सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250671MN000000F674

क	फ़ाइल संख्या FILE NO.	S/49-27/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-107-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. MCH/ADC/RK/190/2023-24, dated 17.10.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Samyak Synthetics Pvt. Ltd., 1-B-32, Old Housing Board, Shashtri Nagar, Bhilwara, Rajasthan

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बेगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of Drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by M/s Samyak Synthetics Pvt. Ltd., 1-B-32, Old Housing Board, Shashtri Nagar, Bhilwara, Rajasthan, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/ADC/RK/190/2023-24 dated 17.10.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant is engaged in manufacture of various types of Fabric and clearance/supply thereof for export as well as in domestic market and is also engaged in exporting of Other Woven Fabric of Synthetic Staple Fibre under the Tariff headings 55151130 and 55151190 and claiming Drawback under relevant Drawback Serial Numbers of the Drawback schedule. After enactment of GST law, for the period from July 2017 to September 2017, the government continued two Drawback categories, Drawback under Category 'A' i.e. higher rate of Drawback and category "B" i.e. lower rate of Drawback. However, for claiming Drawback under category 'A', Appellant had to provide/give an undertaking that no cenvat credit/input tax credit was availed in respect of the inputs/input services used for making such export supplies. The Appellant during the period from July 2017 to September 2017 had claimed both i.e., Drawback under category 'A' as well as input tax credit of CGST and IGST. An intelligence collected and developed by the officers of Directorate of Revenue Intelligence, Jaipur (herein after referred as "DRI" for the sake of brevity) indicated that some Appellants of 'Yarns, Textiles and Fabric' have wrongly availed Drawback against the goods exported during the period from July 2017 to September 2017. The appellant, during the period from July 2017 to September 2017, had claimed both i.e., Drawback under category 'A' as well as input tax credit of CGST and IGST.

2.1 Vide Notification No. 59/2017(NT) dated 29.06.2017 government amended the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 131/2016 - Customs (N.T.) dated the 31st October, 2016 thereby specifying conditions for availing Drawback. The said notification provided that an undertaking should be provided, in case an Appellant wants to claim Drawback under category "A", that they have not availed any input tax in

respect of IGST and CGST.

2.2 The rates of Drawback did not change even after the enactment and applicability of the GST law i.e. the higher Drawback rates continued till September, 2017. The Notification No.131/2016 Customs (NT) dated 31.10.2016 had also provided the said condition that in case the Appellant wish to avail higher rate of Drawback, then Cenvat credit should not be availed and the government amended the Notification No.131/2016-Customs (NT) dated 31.10.2016 vide Notification No. 59/2017-Customs 29.06.2017 but the Government continued both rates of Drawback (Higher and Lower rates) for the period from July 2017 to September 2017 with a condition that no ITC of Central tax and Integrated tax should be availed as the higher Drawback represent rebate of Central duties which includes CGST and IGST component. Further from 01.10.2017, higher Drawback rates were discontinued and only lower Drawback rates were allowed and the same was amended vide Notification 88/2017-Customs (NT) dated 21.09.2017, wherein Drawback in respect of Central taxes other than Custom duties were discontinued.

2.3 The Appellant is engaged in manufacture of various types of Fabric and clearance/supply thereof for export as well as in domestic market. During the period from July 2017 to September 2017, the appellant had simultaneously claimed Drawback under category 'A' as well as input tax credit of IGST and CGST in the GSTR 3B return filed by them and Cenvat Credit in the TRAN-1 of the stock of 42,366Kg Yarn available with them as on 30.06.2017. The matter was examined with reference to Duty Drawback Schedule, GST TRAN-1, GSTR-3B return, GSTR-2A return, relevant Notifications and technical sources to judge the legality of claim of the Appellant under Drawback at higher rate/category 'A' during the period from July 2017 to September 2017. The appellant had been exporting Other Woven Fabric of Synthetic Staple Fibre under the tariff headings 55151130 and 55151190 and claiming Drawback under relevant Drawback Serial Numbers of the Drawback schedule. Relevant entries of Drawback Schedule, 2016 are reproduced as under: -

			A		B	
Tariff Item	Description of Goods	Unit	Drawback when Cenvat facility not been availed		Drawback when Cenvat facility availed	
			Drawback Rate (in %)	Drawback Cap per unit in (in Rs.)	Drawback Rate (in %)	Drawback Cap per unit in (in Rs.)
5515	**Other woven fabrics of synthetic staple fibres**					
5515	Of other blends containing **synthetic staple fibres of** less than 85% by weight, dyed	Kg	8.5%	55	1.8%	11.6

