costs."*

(Emphasis Supplied)

Accordingly, the Noticee submits that non-mentioning a specific sub-clause under Section 113 (the provisions of which are pari-materia with those under Section 111 of the Customs Act, the proposal for confiscation cannot be sustained.

Thus, in view of the above submissions, the Impugned SCN is unsustainable and is liable to be dropped forthwith.

22.4 The noticee submitted in addition to the submissions made with respect to confiscation in the main reply of the Principal Noticee, the Noticee submits that Section 113 of the Customs Act is attracted only when the assessee has contravened one or more of the sub-clauses thereunder. The Department is duty bound corroborate the allegations on any assessee under a specific sub-clause under Section 113 to propose confiscation of any good. It may be noted that all the sub-clauses of Section 113 of the Customs Act, provide for a distinct nature of contravention, only based on which the goods attempted to be exported can be held liable for confiscation and penalty can be imposed. However, in the absence of the categorical mention of the sub-clause under Section 113, the allegations on the Noticee for acting in a manner as to render the subject goods liable for confiscation are not clear. This aspect has also been sufficiently elaborated above. Additionally, none of the sub-clauses of Section 113 empowers the Customs Officials to hold that the goods are liable for confiscation, based on the signing of documents, or not being able to substantiate the manufacturing/ non-manufacturing of any good by the assessee. The Department has erroneously gone beyond the ambit of Section 113, due to the lack of understanding of the same to hold the subject goods liable for confiscation.

Without prejudice to the above, the Noticee assumes that the penal provisions are imposed on him for alleged violation of **Section 113(i)** of the Customs Act. The said section provides for confiscation of goods which do not correspond in value or in any other particular with the entry *inter alia* made under this act. The Noticee submits that the Impugned SCN does not adduce any evidence to show how the value declared of the subject goods in the disputed Shipping Bills is incorrect. The same just relies on an import invoice, which is not issued to or by the Principal Noticee, thereby making the attribution of the value mentioned therein to the subject goods unjustifiable and arbitrary. Further, the Impugned SCN does not provide any evidence to demonstrate as to how the Noticee in his individual capacity has rendered the subject goods liable for confiscation. For the submissions made in the Principal Noticee's reply, it has been sufficiently demonstrated that how the reliance by the Department up on the Import Invoice and the Chartered Engineer Certificate to allege overvaluation is misplaced. It is humbly submitted that the Noticee has neither done nor omitted to do any act which would render the Impugned goods liable for confiscation under Section 113(i) of the Customs Act.

22.5 It may be noted that Section 112 and 114 are *pari-materia*, to the extent that both these sections relate to the imposing of a penalty on any person who attempts to improperly import or export the goods respectively. Therefore, the Noticee places reliance on the case of ***Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 401 (SC)***, wherein the Hon'ble Supreme Court held as under:

*"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the*

*proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly.* ***It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.****"*

*(Emphasis Supplied)*

Reliance is also placed in this regard on ***Atul Dalpatram Pandya vs. Commissioner of Customs (EP), Mumbai, 2019 (366) E.L.T. 876 (Tri.-Mumbai.*** The above judgment was also admitted by the Bombay High Court in ***2019 (366) E.L.T. A179 (Bombay High Court).*** Thus, in light of the above-mentioned settled position of law, the Impugned SCN ought to have established a positive deliberate act by the Noticee to allege that the Noticee has rendered the subject goods liable for confiscation. The Impugned SCN drastically fails to do. The Impugned SCN merely alleges the overvaluation of the subject goods by misplacing reliance upon the documents which actually hold no relevance in the instant case. Thus, the said allegation is insufficient and untenable to attribute the act of the Noticee rendering the subject goods liable for confiscation under Section 113(i) of the Customs Act and thus, renders the consequential proposal of imposing penalty under Section 114(iii) of the Customs Act against the Noticee liable to be dropped to that extent.

The second limb of Section 114 of the Customs Act covers the abetment of commission/ omission of any act which would render the goods liable for confiscation under Section 113(i) of the Customs Act. In the following paras, it is submitted that the Noticee has not abetted the doing of an act/ omission which would render the subject goods liable for confiscation:

As the words 'abet' or 'abetment' are not defined in the Customs Act, it is pertinent to refer to the General Clauses Act, 1897. Section 3(1) of the General Clauses Act, 1897 defines "Abet" as under:

*"Abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860)"*

(Emphasis Supplied)

Further, Section 107 of the Indian Penal Code, 1860 defines 'abetment' as under:

***"107. Abetment of a thing –***

*"A person abets the doing of a thing, who—*

***Instigates any person to do that thing; or***
***Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or***
***Intentionally aids, by any act or illegal omission, the doing of that thing***
*Explanation 1 – A person who, by wilful misrepresentation, or by wilful*

*concealment of a material fact which he is bound to dis-close, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."*
(Emphasis Supplied)

The Hon'ble Courts have in various cases enlisted the basic ingredients which must be present for an act to constitute 'abetment'. The main ingredients collated from various judicial pronouncements are as under:

g. There must be *mala fide* intention on the part of the accused to provoke, incite or encourage the doing of an offence.
h. There must be positive act on the part of the accused.
i. A person should facilitate the commission of the act.
j. Mere negligence is not sufficient to constitute abetment.
k. Mere lack of care and diligence is not sufficient to constitute abetment, and
l. The accused must be proved to have derived a pecuniary benefit from such an act.

Furthermore, in the case of ***Tata Oil Mills Company Ltd. and Another vs. Union of India and Another, 1986 (26) E.L.T. 931 (Bom.)***, the Hon'ble High Court applied the definition of 'abetment' as appearing in the Indian Penal Code, 1860 while deciding whether the petitioners could be said to have abetted the unauthorized import of tallow wherein the petitioners merely acted as *bona fide* purchasers. Reliance is also placed on the case of ***Trade Wings Ltd. vs. Commissioner of Customs, Mumbai 2009 (243) E.L.T. 439 (Tri.-Mumbai)*** wherein the Hon'ble Tribunal held that mere lack of care and diligence by the Noticees is not sufficient to pin them with the charge of abetment. The extract is as under: Thus, the definition of 'abetment' as defined under Section 107 of the Indian Penal Code is relevant even for the purpose of the Customs Act.

The judicial precedents have also held the presence of *mens rea* as an essential prerequisite for establishing abetment and for imposition of penalty under Section 114(iii) of the Act. In support, reliance is placed upon ***Subhrabrata Chattaraj vs. Commissioner of Customs, Indore, 2024 (388) E.L.T. 327 (Tri.- Del.)***, wherein the meaning of abetment was elaborated by the Hon'ble Bench. Reliance is placed on ***V. Lakshmipathy vs. Commissioner of Customs, 2003 (153) E.L.T. 640 (Tri-Bang)***, The Noticee also places reliance on the judgment of ***Owens Corning Enterprises (I) P. Ltd. vs. Commissioner of Customs (Export), Nhava Sheva reported in 2011 (270) E.L.T. 547 (Tri.-Mumbai)*** for the aforesaid proposition.

It is submitted that an act of abetment, if any must be intentional. An act committed without knowledge that an offence is being committed does not entail punishment under the law.

Reliance is also placed on the decision of the Hon'ble Tribunal in ***Harbhajan Kaur vs. Collector of Customs, 1991 (56) E.L.T. 273 (Tri-Del)***,

As per the afore-mentioned precedents, an act/omission which aids in the commission of an offence cannot be straightaway categorized as abetment, but the same must be supported by knowledge of offence as well as *mens rea* for proving abetment. Without prejudice and without admitting, even if it is assumed , it is submitted that the Noticee had no intention to aid/ abet the Principal Noticee for alleged overvaluation of the subject goods.

As discussed in the preceding paragraph no cogent evidence or

justification for penalty upon the Noticee has been adduced in the Impugned SCN. Thus, penalty is not imposable on the Noticee under Section 114(iii) of the Customs Act.

22.6 The Noticee in addition to the foregoing submissions, submits that no penalty can be imposed under Section 114 of the Customs Act where there has been no element of *mala fide* intention, which further leads to confiscation of goods. As elaborated hereinabove, no *mala fide* intention can be attributed to the Noticee for the alleged acts of commission or omission. In this regard, reliance is placed on the case of ***Nazir-ul-Rehman vs. Commissioner of Customs, Mumbai, 2004(174) E.L.T.493(Tri.-Mum)*** Considering that the Impugned SCN does not highlight any *mala fide* or suppression on the part of the Noticee, the Impugned SCN proposing penalty upon the Noticee under Section 114(iii) is untenable. Also, it must be noted that, the instant case is not a case where some information pertaining to the subject goods has been concealed/ suppressed from the Customs Officials at the time of export of the goods and the same have been unearthed at a later stage. It may further be noted that the clearance of the subject goods exported vide the Shipping Bill No. 9277085 dated 13.04.2023 was allowed only pursuant to query pertaining thereto being resolved and being satisfied with respect to valuation of the subject goods. The Noticee submits that he has acted in the most *bona-fide* manner and has complied with all applicable rules and provisions so far as the export of subject goods is concerned. Further, he has no say at all in the transaction wherein the goods have been imported to India for the purpose of repackaging and relabeling. Therefore, the Noticee denies all allegations of deliberate overvaluation of the subject goods.

The Hon'ble Supreme Court in the landmark case of ***Hindustan Steel Ltd. vs. State of Orissa, 1978 (2) E.L.T. (J159)*** has held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the *bona-fide* belief that the offender is not liable to act in the manner prescribed by the statute. Relevant portions of the judgment are reproduced below:

*"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*
(Emphasis Supplied)

The Noticee submits that the elements of *mens rea* is absent from the case in point. Therefore, penalties under Section 114 of the Customs Act cannot be imposed on the Noticee. It is submitted that the decision of the Hon'ble Supreme Court in ***Hindustan Steel Ltd. (Supra)***, is apposite. The Hon'ble Court has held that penalty will not ordinarily be imposed unless the assessee either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligations.

This decision was followed by the Apex Court under the Customs law in

the case of ***Akbar Badruddin Jiwani vs. Collector of Customs, 1990 (47) E.L.T. 161*** wherein the Hon'ble Supreme Court specifically held that penalty is not imposable in the absence of *mens rea*. Similarly, relied on Hon'ble Mumbai Tribunal judgement in the case of ***K. K. Arora vs. Commissioner of Customs, Mumbai, 2007 (212) E.L.T. 33 (Tri-Mumbai)*** The acts of the Noticee are purely *bona fide* acts and even the Impugned SCN has failed to establish any *mala fide* intention on the Noticee. The Impugned SCN is vague insofar as it does not discuss the role of the Noticee for it to attract penal provisions under the Customs Act. The Impugned SCN does not provide even a shred of evidence or justification with regards to the direct involvement of the Noticee in alleged overvaluation. Therefore, the proposal to impose the penalty under Section 114(iii) on the Noticee ought to be dropped.

22.7 The Impugned SCN at Para 13.3 alleges that the Noticee has tried to derail the investigation by stating different facts each time. It is mentioned in the Impugned SCN that the Noticee had earlier stated that "*he looks after the accounts and balance sheet related work of the Principal Noticee, but later it was learnt that he is the CFO of the group company viz. M/s Jay Ushin Limited and has no relation to the work of M/s JJF Castings Limited and has no authority in the said Company."* It may be noted that department has erred in imposing such allegation of derailing the investigation on the Noticee. The Noticee has remained consistent and truthful in stating facts during the statements dated 21.07.2023, 27.09.2023 and 11.03.2024 respectively. It may be noted that it is only during the statement dated 21.07.2023, that the Noticee stated that he is currently working as the CFO of the group Company and additionally, he looks after the accounts and balance sheet related work of both the Principal Noticee as well as the group Company. In the other statements recorded by the Noticee on 27.09.2023 and 11.03.2024, there is no mention regarding his position at the Principal Noticee. Therefore, the question of taking different stands with respect to the position of the Noticee at Principal Noticee does not arise. To that extent, it may be said that the department has imposed incorrect allegations on the Noticee, and are thus, not sustainable.

22.8 The Impugned SCN, while imposing allegations on the Noticee, mentions that the Noticee, being an employee at the group Company was aware about the overvaluation of the subject goods by the Principal Noticee. It has been sufficiently elaborated in the main reply as to how the allegations of overvaluation of the subject goods are incorrect, as the value declared in the disputed Shipping Bills is the same as the price agreed between Lloyd Dubai and the Principal Noticee. The export proceeds have, undisputedly, been realized as advance payments. For the sake of brevity, the Noticee craves leave to refer to and rely upon the arguments and submissions pertaining to the valuation aspect of the subject goods made by the Principal Noticee in the main reply against the Impugned SCN. It is humbly prayed that the same may be considered as arguments and submissions of the Noticee in so far as they relate to the Noticee. The Impugned SCN, at Para 13.3, alleges that the response letter dated 18.04.2023 signed by the Noticee, to address the query raised regarding the valuation of the subject goods, gave vague mention of the prices available at various online sellers, such as Globalpartszone, yantralive or ebay. The Department assumes the submissions to be vague on one side, but on the other had allowed the clearance of the subject goods shipped vide the Shipping Bill No. 9277085 dated 13.04.2023. Following the submissions made vide the response letter dated 18.04.2023, the Department had an option to ask the Principal Noticee/ Noticee about more inputs regarding the valuation if the submissions made vide the letter dated 18.04.2023 were not sufficient up to the

satisfaction of the Department. But contrary to the same, the Customs Officials did not raise any further query and allowed clearance on 24.04.2023. The Department has now turned around to impose allegation of making vague submissions just to impose penalties on the Noticee. Additionally, the prices declared of the subject goods are indeed in line with the price of the similar goods declared by the online sellers, and to evince the same, the price quotes of the online sellers are enclosed with the main reply. It may be noted that the same was available with evidently available with the Department in the Customs Portal as well, even then the Department has proceeded to allege overvaluation on the Principal Noticee/ Noticee. It is only post satisfaction with respect to the valuation of the subject goods, that the subject goods were cleared.

Therefore, the allegation of the Department that the Principal Noticee/ Noticee had made vague submissions cannot sustain, and consequently, the proposal to impose penalty under Section 114(iii) also merits to be dropped.

22.9 It is submitted that the Impugned SCN also proposed to impose penalty on the Noticee under Section 114AA of the Customs Act. Section 114AA provides as under:

*"**Section 114AA. Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

(Emphasis Supplied)

At the outset, it is submitted that the penalty under Section 114AA of the Customs Act can be imposed only when a person **knowingly or intentionally** makes, signs, uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Reliance in this regard is placed on the decision of Hon'ble Tribunal in ***M/S MS EXIM Services vs. Commissioner of Customs, Ludhiana, 2021 (2) TMI 205 - CESTAT Chandigarh***, wherein the penalty imposed under Section 114AA of the Customs Act was set aside on the ground that *mens rea* was absent. A similar view was taken in ***M/S. Sea Queen Shipping Services Private Limited vs. The Commissioner of Customs, Chennai – VIII, Commissionerate, 2019 (12) TMI 248 - CESTAT Chennai***. Reliance is also placed on the decision of Hon'ble Delhi High Court in the case of ***Commissioner of Customs (Import) vs. M/S. Trinetra Impex Pvt. Ltd., 2019 (11) TMI 72 - Delhi High Court*** wherein, the ingredients of Section 114AA of the Customs Act was discussed. Reliance is further placed on ***Sameer Santosh Kumar Jaiswal vs. Commr. of Cus. (Import-II), Mumbai, 2018 (362) E.L.T. 348 (Tri.- Mumbai),*** wherein it was held that penalty under Section 114AA is not imposable if the Director has not done any act as specified under Section 114AA. It is submitted that the elements of *mens rea,* is absent in the instant case and the Impugned SCN has failed to attribute any degree of *mens rea* on the Noticee. The Noticee has acted under a *bona fide* belief to appropriately make submissions with respect to valuation and his designation in the Principal Noticee according to his best potential. The facts and circumstances with respect to *bona fide* belief and the absence of *mens rea* has been adequately dealt with hereinabove and in the main reply to the Impugned SCN and is not repeated hereinafter for the sake of brevity. Penalty under Section 114AA of the Customs Act can be imposed only

when a person uses false or incorrect material. In the present case, no evidence has been produced in the Impugned SCN to support that the Noticee has made use of false or incorrect material. It is also noteworthy that the goods exported *vide* the remaining two Shipping Bills i.e. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, were allowed to be exported without any dispute i.e. no query was raised at or before the time of clearance. This demonstrates the *bona fide* intention of the Noticee as against the allegation made in the Impugned SCN in this regard. Further, it is requested that the submissions made in the main reply with regards to the penalty proposed upon the Principal Noticee under Section 114AA be treated as submissions on behalf of the Noticee insofar as those relate to the Noticee. Therefore, it is humbly submitted that penalty under Section 114AA is not imposable on the Noticee and the Impugned SCN to this extent is liable to be dropped.