2.4 On analysis of the TRAN-1, GSTR-2A & GSTR-3B returns of M/s Samyak Synthetics Pvt Ltd., it emerged that the Appellant has availed Cenvat Credit of Raw Materials i.e. 42,366 Kg Yarn, available with them as on 30.06.2017 in the TRAN-1 filed by them and had availed all the Input Tax Credit available to them against the purchase of raw materials/inputs & input services made by them during the period from July 2017 to September 2017. Further, from the Shipping Bills, it was also gathered that during the period from July 2017 to September 2017, Appellant has availed of Duty Drawback at higher rate, i.e. category 'A' of the Drawback schedule (551506A). Pursuant to confirmation of intelligence equally corroborated with the technical analysis of relevant Notifications, Drawback schedule, export data and GST returns, the DRI initiated investigation against the Apellant engaged in export of the Dyed Other Woven Fabric of Synthetic Staple Fibre containing Syn. Stpl Fib. of less than 85% by claiming Drawback at higher rate under tariff items 551506A of the Drawback schedule. Therefore, in order to ascertain the eligibility of the Appellant to avail export incentive i.e. duty Drawback under category "A", Summons dated 09.02.2022 to appear on 30.03.2022 was issued, in compliance of which Shri Vikas Singhal, Accounts Assistant M/s Samyak Synthetics Pvt Ltd appeared on 06.04.2022 to tender voluntary statement under Section 108 of the Customs Act, 1962.

2.5 Statement of Shri Vikas Singhal, Accounts Assistant in M/s Samyak Synthetics Pvt Ltd., Bhilwara, Rajasthan was recorded under Section 108 of the Customs Act, 1962, wherein, he inter alia stated that:-

- He is Accounts Assistant in M/s Samyak Synthetics Pvt Ltd. and looks after all the works related to accounts / finance in the company. Further,

work related to GST and Customs is also looked after by him; that he reports to the Directors Shri Gyan Chand Jain and Shri Shirish Jain for any work;

- M/s Samyak Synthetics Pvt Ltd. is engaged in business of manufacture of polyster and synthetic Suiting & Shirting Fabric and its export as well as domestic sale. They are holding IEC 1311016007. In GST regime, they are registered at Bhilwara, Rajasthan and has GSTN 08AAKCS8357B1Z4. Once the order was received from foreign buyers, all raw material was procured and weaving was done at different manufacturing units on job work basis. After weaving Grey Fabric was sent for processing on job work basis. After processing goods returned to their plant and there cutting & packing of the goods was done before clearance for export and domestic market. The raw material procured by their company for manufacture of Polyester and Polyester Viscose Fabric was Yarn and for synthetic fabric was synthetic filament yarn;
- they did not have any facility for manufacturing and entire work was being done on job work basis. They manufacture Polyester and Polyester Viscose and synthetic Suiting & Shirting Fabric using dyed and grey yarns and synthetic filament yarn respectively. After purchasing, weaving of yarn was done through looms at different manufacturing units on job work basis. After weaving grey fabric was sent for processing/finishing on job work basis. Processing involves dyeing and finishing of fabric. Fabric thus manufactured was dispatched for export and domestic market. From the date yarn was procured, in general, it took around 65 days for them to manufacture finished fabric out of yarn. The major suppliers of yarn were M/s Sangam India Ltd. and M/s RSWM Ltd etc. They were indulged in manufacturing of Polyester and Polyester Viscose Staple Fabric (5515) and Synthetic Suiting & Shirting Fabric;
- that Polyester and Polyester Viscose Suiting/Shirting Fabric were being exported by M/s Samyak Synthetic Pvt Ltd. And they supplied Polyester and Polyester Viscose Suiting/Shirting Fabric as well as synthetic Suiting & Shirting Fabric in the domestic market. Approximately 80% of the total sale accounts for Export whereas 20% of total sale accounts for domestic clearance. Yarn is their main input. They also availed services like Job Work, Courier, Sea Freight Services and other consulting services of Chartered Accountant;
- that they availed ITC on all eligible goods and services as mentioned in answer above. they procured inputs/ inputs services commonly for

finished goods intended for export and domestic clearance. Further, he stated that they did not maintain any separate records for the inputs and input services used for manufacture of goods supplied in domestic market and exported by them. he stated that TRAN-1 return was filed by them on 27.11.2017 and they had carried forward Rs.6,89,904/- pertaining to cenvat credit of excise duty paid by them on purchase of 42,366/- Kg Yarn and Rs. 8,71,344/- as VAT credit. Further, he stated that they were not registered in Central Excise regime therefore ER returns were not applicable on them.