22.10 In reference of para 13.3 of the Impugned SCN, it is alleged that despite holding no position in at the Principal Noticee, the Noticee has signed the response letter dated 18.04.2023. Additionally, the Impugned SCN alleges that the said response letter no where mentions the value of the big gears and the small gears purchased by them and instead have given a vague mention of the prices available at various online sellers such as globlapartszone, yantralive or ebay. The Noticee is held responsible for the alleged act of overvaluation because he is an employee at the group Company. The Noticee submits that the above allegation in the Impugned SCN is incorrect and baseless. It may be noted that the Principal Noticee was incorporated in the year 2010, but effectively commenced its operations in the year 2015. The Noticee being the CFO of the group company, also used to look after the accounts and financials of the Principal Noticee in the initial years after commencement of effective operations. Therefore, the letter dated 18.04.2023 in response to the query pertaining to the Shipping Bill No. 9277085 dated 18.04.2023 was signed by the Noticee. Thereafter, as the Principal Noticee's quantum of financial/ accounting work increased, the same was being looked after by some other person. Mr. Bharat Bhushan Mathur, in his statement dated 15.03.2024 has rightly mentioned that the Noticee does not hold any position as the Principal Noticee as on the date of recording of his statement. Further, it is submitted that there is no rule/ law mandating that an entity against whom, a proceeding is pending has to inform about the same to the department along with every correspondence it undertakes. It is submitted that the value of the subject goods has been derived based on the verbal commercial negotiations between the representatives of Principal Noticee and Lloyd, Dubai. It is noteworthy that the based on verbal negotiations/ agreed prices only, purchase orders were issued by Lloyd, Dubai to the Principal Noticee, and the same was declared in the disputed Shipping Bills at the time of export. The same has been realized as advance payment by the Principal Noticee. To this extent, imposing an allegation against the Noticee claiming that this act has rendered the Impugned goods liable for confiscation is blatantly incorrect. Also, no *mens rea* can be attributed to the actions of the Noticee who acted in a consistent and bona fide manner. In any case, it is the department who acted inconsistently by sticking to two different views, i.e. on one hand accepting the value of the subject goods pursuant to the addressing of the online query raised in respect of Shipping Bill No.9277085 dated 13.04.2023 when it had an option to further question the Principal Noticee and on the other hand, alleging overvaluation of the subject goods in the Impugned SCN. In such cases, invoking penal provisions is not sustainable. The Department has harped upon the fact that the Noticee has signed a letter wherein vague submissions regarding the prices of the subject goods based on the prices of the online sellers. But the fact that the clearance

has been granted to the subject goods on 24.04.2023, on being satisfied with the said submissions, has been completely disregarded. Also, the values declared in the disputed Shipping Bills is indeed in tune with the prices declared by the online sellers only and the has been sufficiently substantiated in the mail reply. Hence, the assumption of the department that the submissions made in the response letter dated 18.04.2023 are vague is a mere unsustainable speculation.

Therefore, it is submitted that the allegation in para 13.3 of the Impugned SCN is inconsistent in the light of the facts of the present case and is liable to be dropped. Thus, penalty is not imposable on the Noticee.

22.11 Noticee submitted that apart from proving active involvement in the alleged offence and existence of a *mala fide* intention on the part of the Noticee, penalty cannot be imposed if there is no evidence of any pecuniary benefit flowing to the assessee. Reference is made to the order of the Hon'ble Tribunal in the case of ***Commissioner of Customs, Mumbai vs. M. Vasi, 2003 151 E.L.T. (312)*** wherein it has been held that for imposing penalty for abetment, knowledge of the proposed offence and also the benefit to be derived from the abetment has to be demonstrated. Further, in the case of ***Commissioner of Customs, Bangalore vs. M. Naushad, 2007 (210) E.L.T. 464 (Tri. - Bang.)***, the Hon'ble Tribunal has held that penalty cannot be imposed on the officers of customs who have not benefitted in any way from the offence. The said proposition has been further upheld in the case of ***Commissioner of Customs vs. Hargovind Export, 2003 (158) E.L.T. 496 (Tri. - Delhi).*** Further, in the case of ***Commissioner of Customs (EP) vs. P.D. Manjrekar, 2009 (244) E.L.T. 51 (Bom.),*** and ***B. Lakshmichand vs. Government of India 1983 (12) E.L.T. 322 (Mad.)*** the Hon'ble Bombay and the Madras High Courts have held that the onus of establishing the essential ingredients of the penal provision is on the Department. In view of all the aforesaid judgments, it is very clear that to allege abetment the department must prove that the Noticee had a guilty mind and that there was deliberate and conscious suppression of information with intent to derive some benefit out of the entire transaction. It is submitted that in the present case, the Impugned SCN has not proved any conscious or intentional act of collusion, wilful mis-statement or suppression of any facts on the part of the Noticee except making a bald statement that Noticee has signed the response letter dated 18.04.2023 without authority and since the Noticee holds the designation of the CFO in the group Company, he is well aware about the alleged overvaluation of the subject goods. The Noticee does not agree with the allegations. It is already sufficiently submitted in the main reply as to how the transaction value of the subject goods has been rightly derived i.e. on the basis of commercial negotiations. Also, the Noticee has never taken any different stands with respect to his designation in the group Company and the Principal Noticee.

In view of the aforesaid submissions, it is submitted no penalty can be imposed on the Noticee under Section 114(iii) and 114AA of the Customs Act.

22.12 The noticee submitted that penalty is not imposable in the present case, it is submitted that the Impugned SCN proposes to impose penalty on the Principal Noticee under Section 114(iii) and Section 114AA of the Customs Act. In this regard, it is submitted that in case where penalty is already imposed on the Principal Noticee, there cannot be any justification for imposition of penalty on the Noticee. It is submitted that it would be totally unjust and improper to impose penalties for the same event on the company and on its employees. To similar effect are the judgments of the Hon'ble Tribunal in the cases of ***Globe Rexine Pvt. Ltd. vs. Commissioner of Central Excise, Chennai, 2006 (203)***

***E.L.T. 632 (Tri. - Chennai)***. In this regard, the Noticee further places reliance on the following decisions:

- ***Rutvi Steel & Alloys vs. Commissioner of Central Excise, Rajkot , 2009 (243) E.L.T. 154 (Tri. - Ahmd.)****;*
- ***Mahindra & Mahindra Ltd. vs. Commissioner of Customs (Import), Mumbai, 2014 (312) E.L.T. 545 (Tri.-Mumbai)****.*
- ***Shipping Corporation of India vs. Commissioner of Customs (Import), Mumbai. 2014 (312) E.L.T. 305 (Tri. -Mumbai);*** which was affirmed in ***2017 (351) E.L.T. 247 (Bombay High Court)***

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Without prejudice, in view of the above, since the Impugned SCN has already proposed to impose penalty on the Principal Noticee under Section 114(iii) and 114AA of the Customs Act, it is respectfully submitted that no penalty can be imposed upon the Noticee.

22.13 In view of the above submissions, Noticee prayed that the Ld. Additional Commissioner of Customs, Customs House, Mundra Port, Kutch, Gujarat-370421 may be pleased to**:**

a) drop the proceedings initiated vide the Show Cause Notice No. GEN/ADJ/ADC/1240/2024-Adjn-O/0 Pr Commr-Cus-Mundra dated 10.07.2024;

b) hold that no penalty is imposable on the Noticee under Section 114(iii) and 114AA of the Customs Act;

**23. Shri Inder Bhojwani, partner in D.L. Shipping submitted his reply which was received in this office on dated 31.10.2025 wherein he had, *inter alia*, submitted that:**

23.1 The Noticee submitted that there is no direct evidence to establish that the noticee had in any manner assisted the exporter to export the goods at inflated price. As a CHA, the noticec have relied on the documents furnished to them by their client. The provisions under the Customs Act cannot be invoked to impose penalty alleging that the noticee has not taken due diligence before filing the shipping bills. The CHALR is a self-contained subordinate Regulation, which itself provides for penalties for the non-compliance of the conditions prescribed therein

23.2 The Noticee further submitted that it is a settled position of the law that for imposition of penalty, it is necessary to establish a positive role on the part of the concerned person or the establishment of mensrea on part of such a person is a must. Vague allegations and negligence, if any, howsoever grave cannot be assumed tomean abetment so as to invoke penal action.

23.3 The noticee in respect of imposition of penalty under section 114(iii) of The Customs Act, 1962 submitted that no penalty may be imposed on it

under Section 114(iii) of the Customs Act,1962. Section 114 of the Customs Act,1962 reads as:

Section 114 in the Customs Act, 1962:

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

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

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

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

23.4 The Noticee submitted that in the notice itself, the goods which were seized are the goods which were imported in Mumbai and the noticee is in no way concerned with those imported goods. It is submitted that at most the noticee had dealt with the goods which were exported from Mundra and once the goods were allowed to be exported, the role of the noticee ceased. It is almost impossible for any person to foresee or predict the future movement of the goods. In the present context it has been alleged that the goods which were exported were imported by some other importer and those goods were seized and there is proposal for confiscation of the those imported goods, which were never dealt by the noticee-. The goods which were exported cannot be confiscated as they were_not seized but they are just to be held liable for confiscation and as •such no penalty may be imposed under Section l 14(iii) of the customs Act,1962. It is also submitted that Customs Brokers are authorized to facilitate the Customs department for smooth and proper export and import of goods and in the present case, when the query, ,was raised by the Customs department regarding valuation, it arranged the explanation from the exporter. In case, the department was-not satisfied with the explanation, it ought to have taken some further scrutiny and then allowed for export. When the goods were allowed for export it was considered that query got resolved and now when the goods were exported it is not proper to point fingers to the noticee.

23.5 The Noticee submitted that' in the show cause notice, the penalty has been proposed on the noticee for not advising the exporter properly and not verifying the KYC'of his client and for such acts there is no provision in Section 114 (iii) of the Customs Act,1962 for imposition of penalty.

Following the principles, when the goods are not proposed to be confiscated, no penalty be imposed under Section 114(iii) of the Customs

Act, 1962 as the goods are not confiscated. Noticee relies on the following case laws:

**M/s. Prakhar Gupta vs Commissioner , Central (Prev.), Lucknow-2024-TIOL-775-CESTAT-ALL:-**

Held : *There* is *not even an iota of evidence* as *per which it can be concluded that Appellant was responsible for filing of the said bill of entry - Proprietor of importer Mr Archit Sharma specifically states that he never had contacted or met the Appellant or was even under impression that bill of entry for clearance of his consignments were to filed by the Appellant - -On the contrary he specifically* states *that the work for the clearance of the said consignment had been entrusted by him to Ml* s *Goodwings Maritime Pvt Ltd. - When Appellant has denied about having signed or* issued *any such authorization letter the signatures on the letter have not been subjected to any forensic examination by a hand writing expert - Even copy this agreement letter submitted by Shri Awadhendra Kumar has not been subjected to any forensic examination - On the contrary this letter* goes *on to establish the* case *that Appellant has stated in his statement to effect that his login id and password has been compromised and used for filing this bill of entry - Impugned -order holding that Appellant have contravened the provisions of regulation 10 (a), (b), (d},(e),(f),(k)* & *(n) of the CBLR, 2018* is *without any* basis *in law or on cogent examination of the facts in hand -Appeal allowed: CESTAT [para 4. 7, 4. 9).*

**M/s EASTERN CLEARING AND FORWARDING AGENCY PVT LTD Vs COMMISSIONER OF CUSTOMS (AIRPORT & ADMN.), KOLKA TA-2024-TIOL-739-CESTAT-KOL:**

***Cus*** *- The appellant* is a customs *broker and has filed the appeal against impugned ord*[illegible]*r -imposing a penalty on them in* terms *of regulation 18 of CBLR, 2013 - No* case *of imposition of penalty* subsists *in the matter* as *there.,* is *nothing to impute any misdemeanour,* commission, *or* omission *of an act clearly attributable on part of appellant attributable to-them* as *their role and responsibilities of a* customs *broker -There* is.*nq case for invocation and imposing of penalty on appellant therefore 0-1-0* is *set aside - In view of categorical finding of no* case *for levying penalty on appellant having been made out in matter, the other pleadings* as *made out by appellant are not being elaborated upon: CESTAT.*

**M/s. Shakti Cargo Movers vs. Commissioner of Customs (Airport and General), New Customs House, NEW DELHI -2024-TIOL-471-CESTAT-DEL:**

***Cus*** *- Appeal filed against impugned order revoking* Customs *Brokers' licence of appellant and imposed a penalty of Rs. 50,* 000/- *- - Regulation 10(n) requires the* Customs *Broker to verify correctness of Importer Exporter Code (!EC) number,* Goods *and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information - The verification of certificates part of obligation under Regulation 10(n) on Customs Broker is fully satisfied as long as* Customs *Broker satisfies itself that !EC and GSTIN were, indeed issued by concerned officers - The onus on* Customs *Broker cannot therefore, extend to verifying that the officers have correctly issued the certificate or registration - The responsibility of Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations - Therefore, once verification of address is complete, if*

*the client moves to a new premises and* does *not inform the authorities or does not get his documents amended, such act or omission of the client cannot be held against the Customs Broker - Therefore, Customs Broker has not failed in discharging his responsibilities under Regulation 10(n) - Impugned order* is *not correct in co,:including that despite obtaining and providing authentic documents issued by various Government officers, the Customs Broker has violated Regulation 10(n) because the exporters were found to not exist cj.uring subsequent verification by the officers - Impugned order* is *set aside*•*CESTAT.*

**RAJEEV KHATRI VS COMMISSIONER OF CUSTOMS (EXPORT) 2023-TIOL-769-HIGH COURT-DELHI HIGH COURT-CUSTOMS.**

***Held:*** *Revenue* does *not contest the finding of the Tribunal that no* case *of connivance has been made out against the appellant and that he had no knowledge that the goods sought to be imported were prohibited and their import was illegal - Therefore, the principal question to be addressed is whether a person, who has no knowledge that the goods*

*imported are liable for confi-scation, can be mulcted with penaltyunder*

*Section l 12(a) of the Customs Act for abetting such an offence- In the present case, penalty has been imposed on the appellant on the allegation that he had abetted the acts of misdeclaration, importation of prohibited goods and not of committing those acts - There is no cavil that the appellant's role in the offending import was confined to the ministerial act of filing the Bill of Entry - Indisputably, the said ministerial act* is *not the_reason why the goods have been held to be liable for confiscation under Section 1 1 1 of the* Customs *Act - The Adjudicating Authority has directed confiscation of the goods,* ***inter alia,*** *on the ground that the goods were prohibited goods; the goods were not disclosed and described; and that their correct value was not declared - The penalty imposed for failure to perform a civil obligation* is *required to be distinguished from a penalty imposed* as *a punishment for committing a crime- The* use *of the expression 'abet' in Section 112(a) of the* Customs *Act, makes it implicit that the person charged, who* is *alleged to have abetted the* acts *of* omission *or commission, has knowledge and* is *aware of the said acts- Thus, in the context of Section 112(a) of the* Customs *Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of* commission *o r* omission *that render the goods liable for confiscation- I t* is *apparent from the above that the knowledge of a wrongful act of* omission *or* commission, *which rendered the goods liable for confiscation under Section 111 of the* Customs *Act,* is *a necessary element for the offence of abetting the doing of such an act - Question framed* is *answered in the negative - Penalty imposed on the appellant under Section 112(a) ofthe* Customs *Act* is set *aside - Appeal allowed: High Court [para 21, 24, 26, 27, 31, 36,37, 43].*