- he stated for suiting, from 250 grams of Yarn they manufactured fabric of 1Mtr length. During this process wastage came to around 2%. Further during the process of finishing, around 5% of shrinkage took place. After finishing, around 2% of wastage also took place. They did not receive any purchase orders from their buyers however they made sale orders against the exports made by them. The finished goods were sold on the basis of orders placed verbally or through mobile phone; that as per GSTR 3B return total credit availed by them was Rs.1,36,03,007/- (July - Rs.55,00,479/-, August- Rs. 0/- & September- Rs.81,02,528/-). They had availed all the ITC available to them during the month from July 17 to Sept 17 that was available to them in the purchase register; he stated due to clerical error Input Tax Credit was not availed in the month of August 2017. However, the ITC in respect of invoices of the month of August 2017 was availed in the month of September 2017; they had availed all the credit available to them in the GSTR 2A, in the GSTR 3B filed by them during the month from July 17 to Sept 17. He submitted copies of GSTR-3B returns for the month of July 2017 to September 2017. Further, he stated that the credit in respect of the month of August 2017 was availed by them in the month of September 2017 as the same could not be availed by them during the month of August 2017 due to clerical error; they did not import any raw material during the months of July 17 to Sept 17 hence question of availing ITC on imported goods did not arrive; they had claimed refund of the credit availed by them during the month of July 17 and Sept 17, however, refund of IGST & CGST part was rejected for the month of July 2017 whereas the SGST part was sanctioned to them. Further, they had been sanctioned refund of IGST, CGST and SGST for the month of September 17 only for the goods exported at lower rate of Drawback and refund pertaining to goods exported at higher rate was rejected. He submitted copies of RFD 06 for the period from July 17 to Sept 17.

- On being asked to provide details of export made by you during the month of July to September, 2017, he stated that M/s Samyak Synthetic Pvt Ltd. was engaged in export of Suiting /Shirting Fabric and during the month of July to September, 2017 export made by them was as under: -

Sr. No.	Month	Quantity (Meters)	FOB Value (Rs.)	Drawback Amount (Rs.)
1	Jul-17	140130	1,26,52,098 /-	10,75,426 /- (Higher Rate)
2	Aug-17	472607	4,46,76,891 /-	37,97,530 /- (Higher Rate)
3	Sep-17	414764	3,56,87,995 /-	30,33,476 /- (Higher Rate)

- he stated that they had availed Drawback at higher rate, i.e. under category 'A' on the export made in months of July, Aug and Sept.-2017 and some consignments during the month of September-17 were exported availing Drawback at lower rate i.e. category B of Drawback schedule. Total Drawback at higher rate and lower rate of Drawback availed by M/s Samyak Synthetics Pvt Ltd. during this period was Rs.79,06,432/- and 6,04,464/-respectively summarized as under: -

Sr. No.	Month	Drawback at Higher Rate (In Rs.)	Drawback at lower rate (In Rs.)	Total Drawback (In Rs.)
1	Jul-17	10,75,426 /-	--	10,75,426 /-
2	Aug-17	37,97,530 /-	--	37,97,530 /-
3	Sep-17	30,33,476 /-	6,04,464 /-	35,37,940 /-
	Total	**79,06,432 /-**	**6,04,464 /-**	**85,10,896 /-**

- He was shown Notification No.131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 issued by Government of India and on being asked to explain whether M/s Samyak Synthetics Pvt Ltd had satisfied all the conditions/requirements of Notification No. 131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 and also state whether duty Drawback availed at higher rate by M/s Samyak Synthetics Pvt Ltd. during the period from July 17 - Sept 17 was in order or otherwise, he stated that they had 1,78,265.52 Kg of Yarn 6,63,859 Mtrs when converted into finished fabric and after deducting wastage/ shrinkage) in their stock as on 30.06.2017. Further, they had 1,77,661 Mtrs of Grey (WIP) 1,65,402 Mtrs when converted to finished fabric) and 4,76,517.79 Mtrs of finished Fabric as on 30.06.2017. Therefore, he stated that they had stock of 13,05,778.79 Mtrs fabric with them as on 30.06.2017 out of which Cenvat Credit of Rs. 6,89,904/- was taken on the 42,366 Kg yarn

which was purchased by them in the month of June 2017. During the month of July to September, 2017 they had exported total 14,88,213 Mtrs of finished fabric. He further stated that all the exports made by them on higher rate Drawback during the month of July to September-2017 was from the stock of raw material, semi-finished and finished goods available with them as on 30.06.2017. The exports made by them in the month of Sept 17 at lower rate of Drawback was done consuming the raw material procured by them during the months of July 17 to Sept 17. Thus, he stated that they have satisfied conditions of Notification No. 131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 w.r.t. export made by them during this period.

- On being asked to provide the details of the stock position of raw materials as well as finished goods as on 30.06.2017 of M/s Samyak Synthetics Pvt Ltd., he provided the stock position of finished goods as well as raw materials as on 30.06.2021. Further, month wise stock position starting from period April 17 to Sept 17 was also submitted. As on 30.06.2017 they had stock position as under:

Raw material / finished goods	Quantity
Yarn	1,78,265.52 Kg (without deducting shrinkage on finished goods)
Grey Fabric	1,77,661.37 Mtrs. (without deducting shrinkage)
Finished Fabric (after processing)	476517.79 Mtrs.

- On being asked to state what was the total quantity of finished goods that was manufactured by using 1,78,265.52 Kg of Yarn and 1,77,661.37 Mtrs of Grey Fabric held by them as on 30.06.2017, he stated that from the stock of 1,78,265.52 Kg of Yarn total finished goods of 6,63,859 Mtrs were manufactured and from 1,77,661.37 Mtrs of Grey Fabric 1,65,402 Mtrs of finished fabric were manufactured as during making of finished fabric from Grey around 5% wastage/shrinkage took place. Therefore, based on the calculation, approximately 8,29,261 Mtrs of finished goods had been manufactured from the stock of Yarn and Grey Fabric available with them as on 30.06.2017. Therefore, as per the calculation, they had yarn, grey fabric and finished goods equivalent to total 13,05,778.79 Mtrs of finished goods available with them as on 30.06.2017.
- He was confronted that from the details of their stock position as on 30.06.2017 and the details of clearance of finished goods during the period

July 17 to Sept 17, it appeared that they had stock of total 13,05,778.79 Mtrs of finished goods and had exported 14,88,213 Mtrs of finished fabric during July to Sept.-2017 and confronted that this showed that they had exhausted their stock held by them as on 30.06.2017 and they continued to export goods, evidencing that goods manufactured from raw material on which input tax credit was availed and procured during the months of July 17 to Sept 17 were exported. In view of this, on being asked why duty Drawback availed by them should not be disallowed, he stated that he agreed that they had exhausted the stock of finished goods manufactured from the raw materials, grey fabric and finished goods available with them as on 30.06.2017 before 30.09.2017 and the finished goods supplied by them over and above the stock were manufactured from the raw materials purchased by them during July to September-2017. He further stated that after exhausting their stock they had exported goods at lower rate of Drawback. During this period, they had exported 10,27,506 Mtrs at higher rate of Drawback and 4,60,712 Mts at lower rate of Drawback; that the goods exported by them after exhausting stock as on 30.06.2017 were manufactured by using raw materials procured during the month of July to September -2017 on which they had availed full input tax credit; that in mid-September 2017, they had worked out a calculation, and found that the stock they had as on 30.06.2017 was declining, so they started using raw material/input procured during the months of July 17 to Sept 17 in manufacturing of goods intended for export and cleared goods at lower rate; that they did not have such evidence that can prove that which raw material was used for manufacturing of which type or quality/shade of finished goods.

2.6 Statement of Shri Shirish Jain, Director in M/s Samyak Synthetics Pvt Ltd., Bhilwara, was recorded under Section 108 of the Customs Act, 1962 on 31.01.2023 wherein, he inter alia stated that:-

- The company was engaged in business of manufacture of polyester and synthetic Suiting & Shirting Fabric and its export as well as domestic sale. Once the order was received from foreign buyers, all raw material was procured and weaving was done at different manufacturing units on job work basis. After weaving Grey Fabric was sent for processing on job work basis. After processing goods returned to their plant and there cutting & packing of the goods was done before clearance for export and domestic market. The raw material procured by their company for manufacture of

Polyester and Polyester Viscose Fabric was Yarn and for synthetic fabric was synthetic filament yarn. They did not have facility for manufacturing and entire work was done on job work basis. They manufactured Polyester and Polyester Viscose and synthetic Suiting & Shirting Fabric using dyed and grey yarns and synthetic filament yarn respectively. After purchasing, weaving of yarn was done through looms at different manufacturing units on job work basis. After weaving grey fabric was sent for processing/finishing on job work basis. Processing involved dyeing and finishing of fabric. Fabric thus manufactured was dispatched for export.

- that from the date yarn was procured, in general, it took around 95 days for them to manufacture finished fabric out of yarn. Major suppliers of yarn were M/s Sangam India Ltd., M/s RSWM Ltd and some other traders in Bhilwara. They were indulged in manufacturing of Polyester and Polyester Viscose Staple Fabric and Synthetic Suiting & Shirting Fabric; that Polyester and Polyester Viscose Suiting/Shirting Fabric were exported by M/s Samyak Synthetic Pvt Ltd.; that along with export, they supplied Polyester and Polyester Viscose Suiting/Shirting Fabric as well as synthetic Suiting & Shirting Fabric in the domestic market. Approximately 75% of the total sale account for export whereas 25% of total sale accounts for domestic clearance. Yarn was our main input. They also availed services like Job Work, Courier, Sea Freight Services and other consulting services of Chartered Accountant; that they were availing ITC on all eligible goods and services as mentioned above answers by him; that they procured inputs/ inputs services commonly for finished goods intended for export and domestic clearance. Further, he stated that they did not maintain any separate records for the inputs and input services used for manufacture of goods supplied in domestic market and exported by them; that TRAN-1 return was filed by them on 27.11.2017. M/s Samyak Synthetic Pvt Ltd had carried forward Rs.6,89,904/- pertaining to cenvat credit of excise duty paid by them on purchase of 42,366 Kg Yarn and Rs. 8,71,344/- as VAT credit. Further, he stated that they were not registered in Central Excise regime therefore ER returns were not applicable on them. he submitted a sheet containing details of 42,366 Kg Yarn on which cenvat credit of Rs.6,89,904/- was carried forward by them in TRAN-1 return; that in textile industry it was difficult to ascertain as to which raw material was used in manufacturing of which finished goods. Since, raw material i.e. yarn is mixed in order to manufacture finished goods. Therefore, it was

not possible to segregate and establish as to which raw material was used in which finished goods.