**RAJEEV KHATRI VS COMMISSIONER OF CUSTOMS (EXPORT) 2023-TIOL-769-HIGH C_OURT-DELHI HIGH COURT-CUSTOMS:-**

*Held: Revenue* does *not contest the finding of the Tribunal that no* case *of connivance has been made out against the appellant and that he had no knowledge that the goods sought to be imported were prohibited and their import was illegal , - Therefore, the principal question to be addressed* is *whether a•person, who has no knowledge that the goods imported are liable for confiscation, can be mulcted with penalty under Section l l 2(a) of the Customs Act for abetting such an offence - In the present case, penalt,y has*

*. been imposed on the appellant on the allegation that he had abetted the acts of misdeclaration, importation of prohibited goods and riot of committing those acts - There* is *no cavil that the appellant's role in the offending import was confined to the ministerial act of filing the Bill of Entry- Indisputably, the said ministerial act* is *not the reason why the goods have been held to be liable for confiscation under Section 111 of the* Customs *Act - The Adjudicating Authority has directed confiscation of the goods,* ***inter alia,*** *on the ground that- the goods were prohibited goods; the goods were not disclosed and described; and that their correct value was not declared - The penalty imposed for failure to perform a civil obligation* is *required to be distinguished from a penalty imposed* as *a punishment for committing a crime : The use of the expression 'abet' in Section 112(a) of the* Customs *Act, makes it implicit that the person charged, who* is *alleged to have abetted the acts of* omission *or* commission, *has knowledge and* is *aware of the said acts - Thus, in the context of Section 112(a) of the Customs Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of* commission *or* omission *that render the goods liable for confiscation- It* is *apparent from the above that the knowledge of a wrongful act of omission or* commission, *which rendered the goods liable for confiscation under Section 111 of the* Customs *Act,* is *a necessary element for the offence of abetting the doing of such an act - Question framed* is *answered in the negative - Penalty imposed on the appellant under Section 112(a) of the* Customs *Act* is set *aside - Appeal allowed: High Court/para 21, 24, 26,-27, 31, 36, 37, 43}*

**M/S CHAKIAT AGENCIES VS COMMISSIONER OF CUSTOMS (E, {PORTS) CUSTOMS APPEAL NO. 102 OF 2012 2023-TIOL-132-C.CSTAT-MAD:**

*The Commissioner {A) has imposed penalty of* Rs. *1 lakh each on appellants under Section •1 l 4 of Customs Act, 1962 - Main allegation* is *thntas a CHA, appellant have abetted in attempt to export restricted go0ds by misclassifying the goods - On perusal of records, it* is *seen thritalong with consignment documents, exporters have provided to appellant a* test *report issued by Geological and Metallurgical Laboratories, Bangalore - In impugned order, adjudicating authority has noted details of test report issued by Coromandal Fertilisers Ltd. - On thC' basis oftest report, department has concluded that consignment de-Zared* as *'Industrial Salt-'•(Potassium Chloride)* is *Muriate of Potash - Be that* as *it may, appellant* as *a CHA cannot be expected to examine a, d ensure the nature_.9--f_.g 9pd.s in consignment- In impugned order, ac1judicatingauthority has ...observed that when test report mentioned that samples are nat.urctlly occurring Potassium Chloride, the CHA ought to haveclassified the goods under ITC HS 31042000; and they ought to have not assistecb.the-exporter in misdeclaring goods* as *ITC HS as28273990 - The clas-sification is not mentioned in test reports- Main reason for imposing penalty on appellants is that they did not e11 surecorrect classification of goods so* as *to see whether goods are*

*restricted items - There-* is *no allegation or evidence to establish that appellant had indulged in any overt act or played any role in any m 111ner so to assist the exporter in his attempt to export goods - Issue of classifications of complete nature - Following the decision of Tribunal in co.* ; e *o f* ***HIM Logistics Pvt., Ltd. 2016-TIOL-1208-CESTAT-DEL,*** *it is hE'-d that penalty imposed on appellants under Section 114 of Customs Ac.:, 1962 is not warranted and-are therefore set aside: CESTAT.*

23.6 The noticee submitted that the statement of the noticee was also recorded and in that it was clearly mentioned that the reply to the query was given by M/ s JJF Castings Ltd and the noticee has not suppressed any facts on which basis the penalty can be imposed. Further, any negligence _on the part of the exporter cannot held the nolicee liable for penalties. Il is further submitted that the noticee was nol aware about the fact that the said goods were again imported to India. It is submitted that the noticee had fulfilled all its responsibilities of custom clearance as it was a CHA without mensrea.

2 3 . 7 It is further submitted that the penalty under section l 14(iii) doss not directly or indirectly prescribe any penalty for the non-compliance or KYC or failure to perform due-diligence by the CHA. Imposing the penalty under section 114 (iii) for non-compliance of KYC or failure to perform due-diligence is totally baseless.

23.8 There were clear sets of rules to establish the accountability of the CHA: In India a customs house agent (CHA) 1s licensed to act as an agent for transaction of any business relating to the **entry or departure of conveyances or the import or export of goods at a customs station.** CHAs, maintain detailed, itemized and up-to-date accounts. it is further submitted that liability of the CHA is ceased when the goods exported from India or imported in the India. It also submits that the goods were exported on 13.04.2023 when the let export order was received and goods were physically exported concluding that the liability of the noticee got ceased on 13 04.2023. If there is any fault on the part of the noticee or there was any mistake in any documentations or anything then it should be found and corrected before the export has been taken place.

23.9 Noticee further submits that there is an established process for verification of the documents and the goods before the receipt of order for export. This process is done by the authorized custom officer. Once the officer is satisfied that all the documents are in compliance with the requirement and the goods which will be exported are as per proper specification, then they issue the order for export.

23.10 It is submitted that when all the set of rules were followed by the noticee and also verified by the custom officer then there is no question of imposition of penalty on noticee. Noticee also submits that when goods were exported all the liability of the CHA regarding the said goods gets ceased. Now after one year when the goods are reimported by some other person, without his knowledge, the liability of the same goods cannot be re-fixed on the noticee.

On the basis of above fact and submissions, it is submitted and requested that the proposal made in the show cause notice may please be withdrawn/ dropped.

**24. Shri Sagar Kamlesh Thakkar, partner in M/s. B.N. Thakker and sons submitted his reply which was received in this office on dated 31.10.2025 wherein he had, *inter alia*, submitted that:**

**24.1** The Noticee submitted that the noticee is a CHA and has assisted the exporter in exporting the goods. It is further noted that the query referred to in the show cause notice was issued to some other export consignment and was

not against the shipping bills filed by the noticee. No issues were raised by the Customs in respect of the shipping bills filed by the noticee.

24.2 It is submitted that there is no evidence to establish that noticee had in any manner assisted the exporter to export the goods for any ill means. Further, as a role of the CHA, noticee has fulfilled all the responsibilities related to the export and his role ends as soon as the goods are successfully exported. Further, for the matter of due diligence, noticee have relied on the documents furnished to it by its client.The provisions under the Customs Act cannot be invoked to impose penalty alleging that the noticee has not taken due diligence before filing the shipping bills. The CHALR is a self-contained subordinate Regulation, which itself provides for penalties for the non-compliance of the conditions prescribed therein.

24.3 **It** is further submitted that it is a settled position of the law that for imposition of penalty, it is necessary to establish a positive role on the part of the concerned person or the establishment of men srea on part of such a person is a must. Vague allegations and negligence, if any, howsoever grave cannot be assumed to mean abetment so as to invoke penal action.

24.4 In reference of imposition of penalty under section 114(iii) of the customs act, 1962 Noticee submitted that no penalty may be imposed on it under Section l 14(iii) of the Customs Act,1962. Section 114 of the Customs Act,1962 reads as:

***Section 114 in the Customs Act, 1962***

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

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

*fjjJ in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded or five thousand rupees], whichever is the greater;*

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

**24.5** It is submitted that in the notice itself, the goods which were seized are the goods which were imported in Mumbai and the noticee is in no way

concerned with those imported goods. It is submitted that at most the noticee had dealt with the goods which were exported from Mundra and once the goods were allowed to be exported, the role of the noticee ceased. It appears that in some other export case, the goods were allegedly found to be re-imported and on the basis of that the allegation have been levelled against me. Though, it is a fact that the goods exported through the shipping bill filed by the noticee were not re-imported, it is almost impossible for any person to foresee or predict the future movement of the goods. In the present context the goods dealt by him were exported without any query and were not re-imported or ever seized and as such cannot be confiscated. Nor they have been proposed for confiscation. The goods which were exported cannot be confiscated as they were not seized but they are just to be held liable for confiscation and as such no penalty may be imposed under Section 114(iii) of the Customs Act,1962. It is also submitted that Customs Brokers are authorized to facilitate the Customs department for smooth and proper export and import of goods and in the present case, if there was any doubt regarding valuation the Customs department ought to have raised query. When the goods were allowed for export it was considered that there was no query at all and now when the goods were exported it is not proper to point fingers to the noticee.

24.6 It is submitted that in the show cause notice, the penalty has been proposed on the noticee for not advising the exporter properly and not verifying the KYC of his client and for such acts there is no provision in Section 114 (iii) of the Customs Act, 1962 for imposition of penalty.

24.7 **Following** the principles, when the goods are not proposed to be confiscated, no penalty be imposed under Section 114(iii) of the Customs Act, 1962 as the goods are not confiscated. Noticee relies on the following case laws:

**M/s. Prakhar Gupta vs Commissioner , Central (Prev.), Lucknow-2024-TIOL-775-CESTAT-ALL:-**

Held : *There* is *not even an iota of evidence* as *per which it can be concluded that Appellant was responsible for filing of the said bill of entry - Proprietor of importer Mr Archit Sharma specifically states that he never had contacted or met the Appellant or was even under impression that bill of entry for clearance of his consignments were to filed by the Appellant - -On the contrary he specifically* states *that the work for the clearance of the said consignment had been entrusted by him to Ml* s *Goodwings Maritime Pvt Ltd. - When Appellant has denied about having signed or*issued *any such authorization letter the signatures on the letter have not been subjected to any forensic examination by a hand writing expert - Even copy this agreement letter submitted by Shri Awadhendra Kumar has not been subjected to any forensic examination - On the contrary this letter* goes *on to establish the*case *that Appellant has stated in his statement to effect that his login id and password has been compromised and used for filing this bill of entry - Impugned -order holding that Appellant have contravened the provisions of regulation 10 (a), (b), (d},(e),(f),(k)* & *(n) of the CBLR, 2018*is *without any* basis *in law or on cogent examination of the facts in hand -Appeal allowed: CESTAT [para 4.* 7, *4. 9).*

**M/s EASTERN CLEARING AND FORWARDING AGENCY PVT LTD Vs COMMISSIONER OF CUSTOMS (AIRPORT & ADMN.), KOLKA TA-2024-TIOL-739-CESTAT-KOL:**

***Cus*** - *The appellant* is a customs *broker and has filed the appeal against impugned ord*r *-imposing a penalty on them in*terms *of regulation 18 of CBLR, 2013 - No* case *of imposition of penalty* subsists *in the matter* as *there.,* is *nothing to impute any misdemeanour,* commission, *or* omission, *of an act clearly attributable on part of appellant attributable to-them* as *their role and responsibilities of a* customs *broker -There* is.*nq case for invocation and imposing of penalty on appellant therefore 0-1-0* is *set aside - In view of categorical finding of no* case *for levying penalty on appellant having been made out in matter, the other pleadings* as *made out by appellant are not being elaborated upon: CESTAT.*

**M/s. Shakti Cargo Movers vs. Commissioner of Customs (Airport and General), New Customs House, NEW DELHI -2024-TIOL-471-CESTAT-DEL:**

***Cus*** - *Appeal filed against impugned order revoking* Customs *Brokers' licence of appellant and imposed a penalty of Rs. 50,* 000/- - - *Regulation 10(n) requires the* Customs *Broker to verify correctness of Importer Exporter Code (!EC) number,* Goods *and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information - The verification of certificates part of obligation under Regulation 10(n) on Customs Broker is fully satisfied as long as* Customs *Broker satisfies itself that !EC and GSTIN were, indeed issued by concerned officers - The onus on* Customs *Broker cannot therefore, extend to verifying that the officers have correctly issued the certificate or registration - The responsibility of Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address and has not changed his operations - Therefore, once verification of address is complete,if the client moves to a new premises and* does *not inform the authorities or does not get his documents amended, such act or omission of the client cannot be held against the Customs Broker - Therefore, Customs Broker has not failed in discharging his responsibilities under Regulation 10(n) - Impugned order* is *not correct in co,:including that despite obtaining and providing authentic documents issued by various Government officers, the Customs Broker has violated Regulation 10(n) because the exporters were found to not exist cj.uring subsequent verification by the officers - Impugned order* is *set aside* • *CESTAT.*

**RAJEEV KHATRI VS COMMISSIONER OF CUSTOMS (EXPORT) 2023-TIOL-769-HIGH COURT-DELHI HIGH COURT-CUSTOMS.**

***Held:*** *Revenue* does *not contest the finding of the Tribunal that no* case *of connivance has been made out against the appellant and that he had no knowledge that the goods sought to be imported were prohibited and their import was illegal - Therefore, the principal question to be addressed is whether a person, who has no knowledge that the goods*

*imported are liable for confi-scation, can be mulcted with penaltyunder*

*Section l 12(a) of the Customs Act for abetting such an offence - In the present case, penalty has been imposed on the appellant on the allegation that he had abetted the acts of misdeclaration, importation of prohibited goods and not of committing those acts - There is no cavil that the appellant's role in the*

*offending import was confined to the ministerial act of filing the Bill of Entry - Indisputably, the said ministerial act is not the_reason why the goods have been held to be liable for confiscation under Section 1 1 1 of the* Customs *Act - The Adjudicating Authority has directed confiscation of the goods,* ***inter alia,*** *on the ground that the goods were prohibited goods; the goods were not disclosed and described; and that their correct value was not declared - The penalty imposed for failure to perform a civil obligation is required to be distinguished from a penalty imposed as a punishment for committing a crime- The use of the expression 'abet' in Section 112(a) of the* Customs *Act, makes it implicit that the person charged, who is alleged to have abetted the acts of* omission *or commission, has knowledge and is aware of the said acts- Thus, in the context of Section 112(a) of the* Customs *Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of* commission *or* omission *that render the goods liable for confiscation- It is apparent from the above that the knowledge of a wrongful act of* omission *or* commission, *which rendered the goods liable for confiscation under Section 111 of the* Customs *Act,* is *a necessary element for the offence of abetting the doing of such an act - Question framed is answered in the negative - Penalty imposed on the appellant under Section 112(a) ofthe* Customs *Act* is set *aside - Appeal allowed: High Court [para 21, 24, 26, 27, 31, 36,37, 43].*