- On being asked to provide documentary proof evidencing that the raw material i.e. 42,366 Kg Yarn on which cenvat credit of Rs.6,89,904/- was carried forward by them in TRAN-1 return was not consumed in finished goods exported by them at higher Drawback during the months of July 17 to Sept 17, he stated that it was difficult to ascertain as to which raw material was used in manufacturing of which finished goods. He further stated that he did not have such evidence to prove that the subject yarn was not consumed in export of finished goods at higher rate of duty Drawback. On being asked to state as to why it should not be assumed that the subject raw material i.e. yarn was utilized in export of finished goods at higher rate of duty Drawback and why the duty Drawback availed at higher rate should not be disallowed to them, he agreed that it was very much possible that the subject raw material i.e. 42,366 Kg yarn might had been consumed in the finished goods exported at higher rate of duty Drawback. Therefore, he admitted that the differential duty Drawback on such exports was recoverable from them; that as per input out ratio of the raw materials consumed vis-a-vis finished fabric manufactured by them, they might have manufactured around 1,31,000 meters of finished fabric by utilizing 42,366 Kg Yarn on which they had availed cenvat credit and carried forward in TRAN-1; that on an average, for suiting, from 300 grams of Yarn they manufactured fabric of 1 Mtr length. While manufacturing Grey from Yarn, wastage came to around 2%. Further during the process of finishing, around 4% of shrinkage took place. After finishing, around 1% of wastage also took place. So on an average, there was approximately 7% wastage in entire manufacturing process; that they did not receive any purchase orders from their buyers however they made sale orders against the exports made by them. The finished goods were sold on the basis of orders placed verbally or through mobile phone.

- On being asked to provide details of Input Tax Credit availed by their company during July 2017 to September 2017 along with documents supporting their claim, he stated that as per GSTR 3B return total credit availed by them was Rs. 1,36,03,007/- (July - Rs. 55,00,479/-, August- Rs. 0/- & September- Rs.81,02,528/-). Further, he stated that they had availed all the ITC available to them during the month from July 17 to Sept 17 that was available to them in the purchase register; that due to clerical

error Input Tax Credit was not availed in the month of August 2017. However, the ITC in respect of invoices of the month of August 2017 was availed in the month of September; that they had availed all the credit available to them in the GSTR 2A, in the GSTR 3B filed by them during the month from July 17 to Sept 17. He further stated that the credit in respect of the month of August 2017 was availed by them in the month of September 2017 as the same could not be availed by them during the month of August 2017 due to clerical error; that they did not import any raw material during the months of July 17 to Sept 17 hence question of availing ITC on imported goods did not arrive; that they had claimed refund of the credit availed by them during the month of July 17 and Sept 17, however, refund of IGST & CGST part was rejected for the month of July 2017 whereas the SGST part was sanctioned to them. Further, they had been sanctioned refund of IGST, CGST and SGST for the month of September 17 only for the goods exported at lower rate of Drawback and refund pertaining to goods exported at higher rate was rejected.

- On being asked to provide details of Export made by them during the month of July to September, 2017, he stated that during the month of July to September, 2017 export made by them is as under: -

Sr. No.	Month	Quantity (Meters)	FOB Value (Rs.)	Drawback Amount (Rs.)
1	Jul-17	140130	1,26,52,098 /-	10,75,426 /- (Higher Rate)
2	Aug-17	472607	4,46,76,891 /-	37,97,530 /- (Higher Rate)
3	Sep-17	414764	3,56,87,995 /-	30,33,476 /- (Higher Rate)
4	Sep-17	460712	3,35,81,370 /-	6,04,464/-(Lower Rate)
	Total	**14,88,213**	**12,65,98,354 /-**	**85,10,464 /-**

- they had availed Drawback at higher rate, i.e. under category ' A ' on the export made in months of July, Aug and Sept.-2017 and some consignments during the month of September-17 were exported availing Drawback at lower rate i.e. category B of Drawback schedule. Total Drawback at higher rate and lower rate of Drawback availed by M/s Samyak Synthetics Pvt Ltd. during this period was Rs. 79,06,432/- and 6,04,464/-respectively summarized as under: -

Sr. No.	Month	Drawback at Higher Rate (In Rs.)	Drawback at lower rate (In Rs.)	Total Drawback (In Rs.)
1	Jul-17	10,75,426 /-	--	10,75,426 /-
2	Aug-17	37,97,530 /-	--	37,97,530 /-
3	Sep-17	30,33,476 /-	6,04,464 /-	36,37,940 /-
	Total	**79,06,432 /-**	**6,04,464 /-**	**85,10,896 /-**