**RAJEEV KHATRI VS COMMISSIONER OF CUSTOMS (EXPORT)**
**2023-TIOL-769-HIGH C_OURT-DELHI HIGH COURT-CUSTOMS:-**

*Held: Revenue does not contest the finding of the Tribunal that no case of connivance has been made out against the appellant and that he had no knowledge that the goods sought to be imported were prohibited and their import was illegal , - Therefore, the principal question to be addressed is whether a•person, who has no knowledge that the goods imported are liable for confiscation, can be mulcted with penalty under Section l l 2(a) of the Customs Act for abetting such an offence - In the present case, penalt,y has . been imposed on the appellant on the allegation that he had abetted the acts of misdeclaration, importation of prohibited goods and riot of committing those acts - There is no cavil that the appellant's role in the offending import was confined to the ministerial act of filing the Bill of Entry- Indisputably, the said ministerial act is not the reason why the goods have been held to be liable for confiscation under Section 111 of the* Customs *Act - The Adjudicating Authority has directed confiscation of the goods,* ***inter alia,*** *on the ground that- the goods were prohibited goods; the goods were not disclosed and described; and that their correct value was not declared - The penalty imposed for failure to perform a civil obligation is required to be distinguished from a penalty imposed as a punishment for committing a crime : The use of the expression 'abet' in Section 112(a) of the Customs Act, makes it implicit that the person charged, who is alleged to have abetted the acts of* omission *or* commission, *has knowledge and is aware of the said acts - Thus, in the context of Section 112(a) of the Customs Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of* commission *or* omission *that render the goods liable for confiscation- It is apparent from the above that the knowledge of a wrongful act of omission or* commission, *which rendered the goods liable for confiscation under Section 111 of the* Customs *Act,* is *a necessary element for the offence of abetting the doing of such an act - Question framed is answered in the negative - Penalty imposed on the appellant under Section 112(a) ofthe* Customs *Act* is set *aside - Appeal allowed: High Court/para 21, 24, 26,-27, 31, 36, 37, 43}*

**M/S CHAKIAT AGENCIES VS COMMISSIONER OF CUSTOMS (E, {PORTS) CUSTOMS APPEAL NO. 102 OF 2012 2023-TIOL-132-C.CSTAT-MAD:**

*The Commissioner {A) has imposed penalty of* Rs. *1 lakh each on appellants under Section •1 l 4 of Customs Act, 1962 - Main allegation* is *thntas a CHA, appellant* *have abetted in attempt to export restricted go0ds by misclassifying the goods - On perusal of records, it* is *seen thritalong with consignment documents, exporters have provided to appellant a* test *report issued by Geological and Metallurgical Laboratories, Bangalore - In impugned order, adjudicating authority has noted details of test report issued by Coromandal Fertilisers Ltd. - On thC' basis oftest report, department has concluded that consignment de-Zared* as *'Industrial Salt-'•(Potassium Chloride)* is *Muriate of Potash - Be that* as *it may, appellant* as *a CHA cannot be expected to examine a, d ensure the nature_.9--f_.g 9pd.s in consignment- In impugned order, ac1judicatingauthority has ...observed that when test report mentioned that samples are nat.urctlly occurring Potassium Chloride, the CHA ought to haveclassified the goods under ITC HS 31042000; and they ought to have not assistecb.the-exporter in misdeclaring goods* as *ITC HS as28273990 - The classification is not mentioned in test reports- Main reason for imposing penalty on appellants is that they did note11 surecorrect classification of goods so* as *to see whether goods are*

*restricted items - There-*is *no allegation or evidence to establish that appellant had indulged in any overt act or played any role in any m 111ner so to assist the exporter in his attempt to export goods - Issue of classifications of complete nature - Following the decision of Tribunal in co.*;e *of* ***HIM Logistics Pvt., Ltd. 2016-TIOL-1208-CESTAT-DEL,*** *it is held that penalty imposed on appellants under Section 114 of Customs Ac.:, 1962 is not warranted and-are therefore set aside: CESTAT.*

24.8 It is submitted that the statement of the noticee was also recorded and in that it was clearly mentioned that no issue was raised by the Customs for the two shipping bills filed by the noticee. Further, any negligence on the part of the exporter cannot held the noticee liable for penalties. It is further submitted that the noticee was not aware about the fact that the said goods were again imported to India. It is submitted that the noticee had fulfilled all its responsibilities of custom clearance as it was a CHA without mensrea.

24.9 In India, a customs house agent (CHA) is licensed to act as an agent for transaction of any business relating to the entry or departure of conveyances or the import or export of goods at a customs station. CHAs maintain detailed, itemized and up-to-date accounts.

It is further submitted that liability of the CHA is ceased when the goods exported from India or imported in the India.

24.10 It also submits that the goods were exported on O 1.05.2023 and 20.05.2023 when the let export order was received and goods were physically exported concluding that the liability of the noticee is ceased on 01.05.2023 and 20.05.2023. If there is any fault on the part of the noticee or there was any mistake in any documentations or anything then it should be found and corrected before the export has been taken place.

24.11 Noticee further submits that there is an established process for verification of the documents and the goods before the receipt of order for export. This process is done by the authorized custom officer. Once the officer is satisfied that all the documents are in compliance with the requirement and the goods which will be exported are as per proper specification then they issue the order for export.

24.12 It is submitted that when all the set of rules were followed by the noticee and also verified by the custom officer then the question of imposition of penalty on noticee is infructuous. Noticee also submits that when goods were exported all the liability of the CHA regarding the said goods gets ceased. Now after one year when the goods are reimported by other, the liability of the same goods cannot be re-fixed on the noticee.

24.13 It is further submitted that the goods exported are not under dispute and so far, the said goods were also properly exported without any query issued by the Customs Department. Therefore, the proposal to impose penalty on the noticee under section 114(iii) is baseless.

On the basis of above fact and submissions, it is submitted and requested that the proposal made in the show cause notice may please be withdrawn/ dropped.

**Personal Hearing**

25.1 Shri D. Santhana Gopalan, Advocate, appeared for personal hearing on 10.10.2025 in virtual mode on behalf of M/s. JJF Casting Ltd, Shri Bharat Bhushan Mathur, Director JJF Casting, Sh. Amit Kithania, Employee of M/s Jay Ushin Limited. During the hearing he submitted that the goods have been exported on ex-works basis. The delivery of goods were duly taken by M/s. Lloyd, Dubai and M/s. Lloyd, Dubai and has duly paid the amount declared in the Purchase Order. There has been total realization of the goods on the value declared by the Noticee. These facts are not disputed in the SCN. Thus, the value declared in the shipping bill is the correct transaction value of the export goods. He submitted that overvaluation cannot be alleged when export proceeds have been realized and relied on Commissioner of Customs, Noida US. Ess Aar Automotive Put. Ltd. 2019 (369) E.L.T. 727 (Tri.- All.).

He submitted that the declared value cannot be disputed merely because it includes high profit margin and relied on Mitexco us. CC - 2003(155) E.L.T. 69 (Tri.-Bom). He submitted that the subject goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 were duly examined by the Customs Officers and the value thereof was accepted by the Department at the time of export. The same cannot be questioned at this stage. The Noticee has submitted Reply dated 18.04.2023 to the query raised by the Department (in respect of Shipping Bill No. 9277085 dated 13.04.2023) that the value adopted by them is in line

with the market value adopted by the other online sellers. He submitted that only the goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 was returned to India even as per the SCN. However, the allegation of overvaluation has been extrapolated for the other two disputed Shipping Bills, viz., No. 9692104 dated 01.05.2023 and No. 1174464 dated 20.05.2023 also, without any basis. He also submitted that no penalty is imposable on Mr. Bharat Mathur and Mr. Amit Kithania. He requested to drop the proceedings initiated vide the SCN.

25.2 Shri Vikas Mehta, consultant appeared for personal hearing in virtual mode on 03.11.2025 on behalf Sh. Inder Bhojwani, CHA, Partner in M/s D.L. Shipping Services and Sh. Sagar Kamlesh Thakker, CHA, Partner in M/s B.N. Thakker and Sons in case of M/s. JJF Casting Ltd. He reiterated the written submissions filed by respective noticees. He submitted that a Custom House Agent is neither an expert in valuation nor law expects them to be so. The exporter had declared a value that was duly assessed and accepted at the time of export and foreign exchange is also realized. The averments like failure to carry out due diligence and negligence are value and baseless, being not supported by any specific evidence. On this basis, he prayed to drop the proceedings.

**Discussion and Findings**

26. I have carefully gone through the facts of the case, Show Cause Notice dated 10.07.2024 and the noticee submissions both, in written and in person. I find that in the present case principle of natural justice have been complied with and therefore, I proceed to decide the case on the basis of applicable laws/rules, written submissions and documentary evidences available on record.

27. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

(i) Whether the value declared in the three (03) Shipping Bills as detailed in Table-B above should not be rejected in terms of Section 14 and Section 50 (3) of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Export Goods) Rules, 2007 or otherwise.

(ii) Whether the impugned goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 having declared assessable value of Rs. 6,00,95,100/- which were subsequently imported into India under B/L No. AHIJEANSA23016 dated 28.06.2024 in the name of M/s M.F. International should be confiscated under

the provision of Section 113 (i) read with Sections 118 and 120 of the Customs Act, 1962 or otherwise.

(iii) Whether the goods exported vide Shipping Bill Nos. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, having declared assessable value of Rs. 7,12,60,830/- each, should be confiscated under the provision of Section 113(i) of the Customs Act, 1962 or otherwise.

(iv) Whether M/s. JJF Casting and Bharat Bhushan Mathur, Director, M/s JJF Castings Limited are liable for penalty under Sections 114(iii) and 114AA of the Customs Act, 1962 or otherwise.

(v) Whether Sh. Amit Kithania, Employee of M/s Jay Ushin Limited, a group company of M/s JJF Castings Limited, Sh. Inder Bhojwani, CHA, Partner in M/s D.L. Shipping Services and Sh. Sagar Kamlesh Thakker, CHA, Partner in M/s B.N. Thakker and Sons are liable for penalty under Sections 114(iii) of the Customs Act, 1962 or otherwise.

2 8 . I find that the investigation was initiated by the DRI in respect of Container No. NIDU2204365, which was destined for Polaris Logistics Park Private Limited-CFS, Navi Mumbai-400 707. Accordingly, the Container No. NIDU2204365 was kept on hold for conducting the examination. The Bill of Lading No. AHLJEANSA23016 dated 28.06.2023 filed for the said container indicated the cargo as '*Parts of Brakes (M.V. Parts) Calliper Pin Caterpillar set of 3 pcs (Model 797)*' with the Consignee as "M/s M.F. International [IEC No. 0307070221], Sea Coast CHS, CBD-Belapur, Navi Mumbai-400614" and the consignor as 'M/s Llyod & Traf Global FZCO, DSO IFZA, Dubai Silicon Oasis, Dubai' and the delivery agent/shipping liner as "M/s Aahil Shipping & Logistics Pvt. Ltd., CBD-Belapur, Navi Mumbai-400614. Container No. NIDU2204365 was examined twice on 21.07.2023 and 25.08.2023 under two different panchanamas. During the course of examination of goods, the goods in the container was found as declared in the Bill of Lading No. AHLJEANSA23016 dated 28.06.23.

From the investigation carried out, I find that Shri Nasir Hussain, Manager (Import) of M/s Aahil Shipping & Logistics Pvt. Ltd. informed that Container No. NIDU2204365 has been received as Return On Board (ROB) under the same bottle seal and the said cargo was previously exported from Mundra Port, Gujarat by M/s JJF Castings Ltd., Bhiwadi, Rajasthan [IEC No. 0515034517] and submitted the export-related documents as per above mentioned Table-B.

2 9 . From the investigation carried out, I find that the consignee and the value mentioned on the subject Invoice/Bill of Lading differs, even though it was ROB. The consignee was mentioned as M/s M.F. International, Sea Coast CHS, CBD Belapur, Navi Mumbai and value declared as USD ($) 15105. For

ROB consignments, the consignment should have gone to the Exporter i.e. M/s JJF Castings Ltd who had exported the goods and should not have been delivered to any third person/entity. M/s. M.F. International, the impugned importer of the consignment informed that they had never given consent for the import of the goods covered under Bill of Lading No. AHLJEANSA23016 dated 28.06.2023 to M/s Llyod & Traf Global FZCO, Dubai, the supplier of the consignment.

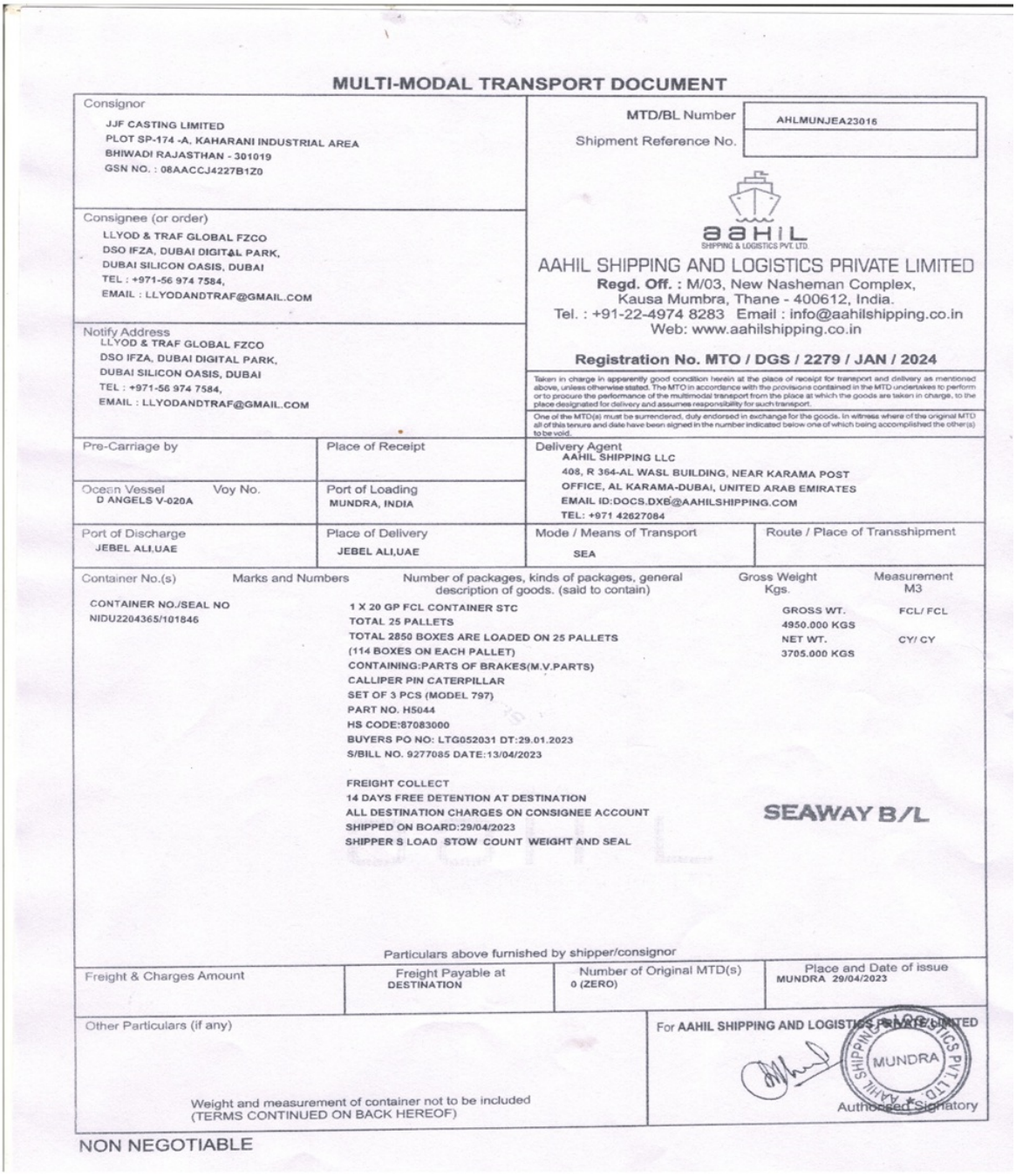
30. On careful consideration of both Bills of Lading, I find that in both the cases, Container No., Seal No., description of goods and the weight of the cargo are the same, the only difference is goods had been exported by M/s JJF Castings Limited to M/s Lloyd and Traf Global FZCO and during import the goods had been imported by M/s MF International from M/s Lloyd and Traf Global FZCO.

Further, during the course of investigation, I find that M/s JJF Castings Limited had obtained EPCG Licences as mentioned in Table-D above and have to fulfil export obligation within a specific time frame.