- On being shown Notification No.131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 issued by Government of India and asked to explain whether they had satisfied all the conditions/requirements of Notification No. 131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 and also state whether duty Drawback availed at higher rate by M/s Samyak Synthetics Pvt Ltd. during the period from July 17 - Sept 17 was in order or otherwise, he stated that they had 1,78,265.52 Kg of Yarn 5,18,478 Mtrs when converted into finished fabric and after deducting wastage/ shrinkage) in our stock as on 30.06.2017. Further, we had 1,77,661 Mtrs of Grey (WIP) (1,67,143 Mtrs when converted to finished fabric) and 4,76,517.79 Mtrs of finished Fabric as on 30.06.2017. Therefore, we had stock of 11,62,138 Mtrs fabric with them as on 30.06.2017 out of which cenvat credit of Rs.6,89,904/- was taken on the 42,366 Kg yarn which was purchased by them in the month of June 2017. Further, during the month of July to September, 2017 they had exported total 14,88,213 Mtrs of finished fabric. He further stated that all the exports made by them on higher rate Drawback during the month of July to September-2017 was from the stock of raw material, semi-finished and finished goods available with them as on 30.06.2017. The exports made by them in the month of Sept 17 at lower rate of Drawback was done consuming the raw material procured by them during the months of July 17 to Sept 17. Thus, he stated that they had satisfied conditions of Notification No. 131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 w.r.t. export made by them during this period. He provided the stock position of finished goods as well as raw materials as on 30.06.2021 which is as under:

Raw material / finished goods	Quantity
Yarn	1,78,265.52 Kg (without deducting shrinkage on finished goods)
Grey Fabric	1,77,661.37 Mtrs (without deducting shrinkage)
Finished Fabric (after processed)	476517.79 Mtrs

- On being asked to state the total quantity of finished goods that was manufactured by using this stock of Yarn & Grey Fabric from the stock of 1,78,265.52 Kg of Yarn and 1,77,661.37 Mtrs of Grey Fabric, he stated

that from stock of 1,78,265.52 Kg of Yarn total finished goods of 5,18,478 Mtrs was manufactured and from 1,77,661.37 Mtrs of Grey Fabric 1,67,143 Mtrs of finished fabric was manufactured as during making of finished fabric from Grey around 5% wastage/shrinkage took place. Therefore, based on the calculation, approximately 6,85,621 Mtrs of finished goods had been manufactured from the stock of Yarn and Grey Fabric available with them as on 30.06.2017. Therefore, as per the calculation, they had yarn, grey fabric and finished goods equivalent to total 11,62,138 Mtrs of finished goods available with them as on 30.06.2017; that they had a stock of total 11,62,138 Mtrs of finished goods and had exported 14,88,213 Mtrs of finished fabric during July to Sept.2017. This showed that they had exhausted their stock that was held by them as on 30.06.2017 and they continued to export goods, evidencing that goods manufactured from raw material on which input tax credit was availed and procured during the months of July 17 to Sept 17 were exported. In view of this, on being asked as to why duty Drawback availed by them should not be disallowed, he agreed that they had exhausted the stock of finished goods manufactured from the raw materials, grey fabric and finished goods available with them as on 30.06.2017 before 30.09.2017 and the finished goods supplied by them over and above the stock were manufactured from the raw materials purchased by them during July to September-2017. In this regard, he stated that after exhausting their stock they had exported goods at lower rate of Drawback. During this period, they had exported 10,27,506 Mtrs at higher rate of Drawback and 4,60,712 Mts at lower rate of Drawback.

- On being asked to state whether they had utilized any raw materials procured during the month of July to September -2017 on which they had availed full input tax credit for manufacture of finished goods which were exported by them during the period from July to September-2017, he stated that the goods exported by them after exhausting stock as on 30.06.2017 were manufactured by using raw materials procured during the month of July to September -2017 on which they had availed full input tax credit; that in mid-September 2017, they had worked out a calculation, and they found that the stock they had as on 30.06.2017 was declining, so they started using raw material/input procured during the months of July 17 to Sept 17 in manufacturing of goods intended for export and cleared goods at lower rate. On being asked to provide evidence that the

inputs/raw material procured during the months of July 17 to Sept 17 were not used in manufacturing of goods exported during the months of July 17 to Sept 17, he stated that they did not have such evidence that can prove that which raw material was used for manufacturing of which type or quality/shade of finished goods.

2.7 On examination of purchase register and GSTR-3B return filed by the Appellant, it appeared that the appellant has availed complete/full Input Tax Credit (ITC) during the month of July 2017 to September 2017 which was available to them as per purchase register. Further, it appeared that the Appellant had also availed cenvat credit on stock of 42,366 Kg Yarn available with them as on 30.06.2017 in the TRAN-1 return filed by them. These facts were also admitted by Shri Shirish Jain, Director M/s Samyak Synthetics Pvt Ltd in his statement dated 31.01.2023 recorded under Section 108 of the Customs Act, 1962 wherein he stated that they had availed all the ITC amounting to Rs. 1,36,03,007/- admissible on the inputs and input services received by them during the period July 17 Sept 17 and had also availed/taken cenvat credit of Rs. 6,89,904/- in column 7a of the TRAN-1 return filed by them on stock of 42,366 Kg Yarn. Thus, it was clear that the Appellant has availed all the eligible input tax credit of all the raw materials purchased by them during these three months and have also availed/taken cenvat credit on, the stock of 42,366 Kg Yarn available with them as on 30.06.2017.

2.9 On examination of Shipping Bills, invoices and other details of export made by the Appellant during the month of July 2017 to September 2017, it appeared that the Appellant had claimed higher rate of Drawback against all the exports made during the said period in the 17 shipping Bills and had availed lower rate of Drawback in the five Shipping Bills. Further, it appeared that the Appellant had also availed Input Tax Credit (ITC) on the inputs & input services purchased by them during the months of July 2017 to September 2017 and had also availed cenvat credit of the stock of 42,366 Kg Yarn available as on 30.06.2017. Thus, the Appellant had violated the essential condition mentioned in Notification No. 59/2017 dated 29.06.2017 by simultaneously availing cenvat credit/Input Tax Credit on the inputs & input services and claiming duty Drawback at higher rate against the exported goods.

2.10 Shri Shirish Jain, Director in his statement had stated that they procure inputs/inputs services commonly for finished goods intended for export

and domestic clearance and no separate record or accounting in respect of Input Tax Credit on raw materials/inputs procured for manufacturing of finished goods intended for domestic clearance and exports were maintained by them. The Appellant had submitted details of the stock available as on 30.06.2017 in his statement on some of which they had availed transitional cenvat credit. On scrutiny of the documents submitted by M/s Samyak Synthetics Pvt. Ltd., it appeared that the Appellant had availed/taken cenvat credit of Rs 6,89,904/- in column 7a of the TRAN-1 return (and the said credit pertains to cenvat credit of duty paid by them on the stock of 42,366 Kg Yarn available with them as on 30.06.2017. This fact has been admitted by Shri Shirish Jain, Director, M/s Samyak Synthetics Pvt. Ltd. in his statement dated 31.01.2023. Thus, the Appellant had violated the essential condition of the Notification No. 59/2017 dated 29.06.2017 by availing duty Drawback at higher rate on the goods exported by them during the period July 17 to Sept 17 which were manufactured from stock of raw material held by them as on 30.06.2017, on which they had availed cenvat credit and carried forward the same in TRAN-1 return filed by them.

2.11 Shri Shirish Jain, Director of M/s Samyak Synthetics Pvt. Ltd. in his statement dated 31.01.2023 had stated that they were having stock of 1,78,265.52 Kg of Yarn 5,18,478 Mtrs when converted into finished fabric and after deducting wastage/ shrinkage), 1,77,661 Mtrs of Grey (1,67,143 Mtrs when converted to finished fabric) and 4,76,517.79 Mtrs of finished fabric as on 30.06.2017 on which they had not availed any Input Tax Credit (except 42,366 Kg Yarn on which they had availed cenvat credit in TRAN-1 return). Thus, the Appellant was having stock of 11,62,138 Mtrs equivalent finished fabric as on 30.06.2017. Further, during the month of July 2017 to September, 2017 Appellant had exported total 14,88,213 Mtrs (10,27,501 Mtrs at Higher rate +4,60,712 Mtrs at Lower rate) of finished fabric. Thus, the claim of the Appellant that during the period from July 2017 to Sept.-2017 they had exported finished goods which was either available with them as on 30.06.2017 or manufactured from the stock of raw material or semi-finished goods available with them as on 30.06.2017 does not hold water as on the basis of stock position statement submitted by the Appellant, the total stock of finished goods as on 30.06.2017 was 11,62,138 Mtrs only, whereas the total export during this period was 14,88,213 Meters. The fact when confronted with the Appellant, was admitted by Shri Shirish Jain, Director, M/s Samyak Synthetics Pvt Ltd that they had exhausted the stock of finished goods manufactured from the raw materials, grey