31. **Now, I had taken up the matter whether the value declared in the three (03) Shipping Bills as detailed in Table-B above should be rejected in terms of Section 14 and Section 50 (3) of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Export Goods) Rules, 2007 :-**

31.1 In the instant case, I find that Shri Nasir Hussain, Manager (Import) of M/s Aahil Shipping & Logistics Pvt. Ltd. informed that Container No. NIDU2204365 has been received as Return On board (ROB) under the same bottle seal and the said cargo was previously exported from Mundra Port, Gujarat by M/s JJF Castings Ltd., Bhiwadi, Rajasthan [IEC No. 0515034517]. Bill of Lading at the time of export and import are reproduced as below:-

**Bill of Lading at the time of export:**



## MULTI-MODAL TRANSPORT DOCUMENT

**Consignor**
JJF CASTING LIMITED
PLOT SP-174 -A, KAHARANI INDUSTRIAL AREA
BHIWADI RAJASTHAN - 301019
GSN NO. : 08AACCJ4227B1Z0

MTD/BL Number: AHLMUNJEA23016
Shipment Reference No.:

**Consignee (or order)**
LLYOD & TRAF GLOBAL FZCO
DSO IFZA, DUBAI DIGITAL PARK,
DUBAI SILICON OASIS, DUBAI
TEL : +971-56 974 7584,
EMAIL : LLYODANDTRAF@GMAIL.COM

AAHIL SHIPPING AND LOGISTICS PRIVATE LIMITED
**Regd. Off. :** M/03, New Nasheman Complex,
Kausa Mumbra, Thane - 400612, India.
Tel. : +91-22-4974 8283 Email : info@aahilshipping.co.in
Web: www.aahilshipping.co.in

**Registration No. MTO / DGS / 2279 / JAN / 2024**

**Notify Address**
LLYOD & TRAF GLOBAL FZCO
DSO IFZA, DUBAI DIGITAL PARK,
DUBAI SILICON OASIS, DUBAI
TEL : +971-56 974 7584,
EMAIL : LLYODANDTRAF@GMAIL.COM

Taken in charge in apparently good condition herein at the place of receipt for transport and delivery as mentioned above, unless otherwise stated. The MTO in accordance with the provisions contained in the MTD undertakes to perform or to procure the performance of the multimodal transport from the place at which the goods are taken in charge, to the place designated for delivery and assumes responsibility for such transport.

One of the MTD(s) must be surrendered, duly endorsed in exchange for the goods. In witness where of the original MTD all of this tenure and date have been signed in the number indicated below one of which being accomplished the other(s) to be void.

| Pre-Carriage by | Place of Receipt | Delivery Agent |
|---|---|---|
| | | AAHIL SHIPPING LLC<br>408, R 364-AL WASL BUILDING, NEAR KARAMA POST OFFICE, AL KARAMA-DUBAI, UNITED ARAB EMIRATES<br>EMAIL ID:DOCS.DXB@AAHILSHIPPING.COM<br>TEL: +971 42627084 |
| Ocean Vessel Voy No.<br>D ANGELS V-020A | Port of Loading<br>MUNDRA, INDIA | |
| Port of Discharge<br>JEBEL ALI,UAE | Place of Delivery<br>JEBEL ALI,UAE | Mode / Means of Transport: SEA<br>Route / Place of Transshipment: |

| Container No.(s) | Marks and Numbers | Number of packages, kinds of packages, general description of goods. (said to contain) | Gross Weight Kgs. | Measurement M3 |
|---|---|---|---|---|
| CONTAINER NO./SEAL NO<br>NIDU2204365/101846 | | 1 X 20 GP FCL CONTAINER STC<br>TOTAL 25 PALLETS<br>TOTAL 2850 BOXES ARE LOADED ON 25 PALLETS<br>(114 BOXES ON EACH PALLET)<br>CONTAINING:PARTS OF BRAKES(M.V.PARTS)<br>CALLIPER PIN CATERPILLAR<br>SET OF 3 PCS (MODEL 797)<br>PART NO. H5044<br>HS CODE:87083000<br>BUYERS PO NO: LTG052031 DT:29.01.2023<br>S/BILL NO. 9277085 DATE:13/04/2023<br><br>FREIGHT COLLECT<br>14 DAYS FREE DETENTION AT DESTINATION<br>ALL DESTINATION CHARGES ON CONSIGNEE ACCOUNT<br>SHIPPED ON BOARD:29/04/2023<br>SHIPPER S LOAD STOW COUNT WEIGHT AND SEAL | GROSS WT.<br>4950.000 KGS<br>NET WT.<br>3705.000 KGS | FCL/ FCL<br>CY/ CY |

SEAWAY B/L

Particulars above furnished by shipper/consignor

| Freight & Charges Amount | Freight Payable at | Number of Original MTD(s) | Place and Date of issue |
|---|---|---|---|
| | DESTINATION | 0 (ZERO) | MUNDRA 29/04/2023 |

Other Particulars (if any)

Weight and measurement of container not to be included
(TERMS CONTINUED ON BACK HEREOF)

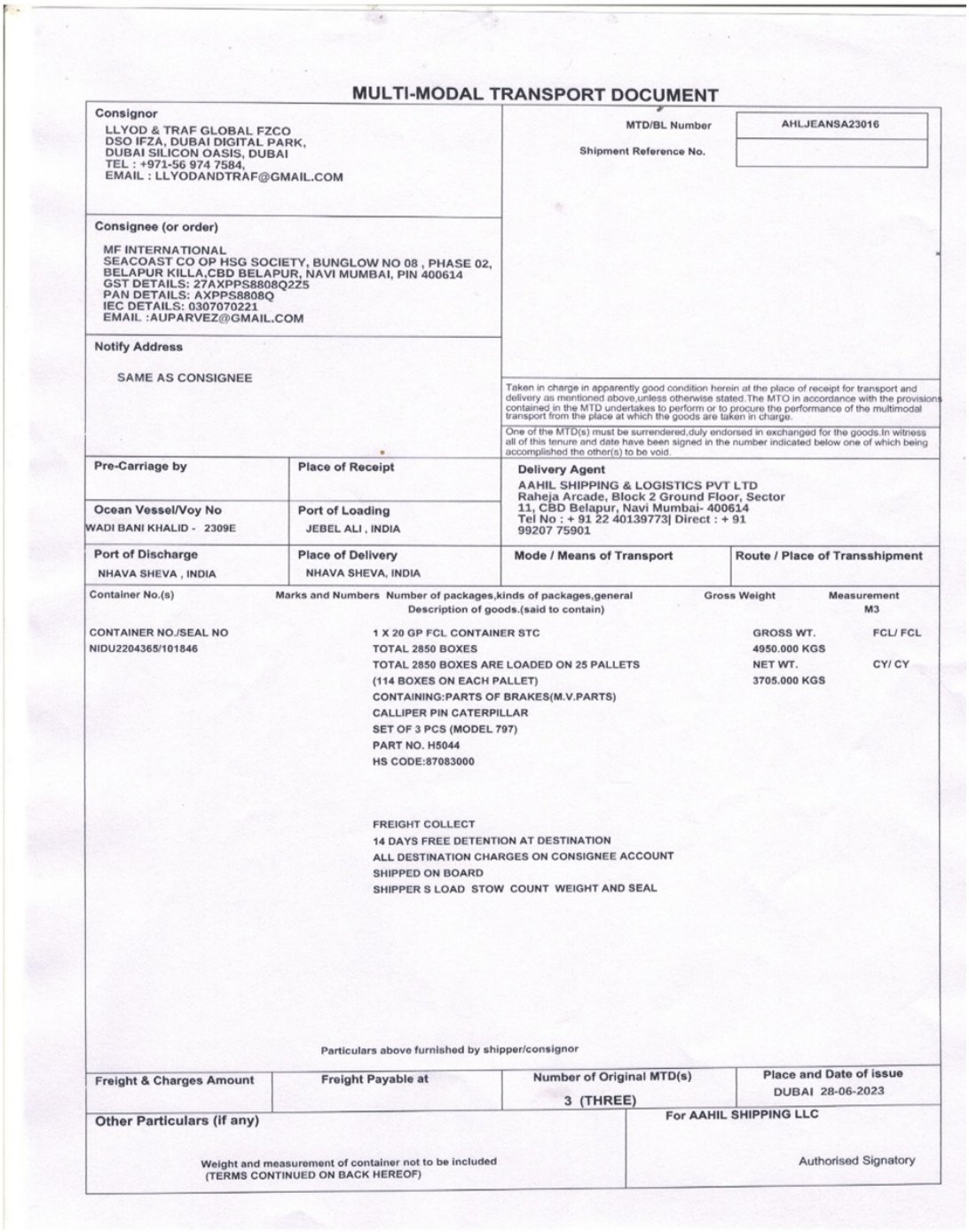
For AAHIL SHIPPING AND LOGISTICS PRIVATE LIMITED

MUNDRA

Authorised Signatory

NON NEGOTIABLE

**Bill of Lading at the time of import:**



**MULTI-MODAL TRANSPORT DOCUMENT**

**Consignor**
LLYOD & TRAF GLOBAL FZCO
DSO IFZA, DUBAI DIGITAL PARK,
DUBAI SILICON OASIS, DUBAI
TEL : +971-56 974 7584,
EMAIL : LLYODANDTRAF@GMAIL.COM

MTD/BL Number: AHLJEANSA23016
Shipment Reference No.:

**Consignee (or order)**
MF INTERNATIONAL
SEACOAST CO OP HSG SOCIETY, BUNGLOW NO 08 , PHASE 02,
BELAPUR KILLA,CBD BELAPUR, NAVI MUMBAI, PIN 400614
GST DETAILS: 27AXPPS8808Q2Z5
PAN DETAILS: AXPPS8808Q
IEC DETAILS: 0307070221
EMAIL :AUPARVEZ@GMAIL.COM

**Notify Address**
SAME AS CONSIGNEE

Taken in charge in apparently good condition herein at the place of receipt for transport and delivery as mentioned above,unless otherwise stated.The MTO in accordance with the provisions contained in the MTD undertakes to perform or to procure the performance of the multimodal transport from the place at which the goods are taken in charge.

One of the MTD(s) must be surrendered,duly endorsed in exchanged for the goods.In witness all of this tenure and date have been signed in the number indicated below one of which being accomplished the other(s) to be void.

| Pre-Carriage by | Place of Receipt | Delivery Agent |
|---|---|---|
| | | AAHIL SHIPPING & LOGISTICS PVT LTD<br>Raheja Arcade, Block 2 Ground Floor, Sector 11, CBD Belapur, Navi Mumbai- 400614<br>Tel No : + 91 22 40139773\| Direct : + 91 99207 75901 |
| **Ocean Vessel/Voy No** | **Port of Loading** | |
| WADI BANI KHALID - 2309E | JEBEL ALI , INDIA | |
| **Port of Discharge** | **Place of Delivery** | **Mode / Means of Transport** / **Route / Place of Transshipment** |
| NHAVA SHEVA , INDIA | NHAVA SHEVA, INDIA | |

| Container No.(s) | Marks and Numbers | Number of packages,kinds of packages,general Description of goods.(said to contain) | Gross Weight | Measurement M3 |
|---|---|---|---|---|
| CONTAINER NO./SEAL NO<br>NIDU2204365/101846 | | 1 X 20 GP FCL CONTAINER STC<br>TOTAL 2850 BOXES<br>TOTAL 2850 BOXES ARE LOADED ON 25 PALLETS<br>(114 BOXES ON EACH PALLET)<br>CONTAINING:PARTS OF BRAKES(M.V.PARTS)<br>CALLIPER PIN CATERPILLAR<br>SET OF 3 PCS (MODEL 797)<br>PART NO. H5044<br>HS CODE:87083000<br><br>FREIGHT COLLECT<br>14 DAYS FREE DETENTION AT DESTINATION<br>ALL DESTINATION CHARGES ON CONSIGNEE ACCOUNT<br>SHIPPED ON BOARD<br>SHIPPER S LOAD STOW COUNT WEIGHT AND SEAL | GROSS WT.<br>4950.000 KGS<br>NET WT.<br>3705.000 KGS | FCL/ FCL<br>CY/ CY |

Particulars above furnished by shipper/consignor

| Freight & Charges Amount | Freight Payable at | Number of Original MTD(s) | Place and Date of issue |
|---|---|---|---|
| | | 3 (THREE) | DUBAI 28-06-2023 |

**Other Particulars (if any)**
Weight and measurement of container not to be included
(TERMS CONTINUED ON BACK HEREOF)

For AAHIL SHIPPING LLC
Authorised Signatory

On careful consideration of import and export Bills of Lading, I find that in both the cases, Container No., Seal No., description of goods and the weight of the cargo are the same, the only difference is goods had been exported by M/s JJF Castings Limited to M/s Lloyd and Traf Global FZCO and during import the goods had been imported by M/s MF International from M/s Lloyd and Traf Global FZCO.

31.2 I find that the consignee and the value mentioned on the subject Invoice/Bill of Lading differs from, even though it was ROB. The consignee was

mentioned as M/s M.F. International, Sea Coast CHS, CBD Belapur, Navi Mumbai and value declared as USD ($) 15105. For ROB consignments, the consignment should have gone to the Exporter i.e. M/s JJF Castings Ltd who had exported the goods and should not have been delivered to any third person/entity. M/s. M.F. International.

During the course of examination of the goods in Container No. NIDU2204365, it was found that they were packed distinctly in different boxes compositely containing three (03) items viz. big gear, small gear and a shaft.

31.3 From the investigation carried out, I find that the goods which had been exported vide Shipping Bill No. 9277085 dated 13.04.2023 are imported back into India in the same container no. NIDU2204365 and with the same bottle seal number affixed on it. The value of the goods at the time of export in Shipping Bill No. 9277085 dated 13.04.2023 has been declared as Rs. 6,00,95,100/- and the value of the goods declared at the time of import is Rs. 12,54,470.25/-. As the goods during export and import are same and in the **same container no. NIDU2204365 and with the same bottle seal**, the value of the consignment should have remains same for export and import with some minor value enhancement or depriciation. Hence the value declared in the Shipping Bill no. 9277085 dated 13.04.2023 cannot be considered as proper/actual value.

31.4 I find that during the course of investigation, M/s Gattani & Co., Chartered Engineer inspected the goods imported vide container no. NIDU2204365 and submitted Certificate ref no. INS/CER/2223-029 dated 02.09.2023. The summarised details of the certificate is as under:-

i. The cargo consisted of gears & pins. Each box was opened & found to be identical in nature consisting of two gears & a pin. **They are a mixture of new, old and used parts.** There are no marks or identity. The 3 pcs set as declared are not uniform in nature and were in used condition.

ii. The parts of brakes shown/inspected appear to have been **retrieved from discarded items (gears)** and the pin in it was new. Thus, as there is no description & uniformity of the parts except the PIN, it doesn't appear to be parts as declared in the present condition.

iii. The value declared in the import invoice appears fair.

31.5 Further, I also find that M/s. JJF casting Limited submitted value provided by their cost auditor. The value provided by their Cost Auditor of the goods viz. Parts of MV (Set of 3) has been found to be Rs. 10,614/- per set and the value of the goods in respect of all the three Shipping Bills is Rs. 10,28,49,660/-.

I find that the value provided by the cost accountant has been done only on the basis of the documents provided to him such as purchase bills, signed financial statements & by explaining the technical process for the manufacture of the said goods. The Accountant had never shown the product nor visited the factory. Therefore the value provide by the cost accountant cannot be considered as proper as he had provide the value of the goods on the basis of financial statements and other documents provided to him and he had not checked the goods physically also. Therefore, the said value provided by the Cost Accountant cannot be considered as proper value.

31.6 During the course of investigation, I find that M/s A.K. Engineering, M/s Tarun Enterprises, and M/s Gautam Udyog submitted invoices for the parts and goods supplied by them to M/s JJF Casting. After examining all the invoices, it is seen that M/s JJF Casting purchased small gears and big gears from M/s A.K. Engineering at the rates of Rs. 345 per piece and Rs. 695 per piece, respectively. Further, based on the calculations carried out, the weight of the shaft is approximately 400 grams, and accordingly, the rate of the shaft comes to Rs. 126 per piece (considering the shaft material rate of Rs. 306/kg and Rs. 10/kg towards cutting charges). Thus, the total value of one set comprising a small gear, a big gear, and a shaft works out to Rs. 1,166/- per set. Therefore, the total value of the goods comprising 2,850 such sets comes to approximately Rs. 33,23,100/-.

Further, the Chartered Engineer, vide Certificate No. INS/CER/2223-029 dated 02.09.2023, reported that the goods were a mixture of new, old, and used parts, and that the brake parts inspected appeared to have been retrieved from discarded items (gears).

Accordingly, I find that although M/s JJF Casting purchased new parts valued at approximately Rs. 33,23,100 from various suppliers, however, the export goods is comprising of both new goods and old goods as found during examination and as per CE report, the value of the goods at the time of import was found to be Rs. 12,54,470.25. In view of the CE report confirming that the exported goods contained a mixture of old and used parts, I hold that the correct value of the exported goods is Rs. 12,54,470.25, as certified by the Chartered Engineer instead of decalred value of goods during the time of export..

31.7 Accordingly, Considering the Certificate of the Chartered Engineer which states that parts of brakes shown/inspected appear to have been retrieved from discarded items (gears) and the value in the import invoice appears to be fair, the invoice value shown was USD 5.30 unit price for a quantity of 2850 which comes to USD 15105. Further, M/s. Gattani & Co., Chartered Engineer on the basis of physical & visual verification of the cargo, submitted that the value

of the goods as declared in the import invoice is proper value of the goods.

In view of above discussions and on the basis of the value declared in the export consignment and valuation certificates of the cost auditor provided by M/s. JJF Casting Ltd., I find that exporter had declared the **goods as "parts of Brakes calliper Pin set of 03 Pcs" as new however, as per CE certificate gooda are mixture of new , old and used parts and "parts of brakes shown/inspected appear to have been retrieved from discarded items (gears)", therefore the exporter has mis-declared the goods as new at the time of export however exported old and used discarded items in the subject shipping Bill**. Accordingly, the value declared by the exporter on the Shipping Bills is not proper transaction value and cannot be considered as actual value, therefore liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of export goods) Rules, 2007.

31.8 For the Purpose of Section 50(3) of the Customs Act, 1962,

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

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

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

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

In the instant case, as discussed above, exporter had declared the goods as "parts of Brakes calliper Pin set of 03 Pcs" as new however, as per CE certificate "parts of brakes shown/inspected appear to have been retrieved from discarded items (gears)", therefore the exporter has mis-declared the goods as new at the time of export however exported old and used discarded items in the subject shipping Bill. Further, CE certified that the value in the import invoice appears to be fair, the invoice value shown was USD 5.30 unit price for a quantity of 2850 which comes to USD 15105. Accordingly, I find that as per provisions of Section 50(3) of The Customs Act, 1962, the exporter had not provided the accurate, complete information and provided inflated value in export documents tried to fulfil the export obligation by fraudulent means.

3 1 . 9 For the purpose of Customs Tariff Act, 1975, valuation of export goods is to be done in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of value of Export Goods) Rules, 2007 (CVR). Accordingly, in terms of rule 3(3) of the said rules, the value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 6 of CVR, 2007.

I find as per Rule 3(3) of CVR, 2007, If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by

proceeding sequentially through rules 4 to 6. The relevant rules of Customs Valuation (Determination of Value of Exported Goods) Rules, 2007 and Section 14 of the Customs Act, 1962 are reproduced hereunder:

***Rule 3 Determination of the method of valuation–***

*(1) Subject to rule 8, the value of export goods shall be the transaction value.*
*(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.*
*(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.*

***Rule 4 Determination of export value by comparison -***

*(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).*
*(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-*

*(i) difference in the dates of exportation,*
*(ii) difference in commercial levels and quantity levels,*
*(iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,*
*(iv) difference in domestic freight and insurance charges depending on the place of exportation.*

***Rule 5 Computed value method–***
*If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-*
*(a) cost of production, manufacture or processing of export goods;*
*(b) charges, if any, for the design or brand;*
*(c) an amount towards profit.*

***Rule 6 Residual method–***

*(1) Subject to the provisions of rule 3, where the value of the export goods*

*cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.*

**Section 14 of the Customs Act, 1962:**

***Valuation of goods.*** *-*

*(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

***Provided*** *that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*

***Provided*** *further that the rules made in this behalf may provide for,-*
*(i) the circumstances in which the buyer and the seller shall be deemed to be related;*

*(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*

*(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*

*(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]*

***Provided*** *also that such price shall be calculated with reference to the*

*rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.*

*(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.*

***Explanation** . - For the purposes of this section -*
*(a) rate of exchange" means the rate of exchange -*
*(i) determined by the Board, or*

*(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;*

*(b)"foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).*

From the plain reading of Rule 4, it is evident that the said Rule provides for the determination of transaction value of the exported goods by comparing the goods of like kind and quality or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation in accordance with the provisions provided in sub-rule (2) of rule 4. In the instant case, efforts were made to find out the correct value of the exported goods. But, it was not possible to find and compare the same with other goods having like kind, quality, description and other characteristics as the 'Parts of Brakes (MV Parts) calliper pin cater pillar set of 3 pieces exported at same time, hence, the value of export goods could not be determined under Rules 4 of CVR, 2007.

Further, I find that Rule 5 of the CVR 2007 provides for the determination of the transaction value of the exported goods by computed value method considering the cost of production, manufacture or processing of goods, other charges, profit margin etc. I find that M/s. JJF Casting had exported 03 consignments of Parts of Brakes viz. 'Calliper Pin Caterpillar' consisting of a set of 3 pieces big gear, small gear & a shaft to M/s Llyod & Traf Global FZCO, Dubai. The big & small gears are bought out items whereas shaft is a manufactured item. However, during the course of investigation he wasn't able to produce any contemporaneous evidence certifying that the shaft was manufactured by M/s JJF Castings Ltd. In this case two out of the three (03)

pieces confined in a box are bought out/purchased goods and the third piece is a manufactured item. However, no contemporaneous evidence has been provided by the manufacturer regarding the manufacturing of the third piece viz. shaft nor the Cost Accountant was able to provide any evidence substantiating the said. Hence, the value of the goods under export could not be determined, as per Rule 5 of the Rules Customs Valuation (Determination of export goods) Rules, 2007. Thus, the value of impugned goods merit to be re-determined under residual method i.e. Rule 6 the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

Therefore, the valuation of goods is determined under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 using reasonable means consistent with the principles and general provisions of these Rules and therefore, opinion of the Chartered engineer was taken.

In the instant case, the goods exported by M/s JJF Castings Limited vide Shipping Bill No. 9277085 dated 13.04.2023, have been imported by M/s MF International in the same Container No. NIDU2204365 with the same bottle seal no., without any change. The shipping line, M/s Aahil Shipping & Logistics Pvt, which was common for both import and export, has confirmed that the container was ROB and the same goods which were exported have returned. Further, M/s Gattani & Co., Chartered Engineer inspected the goods imported vide container no. NIDU2204365 and submitted Certificate ref no. INS/CER/2223-029 dated 02.09.2023 and as per the certificate provided by CE, the value of goods declared at the time of import or import documents i.e. USD 15105 is fair and proper.

31.10 Further, I also find that Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited, in his statement, had agreed to the fact that the goods exported in the other two containers are same and identical in as much as the goods exported in the Container which have been imported in the name of M/s MF International. Also the descriptions mentioned in all the shipping bills is same.

Therefore, as per the investigation carried out, I find that exporter had filed 02 more shipping bill for the same goods and during the same periods, accordingly, the same calculations are applied to the other two containers exported by M/s JJF Castings Limited vide Shipping Bills no. 9692104 dated 01.05.23 and 1174464 dated 20.05.23, the value declared in the said Shipping Bills is Rs. 14,25,21,660/- however the actual value comes as Rs. 29,53,631.70/.

In view of the above discussions, and on the basis of the value declared at the time of import and the valuation certificate issued by M/s Gattani and Co., CE, the value of the goods exported vide 03 shipping Bills as mentioned

above in Table-B is re-determined as Rs. 42,08,102/-. Accordingly, I hold that the value declared of the three shipping bills as mentioned above in Table-B as Rs. 20,26,16,760/, (Rupees Twenty Crore Twenty six lakh sixteen thousand seven hundred sixty only) is liable to be rejected and the value of the exported goods as mentioned in Table –B above is re-determined as Rs. 42,08,102/- (Rupees Forty two lakh eight thousand one hundred two only) in terms of provisions of Rule 6 of the CVR, 2007.

31.11 The notice in their submission contended that value declared is correct transaction value and cannot be rejected when export proceeds realised and therefore case of overvaluation cannot sustain. However, I hereby rely on the following judgements in support of my claim wherein it is held that "Over-invoicing of the export goods or not mentioning true sale consideration of the goods, would amount to violation of the conditions for import/export of the goods and result in illegal/irregular transactions in foreign currency" and "If the goods are in fact over-invoiced, this means that the exporter is realising proceeds not really relatable to the export made. In fact the receipt of foreign exchange might in reality be a mirage. Apart from the public revenue being defrauded of large amounts of money both on account of income tax and on account of import duty by a false declaration of value of exports by the exporter, no benefit would accrue to the national exchequer at all as the foreign exchange earned would be used to purchase the duty free imported material".

In case of **Om Prakash Bhatia vs Commissioner of Customs 2003 (158) E.L.T A 177**, in para 18, wherein it is held that:

*"in cases where the export value is not correctly stated but there is international over-invoicing for some other purpose, that is to say not mentioning true sale consideration of the goods, then it would amount to violation of the conditions for import/export of the goods. The purpose may be money laundering or some other purpose, but it would certainly amount to illegal/unauthorized money transaction. In any case, over-invoicing of the export goods would result in illegal/irregular transactions in foreign currency".*

Further in case of Collector of **Customs vs. Pankaj V. Sheth, 1997 (90) E.L.T. 31 (Cal.) in High Court at Calcutta**, wherein it is held that**:**

***"Valuation of export goods where no customs duty is leviable - Customs Officer has jurisdiction to determine the correct export value in terms of Sections 2 (41) and 14(1) of Customs Act, 1962 - Remittance of full foreign exchange into India is not sure indication of declared export value being correct - Misdeclaration of value by exporter amounts to violation of prohibitions deemed to have been imposed under Section 11 ibid which is punishable under Section 113 ibid.***

*- Section 14(1) of the Customs Act merely lays down a method for*

*determination of value of goods and does not limit the jurisdiction of the customs authorities to determine the value of goods only to cases of assessment of duty. In fact, Section 14 is utilised for determination of value under several other enactments where duty is not assessable at all but nevertheless misdeclaration of value under such other enactments is a deemed prohibition under Section 11 of the Customs Act. For example, Clauses 2(h) and 3(3) of Export Control Order, 1988 requiring declaration of value of export goods, Rules 2 (i) and 11 of the Foreign Trade (Regulation) Rules, 1993 requiring declaration of value Whether the goods are liable to duty or not, Section 18(1) read with Section 67 of the Foreign Exchange (Regulation) Act, 1973 requiring furnishing of declaration of full export value of the goods supported by evidence to the prescribed customs authorities and finally the determination and authentication of correct export value by Customs Officer in Col. 10 of Part II of DEEC Book in terms of Exemption Notification No. 203/92-Cus. and 204/92-Cus. issued under Section 25(1) of the Customs Act read with Para 119 of Export-Import Policy, 1992-97, the term `value' used in the Notification having the same meaning as in the parent Customs Act, vide Section 20 of the General Clauses Act, 1897. Correctness of value declaration may be investigated into by the Customs authorities and for such purpose resort may be had to Section 14(1) of the Customs Act. If the goods are in fact over-invoiced, this means that the exporter is realising proceeds not really relatable to the export made. Yet, by virtue of the exporter's declaration the excess amount would enjoy the benefit of the concessions by way of duty free imports to which they would otherwise not be entitled. [paras 14-27]*

***Duty Exemption Scheme - Value Based Advance Licence - Logging of exports in DEEC Book - Customs Officer having reasons to believe that export value was inflated 84 times so that profit earned by exporter was 8,429 per cent - Customs Officer has an obligation to investigate the value declared and cannot be compelled to endorse the value in Exporter's DEEC Book - Obligation of the Customs Officer not discharged only because the foreign exchange had been received on the invoiced amount - Notification No. 203/92-Cus., - Para 119 of Export-Import Policy 1992-97 - Section 14(1) of Customs Act, 1962.***

*- In fact the receipt of foreign exchange might in reality be a mirage. Apart from the public revenue being defrauded of large amounts of money both on account of income tax and on account of import duty by a false declaration of value of exports by the exporter, no benefit would accrue to the national exchequer at all as the foreign exchange earned would be used to purchase the duty free imported material.[paras 25, 26]".*

32. **Now I have to decide whether the impugned goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 having declared assessable**

**value of Rs. 6,00,95,100/- which were subsequently imported into India under B/L No. AHIJEANSA23016 dated 28.06.2024 in the name of M/s M.F. International should be confiscated under the provision of Section 113 (i) read with Sections 118 and 120 of the Customs Act, 1962:-**

3 2 . 1 I find that in the instant case, Container No. NIDU2204365 has been received as Return On Board (ROB) under the same bottle seal and the said cargo was previously exported from Mundra Port, Gujarat by M/s JJF Castings Ltd., Bhiwadi, Rajasthan [IEC No. 0515034517]. I find that in both the cases, Container No., Seal No., description of goods and the weight of the cargo are the same, the only difference is goods had been exported by M/s JJF Castings Limited to M/s Lloyd and Traf Global FZCO and during import the goods had been imported by M/s MF International from M/s Lloyd and Traf Global FZCO.

I find that the consignee and the value mentioned on the subject Invoice/Bill of Lading differs from, even though it was ROB. The consignee was mentioned as M/s M.F. International, Sea Coast CHS, CBD Belapur, Navi Mumbai and value declared as USD ($) 15105. For ROB consignments, the consignment should have gone to the Exporter i.e. M/s JJF Castings Ltd who had exported the goods and should not have been delivered to any third person/entity. M/s. M.F. International. I find that the goods which had been exported vide Shipping Bill No. 9277085 dated 13.04.2023 are imported back into India in the same container no. NIDU2204365 and with the same bottle seal number affixed on it. Thereafter, I find that M/s Gattani & Co., Chartered Engineer submitted Certificate ref no. INS/CER/2223-029 dated 02.09.2023 and confirms that the value declared in the import invoice appears fair.

32.2 I find that that M/s JJF Castings Ltd. Had exported (03) consignments to M/s Llyod & Traf Global, FCZ, Dubai [including the present, which has now been imported on ROB]. All the goods were similar & identical in nature. M/s JJF Castings Ltd. had declared the goods vide the three (3) Shipping Bills mentioned in **Table-B above** (re-produced below for sake of convenience):-

**Table-B**

| Sr. No. | Bill of Lading No | Bill of Lading Date | Container No. | S/b No./ Date | Value | Qty | INR |
|---|---|---|---|---|---|---|---|
| 1 | AHLMUNJEA23016 | 29.04.2023 | NIDU2204365 | 9277085/ 13.04.23 | (USD) 741000 | 2850 | 6,00,95,100 |
| 2 | AHLMUNJEA23021 | 11.05.2023 | EOLU2227578 | 9692104/ 01.05.23 | (AED) 2730300<br>(AED) 546060 | 2850<br>570 | 5,93,84,025<br>1,18,76,805 |
| 3 | AHLMUNJEA23050 | 05.06.2023 | CLHU2968913 | 1174464/ 20.05.23 | (AED) 2293452<br>(AED) 982908 | 2394<br>1026 | 4,98,82,581<br>2,13,78,249 |
| – | – | – | – | – | – | **9690** | **20,26,16,760** |

I find that goods of sr. no. 01 had been re-exported from Dubai under ROB. The goods should have destined to Exporter i.e. M/s JJF Castings Ltd who had exported the goods and could not have been delivered to any third person/entity. Instead of going to the actual exporter viz. M/s JJF Castings Ltd., the said consignment was destined to a new entity by the name M/s M.F. International, a proprietary concern, who had never agreed for the import of the said cargo.

32.3 From the above, I find that the Noticee has violated Sub-Section 2 & 3 of Section 50 of the Customs Act, 1962 as they have not decalred the correct value of the goods. I find that the Noticee was required to comply with Section 50 which mandates that the exporter filing the shipping bill must make true and correct declarations and ensure the following:

Section 50 of the Customs Act, 1962. Entry of goods for exportation.—

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

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

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

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

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

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

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

32.4 I find that Confiscation of goods in terms of Section 113(i), Section 118 and Section 120 of The Customs Act, 1962 is reproduced as under:-

***Section 113 in the Customs Act, 1962:***

*Confiscation of goods attempted to be improperly exported, etc.-*

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

*.....*

*.....*

***Section 118 in the Customs Act, 1962:***

*Confiscation of packages and their contents:*

*(a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.*

*(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.*

***Section 120 in the Customs Act, 1962***

*Confiscation of smuggled goods notwithstanding any change in form, etc.—*

*(1) Smuggled goods may be confiscated notwithstanding any change in their form.*

*(2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation: Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the values of the smuggled goods shall be liable to confiscation.*

From the investigation carried out, I find that, M/s JJF Castings Ltd. has exported goods viz. M.V. Parts to M/s Llyod & Traf Global FZC, Dubai vide three (03) Shipping bills out of which one has come back under ROB. Instead of sending it back to the original exporter viz. M/s JJF Castings Ltd., it was consigned to another importer viz. M/s M.F. International who have shown their ignorance of importing any goods and not aware about the exporter viz. M/s Llyod & Traf Global FZC. Further, I also find that the value shown in the Import Invoice to M/s M.F. International was USD 15105, whereas, the value shown in the export Invoice of M/s JJF Castings Ltd. was USD 741000. I find that M/s Gattani

& Co., Chartered Engineer submitted Certificate ref no. INS/CER/2223-029 dated 02.09.2023 and confirms that the value declared in the import invoice appears fair. Thus, it appears that the value mentioned on the Invoice by M/s JJF Castings Ltd. at the time of export has been grossly over-valued and inflated.

Similarly, vide the other two Shipping Bills, the exporter had also exported identical & similar goods to the same importer viz. M/s Llyod & Traf, Dubai and thus, have grossly over-valued and inflated these consignments also.

Further, as discussed in para 29, on the basis of the value declared at the time of import and the valuation certificate issued by M/s Gattani and Co., CE, the value of the goods exported vide 03 shipping Bills as mentioned above in Table-B is re-determined as Rs. 42,08,102/-. Accordingly, the value declared of the three shipping bills as mentioned above in Table-B as Rs. 20,26,16,760/, (Rupees Twenty Crore Twenty six lakh sixteen thousand seven hundred sixty only) is rejected and the value of the exported goods as mentioned in Table –B above is re-determined as Rs. 42,08,102/- (Rupees Forty two lakh eight thousand one hundred two only).

32.5 During the course of investigation, Shree Amit Kithania, CFO - M/s Jay Ushin Ltd. and looking after the Accounts & Balance Sheet related work of M/s JJF Castings Pvt. Ltd in his statement informed that till date they have exported only three (03) consignments of automotive brake parts which all were exported to M/s Llyod & Traf, Dubai. Further he also informed that the goods 'Calliper Pin Caterpillar' consists of a set of 3 pieces containing big gear, small gear & shaft, out of which big & small gear is bought out items whereas shaft is a manufactured item. He has also submitted copies of Invoices of M/s A.K. Engineering wherein bought out items/goods viz. big gears & small gears have been purchased.

Further, Shri Gaurav Kumar, representative of M/s. A.K. Engineering in his statement informed that they have sold big gears and small gears to the tune of 3000 pieces each to M/s JJF Castings Ltd. from January, 2023 to March, 2023. They have sold 3000 pieces each of small & big gears to M/s JJF Castings Ltd. @ Rs. 345/- and Rs. 695/- per piece respectively, totalling to Rs. 31,20,000/-.

32.6 I find that valuation by Sh. Sunny Ahuja, Cost Accountant for M/s JJF Castings Ltd, which is a group company of M/s. JJF Castings Limited, has

been done only on the basis of the documents such as purchase bills, signed financial statements & by explaining the technical process for the manufacture of the said goods in theory. He was given documents such as purchase bills pertaining to purchase of big gears & small gears, copy of signed financial statements and was explained the technical process. He was never shown the product nor had visited the factory. Shri Sunny Ahuja submitted that he has arrived to the cost of calliper pin caterpillar on the basis of the financial statement handed over to him by Anil Gupta. Accordingly, I find that the costing provided by the cost accountant cannot be considered as a proper way for arriving at the cost of the said goods.

32.7 I find that goods exported by M/s JJF Castings Limited vide the 3 Shipping Bills filed during April and May 2023 have been purchased from M/s A.K. Engineering and M/s Tarun Enterprises. M/s JJF Castings Limited has purchased small and big gears from M/s A.K. Engineering Limited and Stainless-Steel rods of diameter 100 mm, 75 mm and 19 mm from M/s Tarun Enterprises. The said rods were then given to M/s Gautam Udyog for the purpose of cutting/slitting the same into pieces of different sizes/dimensions.

Further, Sh. Gautam, proprietor of M/s Gautam Udhyog, in his statement, has informed that he has taken up the work of cutting of SS Rounds supplied by M/s Tarun Enterprises on behalf of M/s JJF Castings Limited. He further clarified that apart from cutting of SS Rounds of 19 mm, 75 mm and 199 mm, he had not done any other work on the SS Rounds supplied to his company by M/s JJF Castings Limited. The invoices raised by M/s Tarun Enterprises to M/s JJF Castings Limited for the sale of 'SS Round' at the rate of Rs. 306/- per Kg and M/s Gautam Udyog has raised invoices to M/s JJF Castings Limited in respect of 'HUB Brake Assembly Blank' at the rate of Rs. 10/- per Kg.

The invoices raised by the two firms viz. M/s A.K. Engineering and M/s Tarun Enterprises from whom the goods have been purchased do not correspond in value that has been considered at the time of export of the said goods and Sh. Bharat Bhushan Mathur also failed to comment in his statement on the fact as to how they have arrived at a value of ₹21,000/- (approx.) per set, when they purchased the small and big gears at a price of Rs. ₹345/- and ₹695/- per piece from M/s A.K. Engineering. Shri Amit Kithania also informed that he had no proper justification for how they had replied to the query of Customs, Mundra Port, related to overvaluation of the said goods.

32.8 Accordingly, I find that M/s. JJF Casting Ltd. have exported only three (03) consignments, all of them to M/s Llyod & Traf Global FZCO, Dubai consisting of *Parts of Brakes viz. 'Calliper Pin Caterpillar'* having a set of 3 pieces viz. big gear, small gear & a shaft, out of which big & small gears are bought out/traded items purchased from a trader who isn't registered under

GST whereas, shaft is a manufactured item as stated by M/s JJF Castings Ltd, however, they had not produced any contemporaneous evidence certifying that the shaft was manufactured by them.

32.9 From the investigation carried out, I find that as per the invoices submitted by various suppliers the total value of one set comprising a small gear, a big gear, and a shaft works out to Rs. 1,166/- per set and accordingly total value of the consignment comprising 2,850 such sets comes to approximately Rs. 33,23,100/-.

Further, the Chartered Engineer, vide Certificate No. INS/CER/2223-029 dated 02.09.2023, reported that the goods were a mixture of new, old, and used parts, and that the brake parts inspected appeared to have been retrieved from discarded items (gears). Accordingly, I find that M/s JJF Casting purchased new parts valued at approximately Rs. 33,23,100 from various suppliers and exported the goods consisted of mixture of new and old and used parts, therefore, the correct value of the exported goods works out as Rs. 12,54,470.25, as certified by the Chartered Engineer.

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

32.11 In view of above discussion and as per invoice submitted by supplier of Big Gear, small gear and Shaft, I find that exporter had purchased the goods at very less price and inflated the value of same goods at the time of export to take undue benefit. I also observe that there is a huge price difference in the Export Invoice price and the Import Invoice price even though the goods happened to be ROB. M/s JJF Castings Ltd., exporter while exporting their goods (under Shipping Bill No. 9277085 dtd. 13.04.2023) to M/s Llyod & Traf have grossly inflated the value. This can also be evidenced by considering the Certificate of the empanelled Chartered Engineer which states that the value in the import invoice appears to be fair, the invoice value shown was USD 5.30 unit price for a quantity of 2850 which comes to USD 15105 whereas, while

exporting, the Invoice value shown was USD 260 unit price for a quantity of 2850 which comes to USD 7,41,000. Thus, if the current USD value is taken @ 83.05 (As per exchange rate Notification No. 44/2023 - Customs (N.T.) dated 15th June 2023), the total value of good exported is only Rs. 12,54,470.25 as compared to the value shown at the time of export by M/s JJF Castings Ltd., which was to the tune of Rs. 6,00,95,100/-. Accordingly, I find that the export amount has been grossly over-valued and inflated.

The wide variance in the declared value vis-à-vis the actual value establishes beyond doubt the deliberate attempt at suppression and mis-declaration with an intent to fulfil the export obligations within the time. The exporter had mis-declared the goods at the time of export as new however during the import the goods are found as mixture of new, old and used parts as certified by Chartered Engineer,. Therefore, the goods covered under impugned Shipping Bill no. 9277085 dated 13.04.2023 seized vide seizure memo dated 20.10.2023. Accordingly, their omission or commission has rendered the impugned goods liable for confiscation under Section 113 (i) of the Customs Act, 1962.

In view of above discussions and goods are liable for confiscation under Section 113 (i) of Customs Act, 1962. In terms of Section 118 of the Customs Act, 1962, any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation. Accordingly, package and any other goods, fall squarely within the ambit of Section 118 and are therefore liable to confiscation.

Further as per section 120 of the Customs Act, 1962,

*Confiscation of smuggled goods notwithstanding any change in form, etc.* —

> *(1) Smuggled goods may be confiscated notwithstanding any change in their form.*
>
> *(2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation: Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the values of the smuggled goods shall be liable to confiscation.*

In the present case, I find goods are imported in India in same container and same bottle seal no., therefore, I find that goods are imported without change in their form. Accordingly, the goods, fall squarely within the ambit of Section 120 of The Customs Act, 1962 and therefore liable to confiscation.

33. **Now I had taken up the matter regarding the goods exported vide Shipping Bill Nos. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, having declared assessable value of Rs. 7,12,60,830/- each, should be confiscated under the provision of Section 113(i) of the Customs Act, 1962.**

In view of above discussion in para 32, wherein it is held that goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 having declared assessable value of Rs. 6,00,95,100/- which were subsequently imported into India under B/L No. AHIJEANSA23016 dated 28.06.2024 in the name of M/s M.F. International are confiscated under Section 113 (i) of the Customs Act, 1962.

Further, Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited, in his statement, had agreed to the fact that the goods exported in the other two containers are same and identical inasmuch as the goods exported in the Container which have been imported in the name of M/s MF International. Also, it is observed that descriptions mentioned in all the shipping bills are also similar. If the unit price as shown in the import invoice as 5.30 USD is considered for valuation, the actual valuation of the goods at the time of export under the two (02) shipping bills, on the basis of the said unit price, is as given in the following table:

| **Sr. No.** | **Shipping Bill No. and Date** | **Qty. (in Pcs)** | **Unit Price** | **Exchange Rate Notn.** | **Exchange Rate** | **Total Value (in Rs.)** |
|---|---|---|---|---|---|---|
| 1. | 9692104 dtd. 01.05.2023 | 3420 | 5.30 USD | 29/2023-Customs (N.T.) dtd. 20th April 2023 | 81.40 | 14,75,456.40 |
| 2 | 1174464 dtd. 20.05.2023 | 3420 | 5.30 USD | 36/2023-Customs (N.T.) dtd. 18th May 2023 | 81.55 | 14,78,175.30 |
| **Total** | | **6840** | | | | **29,53,631.70** |

In view of above, on the basis of the value declared at the time of import and the valuation certificate issued by M/s Gattani and Co., I find that the value declared in the Shipping Bills as Rs. 14,25,21,660/- whereas the actual value comes as only Rs. 29,53,631.70/, which amounts to gross over-valuation at the time of export by M/s JJF Castings Limited.

Therefore, in view of above and as per discussion in para 32 and in view of the investigation made with the exporter and the underlying facts that emerged during the course of investigation, the goods exported vide Shipping Bill nos. 9692104 dtd. 01.05.2023 and 1174464 dated 20.05.2023 having re-determined value as 29,53,631.70/, their omission or commission has rendered the goods liable for confiscation under section 113(i) of the Customs Act, 1962. However, the said goods are not available for confiscation as the same had been

cleared and remained to be brought into India as ROB.

34. **Imposition of Redemption Fine:**

As the impugned goods of shipping bill no. 9277085 dated 13.04.2023 are found to be liable for confiscation under Section 113(i) , section 118 and section 120 of Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN dated 10.07.2024. The Section 125 ibid reads as under: -

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that exporter is involved in gross overvaluation of the goods and accordingly, the impugned goods are liable for confiscation under Section 113(ia) section 118 and section 120 of the Customs Act, 1962. However, I give an option to the exporter to redeem the confiscated goods exported vide shipping bill no. 9277085 dated 13.04.2023 on payment of redemption fine under Section 125 of Customs Act, 1962.

Further, the goods exported vide shipping bill no. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023 are liable for confiscation under Section 113(i) of' the Customs Act, 1962, I find that since the goods in question which are proposed to be confiscated are not available physically and have already been cleared from Customs by the said noticee, I refrain from imposing any redemption fine on shipping bill no. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023 under Section 125 of the Customs Act, 1962.

35. **Now , I had taken up the matter of Penalty under Sections 114(iii) and 114AA of the Customs Act, 1962, should be imposed on M/s JJF Castings Ltd:-**

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

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

*114(i) .....*

*.....*

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

35.2 In view of the above discussions, wherein I held that on the basis of the value declared at the time of import and the valuation certificate issued by M/s Gattani and Co., CE, the value of the goods exported vide 03 shipping Bills as mentioned above in Table-B is re-determined as Rs. 42,08,102/-. Accordingly, the value declared of the three shipping bills as mentioned above in Table-B as **Rs.** 20,26,16,760/, (Rupees Twenty Crore Twenty six lakh sixteen thousand seven hundred sixty only) is rejected and the value of the exported goods as mentioned in Table –B above is re-determined as Rs. 42,08,102/- (Rupees Forty two lakh eight thousand one hundred two only) in terms of provisions of Rule 6 of the CVR, 2007.

35.3 Further, as discussed in foregoing paras, wherein I also held that for the goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 having declared assessable value of Rs. 6,00,95,100/- which were subsequently imported into India under B/L No. AHIJEANSA23016 dated 28.06.2024 in the name of M/s M.F. International are confiscated under Section 113 (i) of the Customs Act, 1962.

Further, Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited, in his statement, had agreed to the fact that the goods exported in the other two containers are same and identical inasmuch as the goods exported in the Container which have been imported in the name of M/s MF International. Also, it is observed that descriptions mentioned in all the shipping bills are also similar.

Accordingly, as discussed above, the goods exported vide Shipping Bill nos. 9692104 dtd. 01.05.2023 and 1174464 dated 20.05.2023 having re-determined value as 29,53,631.70/, are also liable to confiscation under section 113(i) of the Customs Act, 1962.

35.4 In view of above discussions, I find that M/s JJF Castings Limited has consciously and voluntarily exported M.V. Parts vide 03 shipping Bills bearing nos. 9277085 dated 13.04.2023, 9692104 dtd. 01.05.2023 and 1174464 dated 20.05.2023, wherein the declared value is Rs. 20,26,16,760/- however, re-determined value as per the investigation carried out and as per CE

report is Rs. 42,08,102/-, therefore I find that M/s. JJF Casting Limited grossly over-valuing and inflating the exported goods, even though, they have been purchased at a very nominal rate. This act of gross overvaluation on the part of M/s JJF Castings Ltd. has been done deliberately and with a clear mindset, in order to erroneously fulfil the export obligation in respect of the EPCG Licences issued to them.

Further, the goods exported vide the three Shipping Bill nos. 9277085 dated 13.04.2023, 9692104 dtd. 01.05.2023 and 1174464 dated 20.05.2023 are also liable to confiscation under Section 113(i) of the Customs Act, 1962 as discussed in above paras. Therefore, I find that M/s JJF Castings Limited by this act of omission and commission are liable for a penalty under section 114(iii).

35.5 Further, during the course of investigation, Shri Amit Kithania submitted copies of Invoices of M/s A.K. Engineering wherein items/goods viz. big gears & small gears have been purchased and M/s. A.K. Engineering, M/s. Tarun Enterprises and M/s. Gautam Udyog submitted their invoices. Accordingly, I find that M/s. JJF Casting Ltd had procured the goods at a nominal rates and exported the goods vide 03 shipping Bills as mentioned in Table-B at very high value in order to erroneously fulfil the export obligation in respect of the EPCG Licences issued to them. M/s. JJF Casting Limited had submitted the false invoices, packing list and other documents. Further, a letter in response to query raised on valuation of goods was signed by Shri Amit Kithania with no mention of the value of the small and big gears and gave vague mention of the prices available at various online sellers such as Globalpartszone, yantralive or ebay and not submitted any supporting documents like purchase invoice, cost sheet etc. Accordingly, it is evident that M/s JJF Casting Limited knowingly and intentionally made, signed, used and/or caused to be made, signed or used export documents and related papers that were false or incorrect in material particulars for the purpose of illegally exporting the subject goods. Therefore, I find that exporter is also liable for penal action under Section 114AA of the Customs Act, 1962.

**36. Penalty on Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited:-**

36.1 In view of the above discussions, wherein I held that on the basis of the value declared at the time of import and the valuation certificate issued by M/s Gattani and Co., CE, the value of the goods exported vide 03 shipping Bills as mentioned above in Table-B is re-determined as Rs. 42,08,102/-. Accordingly, the value declared of the three shipping bills as mentioned above in Table-B as Rs. 20,26,16,760/, (Rupees Twenty Crore Twenty six lakh sixteen thousand seven hundred sixty only) is rejected and the value of the exported goods as mentioned in Table –B above is re-determined as Rs. 42,08,102/-

(Rupees Forty two lakh eight thousand one hundred two only).

36.2 Further, I find that Sh. Bharat Bhushan Mathur, Director of M/s JJF Castings Limited in his statement has agreed that he is the main working Director of M/s JJF Castings Limited and responsible for all the decisions related to Administration, Human Resources, Production, Legal, Purchase, compliances with government organisations etc. Shri Bharat Bhushan Mathur, had agreed to the fact that the goods exported in the other two containers are same and identical inasmuch as the goods exported in the Container which have been imported in the name of M/s MF International. Also, it is observed that descriptions mentioned in all the shipping bills are also similar. Shri Bharat Bhushan Mathur did not comment on the aspect related to the valuation of the said goods exported vide the three Shipping Bills and also did not comment on the fact with respect to the fulfilment of the export obligation of the EPCG Licence, if the valuation as per the import invoice is considered. Shri Bharat Bhushan Mathur was well aware of the exports taken place. He was aware about the purchase of goods from M/s A.K. Engineering who is not registered with GST. He also failed to get the GST payments made through RCM and generating E-Way bills, deliberately. He was also aware of the query raised by the Customs at the time of export and had instructed Sh. Amit Kitania to send the reply in a vague manner instead of producing the purchase documents which were available with them. Further, I also find that exporter had declared the goods as parts of Brakes calliper Pin set of 03 Pcs as new however, as per CE certificate goods are mixture of new, old and used parts, therefore the exported has mis-declared the goods as new at the time of export however exported mixture of new, old and used discarded items in the subject shipping Bill

Further, as discussed in above paras wherein I held that, goods exported vide shipping bill nos. 9277085 dated 13.04.2023, 9692104 dtd. 01.05.2023 and 1174464 dated 20.05.2023 are liable to confiscation under section 113(i) of the Customs Act, 1962.

Therefore, Shri. Bharat Bhushan as a Director of M/s JJF Castings Limited by this act of omission and commission is liable for a penalty under section 114(iii).

36.3 From the investigation carried out, I find that Sh. Bharat Bhushan Mathur, Director of M/s JJF Castings Limited is responsible for all the decisions related to Administration, Human Resources, Production, Legal, Purchase, compliances with government organisations. Shri Bharat Bhushan Mathur was well aware of the exports taken place. He was aware about the purchase of goods from M/s A.K. Engineering who is not registered with GST. He also failed to get the GST payments made through RCM and generating E-Way bills, deliberately. He was also aware of the query raised by the Customs at

the time of export and had instructed Sh. Amit Kitania to send the reply in a vague manner instead of producing the purchase documents which were available with them. Accordingly, I find that Shri Bharat Bhushan Mathur knowingly and intentionally made, signed, used and/or caused to be made, signed or used export documents and related papers that were false or incorrect in material particulars for the purpose of illegally exporting the subject goods. Therefore, I find that Shri Bharat Bhushan Mathur is also liable for penal action under Section 114AA of the Customs Act, 1962.

**37. Penalty on Sh. Amit Kithania, Employee of M/s Jay Ushin Limited, a group company of M/s JJF Castings Limited:-**

I find that Sh. Amit Kitania, CFO of M/s Jay Ushin Ltd. looks after the accounts & balance sheet related work of M/s JJF Castings Ltd and informed that till date M/s. JJF Casting Limited had exported only three (03) consignments to M/s Llyod & Traf Global FZCO, Dubai. Sh. Amit Kitania also informed that the goods viz. small & big gears have been purchased locally (bought out item) from M/s A.K. Engineering and the shaft has been manufactured by them and submitted copies of the purchase Invoices. Further, in response to query raised by Customs regarding valuation, Sh. Bharat Bhushan Mathur had instructed Sh. Amit Kitania to send the reply in a vague manner instead of producing the purchase documents which were available with them.

I also find that Sh. Amit Kithania had tried to derail the investigation by stating different facts each time. Sh. Amit Kithania earlier stated that he looks after the accounts and balance sheet-related work of M/s JJF Castings Limited, however, later during the course of investigation, it was learnt that he is the CFO of a group company viz. M/s Jay Ushin Limited and has no relation to the work of M/s JJF Castings Limited and has no authority in the said company. I find that M/s JJF Castings Limited is one of the group companies of M/s Jay Ushin Limited, and Sh. Amit Kithania was very well aware of the over-valuation of the goods at the time of export by M/s JJF Castings Limited and has tried to hoodwink the Customs authorities by stating the facts in a roundabout manner.

Further, as discussed in foregoing paras, wherein I held that goods exported vide shipping bill nos. 9277085 dated 13.04.2023, 9692104 dtd. 01.05.2023 and 1174464 dated 20.05.2023 are liable to confiscation under section 113(i) of the Customs Act, 1962. Accordingly, I find that as per the acts and omissions on the part of M/s. Amit Kithania is liable for penalty under Section 114 (iii) of the Customs Act, 1962.

**38. Penalty on Inder Bhojwani: (CHA, Partner in M/s D.L. Shipping Services):-**

I find that that Shri Inder Bhojwani, acting as the Customs Broker for various export consignments, is responsible for serious procedural and legal violations under the Customs Act, 1962. It is the responsibility of Sh. Inder Bhojwani to verify the KYC of his client and to advise his client properly in respect to all matters related to Customs. In particular, for the Shipping Bill no. 9277085 dated 13.4.2023, the client was brought to him by Sh. Hitesh Tahiliani, who was known to him, due diligence was not followed to advise the client about all the relevant documents required for export. The fact was also established on the basis that Shri Inder bhojwani in his statement informed that as per his knowledge and after giving a thought to the valuation angle, he was not satisfied with the said valuation and the goods appeared to be over-valued to him and due to this reason, he has not undertaken the clearance work of any further exports made by M/s JJF Castings Limited. Further, Shri Inder Bhojwani also informed that he was not satisfied with the said explanation, however, being the CHA in respect of the said consignment, it was his responsibility to get it cleared from Customs and therefore, he submitted the reply to Customs to get the consignment cleared. This clearly indicates that the Customs Broker was also not satisfied on the valuation angle and on the reply submitted by the exporter and accordingly denied for further clearance work.

In view of above, I find that it is the responsibility of CHA to verify the KYC of his client and to advise his client properly in respect to all matters related to Customs, however, in the said case, as the client was brought to him by Sh. Hitesh Tahiliani, who was known to him, due diligence was not followed by CHA. As a Customs House Agent, they did not advise M/s JJF Casting Limited to comply with the applicable laws under the Customs Act, 1962.

Further, as discussed above, the goods covered under impugned Shipping Bill no. 9277085 dated 13.04.2023 are liable for confiscation under Section 113 (i) of the Customs Act, 1962. Accordingly, I find that the said act of negligence on the part of Sh. Inder Bhojwani, CHA partner in D.L. Shipping Services rendered himself liable for penalty under Section 114(iii) of the Customs Act, 1962.

**39. Penalty on Sagar Kamlesh Thakker: (CHA, Partner in M/s B.N. Thakker and Sons):-**

I find that that Shri Sagar Kamlesh Thakker, acting as the Customs Broker for various export consignments, is responsible for serious procedural and legal violations under the Customs Act, 1962. It is the responsibility of Sh. Sagar Kamlesh Thakker to verify the KYC of his client and to advise his client properly in respect to all matters related to Customs. In particular, for the Shipping Bill no. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, the client was brought to him by Sh. Hitesh Tahiliani, who was known to him,

due diligence was not followed to advise the client about all the relevant documents required for export.

In view of above, I find that it is the responsibility of CHA to verify the KYC of his client and to advise his client properly in respect to all matters related to Customs, however, in the said case, as the client was brought to him by Sh. Hitesh Tahiliani, who was known to him, due diligence was not followed by CHA. As a Customs House Agent, they did not advise M/s JJF Casting Limited to comply with the applicable laws under the Customs Act, 1962.

Further, as discussed above, the goods covered under impugned Shipping Bill 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023 are liable for confiscation under Section 113 (i) of the Customs Act, 1962. Accordingly, I find that the said act of negligence on the part of Sh. Sagar Kamlesh Thakker, CHA partner in B.N. Thakker and Sons rendered himself liable for penalty under Section 114(iii) of the Customs Act, 1962.

40. In view of above, I pass the following order:

**ORDER**

i. I order to reject the value declared in three Shipping Bill nos. 9277085 dated 13.04.2023, 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023 as Rs. 20,26,16,760/-(Twenty crore twenty six lakh sixteen thousand seven hundred sixty only) in terms of Section 14 and Section 50 (3) of the Customs Act, 1962 read with rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and order to re-determine the same as Rs. 42,08,102/-(Forty two lakh eight thousand one hundred two only) under Rule 6 of Customs Valuation (Determination of Value of Exported Goods) Rules, 2007.

ii. I order to confiscate the goods exported vide Shipping Bill No. 9277085 dated 13.04.2023 having declared assessable value of Rs. 6,00,95,100/- and re-determined as Rs. 12,54,470/- which were subsequently imported into India under B/L No. AHIJEANSA23016 dated 28.06.2024 in the name of M/s M.F. International under the provision of Section 113 (i) read with Sections 118 and section 120 of the Customs Act, 1962. (The said goods are presently lying at the premises of M/s Polaris Logistics Park Private Limited – CFS located at CWC Logistics Park, Sector – 10, Dronagiri Node, Navi Mumbai, Maharashtra – 400 707). However, I give an option to the exporter to redeem the confiscated goods on payment of redemption fine of Rs. 5,00,000/- (Rs. Five Lakhs only) under Section 125 of Customs Act, 1962..

iii. I order to confiscate the goods exported vide Shipping Bill Nos. 9692104 dated 01.05.2023 and 1174464 dated 20.05.2023, having declared assessable value of Rs. 7,12,60,830/- each and redetermined as Rs. 29,53,631.70/- under the provision of Section 113(i) of the Customs Act, 1962. However, the said goods are not available for confiscation as the same had been cleared outside India and remained to be ROB. Since the goods are not available for confiscation, I refrain to impose redemption fine under Section 125 of the Customs Act, 1962.

iv. I impose penalty of Rs. 20,00,000/- (Rupees Twenty Lakh Only) upon the

exporter M/s. JJF Casting Limited under Section 114(iii) of the Customs Act, 1962.

v. I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) upon the exporter M/s. JJF Casting Limited under Section 114AA of the Customs Act, 1962.

vi. I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) upon Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited under Section 114(iii) of the Customs Act, 1962.

vii. I impose penalty of Rs. 5,00,000/-/- (Rupees Five Lakh Only) upon Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited under Section 114AA of the Customs Act, 1962.

viii. I impose penalty of Rs. 5,00,000/-/- (Rupees Five Lakh Only) upon Sh. Amit Kithania, Employee of M/s Jay Ushin Limited, a group company of M/s JJF Castings Limited under Section 114(iii) of the Customs Act, 1962.

ix. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh Only) upon Sh. Inder Bhojwani, CHA, Partner in M/s D.L. Shipping Services under Section 114(iii) of the Customs Act, 1962.

x. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh Only) upon Sh. Sagar Kamlesh Thakker, CHA, Partner in M/s B.N. Thakker and Sons under Section 114(iii) of the Customs Act, 1962.

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

42. The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/1240/2024-Adjn. dated 10.07.2024 is hereby disposed off on above terms.

Digitally signed by Amit Kumar Mishra
Date: 02-12-2025 12:52:29

**AMIT KUMAR MISHRA**
**ADDITIONAL COMMISSIONER**

**ADC/JC-II-O/o Pr Commissioner-Customs-Mundra**

To,

i. M/s JJF Castings Ltd.,
S/P - 174(A), Kaharani Industrial Area,
Ext. Bhiwadi, Dist. Bhiwadi,
Rajasthan - 301 019.
Email : info.jjfcastings@gmail.com

ii. Sh. Bharat Bhushan Mathur, Director, M/s JJF Castings Limited,
a. N-150, New Palam Vihar Phase - I,
Gurgaon, Haryana - 122001

b. Plot No. SP - 174(A),
Kaharani Industrial Area, Ext Bhiwadi,
Dist Bhiwadi, Rajasthan 301019
Email : bharatbhushanmathur@yahoo.co.in

iii. Sh. Amit Kithania, Employee of M/s Jay Ushin Limited,
a. 401, Tower B8, Tulip Orange Apartment,
Sector - 70, Gurgaon, Haryana - 122 018.

b. Plot No. GP 14, HSIDC Industrial Estate,
Sector - 18, Gurgaon, Haryana - 122001.
Email : amikithania@jushinindia.com, caamitkithania@gmail.corn

iv. Sh. Inder Bhojwani, CHA, Partner in M/s D.L. Shipping Services,
Plot No. 288, Tenament No. D, Ward - 3A,
Adipur, Gandhidham, Kachchh,
Gujarat - 370205.
Email : inder@dlshippingservices.com

v. Sh. Sagar Kamlesh Thakker, CHA, Partner in M/s B.N. Thakker and Sons,
Plot No. 42-43, Udhav Parkland, Varsamedi,
Kachchh, Gujarat - 370205.
Email : sagarthakker@bntnco.com

Copy to:

1. The Additional Director, DRI, NS-I, Mumbai Zonal Unit, 208, 209, 215, 2nd Floor, D-Wing, Navi Mumbai SEZ Commercial Complex, Sector -11, Dronagiri, Taluka Uran, Distt. Raigad — 400707.
2. The Addl. Director General of Foreign Trade, Vanijya Bhawan, A wing , 16, Akbar Road, New Delhi-11011.
3. The Deputy Commissioner (EDI), Customs House, Mundra. *with the direction to upload on the official website immediately).*
4. The Dy./Assistant Commissioner (EODC), CH, Mundra.
5. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
6. The Dy./Assistant Commissioner (Export Assessment), CH, Mundra
7. Notice Board
8. Guard File