fabric and finished goods available with them as on 30.06.2017 before 30.09.2017 and the finished goods supplied by them over and above the stock were manufactured from the raw materials purchased by them during July-2017 to September-2017. Appellant stated that after exhausting their stock they exported goods at lower rate of Drawback. During this period, they exported 10,27,506 Mtrs at higher rate of Drawback and 4,60,712 Mts at lower rate of Drawback. He further stated that in mid-September 2017, Appellant worked out a calculation and found that the stock they had as on 30.06.2017 was declining, so they started using raw material/input procured during the months of July 17 to Sept 17 in manufacturing of goods intended for export and cleared goods at lower rate. However, Appellant agreed that it is very much possible that the subject raw material i.e. 42,366 Kg Yarn on which cenvat credit was taken by them in TRAN-1 return might have been consumed in the finished goods exported at higher rate of duty Drawback. Further, as per input out ratio of the raw materials consumed vis-a-vis finished fabric manufactured by the Appellant, they had manufactured around 1,31,000 meters of finished fabric by utilizing 42,366 Kg Yarn on which they had availed cenvat credit and carried forward in TRAN-1. This renders the duty Drawback availed by the Appellant at higher rate on export of 1,31,000 Mtrs of finished goods dis-allowable. The Appellant agreed that Drawback availed by them on the goods exported at higher rate manufactured from cenvat credit availed raw materials is recoverable from them along with interest. Therefore, it is evident from the facts and the statement of Shri Shirish Jain that the Appellant had availed cenvat credit on raw material and used said raw material in manufacturing of finished goods which were exported at higher rate of duty Drawback during the months of July-2017 to September-2017. This renders the Appellant's eligibility to claim duty Drawback at higher rate forfeited. Therefore, the duty Drawback availed at higher rate against the export of finished goods manufactured by using raw material on which cenvat credit was availed in TRAN-1 return by the Appellant was not proper and should be disallowed as the Appellant had violated conditions of Notification No. 59/2017 dated 29.06.2017 by availing Input Tax Credit on the inputs & input services and claiming duty Drawback at higher rate against the exported goods simultaneously.

2.12 Further, it is pertinent to mention that the Appellant has availed cenvat credit of Rs.6,89,904/- in column 7a of the TRAN-1 return filed by them pertaining to cenvat credit of duty paid by them on the stock of 42,366 Kg of Yarn available with them as on 30.06.2017. Thus, it is evident that the Appellant

had availed/taken credit on the stock of raw material i.e. 42,366 Kg Yarn held by them as on 30.06.2017 in their TRAN1 return. Therefore, their claim for justification of admissibility of duty Drawback at higher rate on the finished fabric exported by them during the months of September, 2017, manufactured from the stock of 42,366 Kg of Yarn held by them as on 30.06.2017 is liable to be refuted as the Appellant had availed cenvat credit on the subject Yarn and carried forward the cenvat credit in their TRAN-1 return and had also availed duty Drawback at higher rate on export of the finished fabric manufactured from 42,366 Kg of Yarn. Thus, the Appellant has violated the crucial conditions of Notification No. 131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Customs (NT) dated 29.06.2017. Further, as per input out ratio of the raw materials consumed vis-a-vis finished fabric manufactured by the Appellant, they had manufactured around 1,31,000 meters of finished fabric by utilizing 42,366 Kg Yarn on which they had availed cenvat credit and carried forward in TRAN-1. This renders the duty Drawback availed by the Appellant at higher rate on export of 1,31,000 Mtrs of finished goods dis-allowable.

2.13 On being confronted with the above stated facts about the stock position as on 30.06.2017 and supply made by them during the period from July-2017 to September-2017, Shri Shirish Jain stated that they had exported goods during the months of July 17 to September 17 manufactured from the stock of raw material held by them as on 30.06.2017 or the finished goods available with them as on 30.06.2017. He also admitted that the goods exported during the period July 17 to Sept 17 by them other than the stock held by them as on 30.06.2017 were manufactured by using the raw materials procured during the month of July 17 to Sept. 17 against which they had availed full Input Tax Credit in GSTR 3B. He also admitted that the Drawback availed at higher rate by them against the export made by using raw material on which they had availed Cenvat Credit/input tax credit was not proper. He admitted that they had not satisfied the conditions of Notification No. 131/2016Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017Customs (NT) dated 29.06.2017 and had wrongly availed higher Drawback. It is pertinent to mention that 1,31,000 Mtrs of finished goods manufactured from 42,366 Kg Yarn and exported claiming Drawback at higher rate was wrong as the Appellant had availed cenvat credit to the tune of Rs.6,89,904/-pertaining to 42,366 Kg Yarn in the TRAN-1 return in violation of the conditions of Notification No. 131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017-

Customs (NT) dated 29.06.2017.

2.14 In view of above it appeared that in order to avail higher rate of Drawback the Appellant at the time of filing Shipping Bills has submitted in their invoices a declaration stating that no input tax credit of the Central Goods and Services Tax or of the Integrated Goods and Services Tax had been availed for any of the inputs of input services used in the manufacture of the export product. Further, they declare that cenvat credit on the inputs or input services used in manufacture of the export goods had not been carried forward in terms of Central goods and Services Tax Act 2017. However, as discussed in paras supra, the Appellant has not only availed complete Input Tax Credit (ITC) during the month of July 2017 to September 2017 which was available to them as per GSTR 2A/purchase register, but also has taken cenvat credit on 42,366 Kg Yarn held by them on 30.06.2017 in TRAN-1 return filed by them. Thus, it appeared that the Appellant had submitted wrong declaration before the Customs Authority at the time of filing shipping bills to wrongly avail higher rate of Drawback.

2.15 From the above stated facts, it appeared that for the export consignments i.e DYED OTHER WOV FAB OF SYN STPL.FIB.CONT.STPL.FIB.OF LESS THAN $85 %$ BY WT. details mentioned in below Table

Table-A

Shipping Bill No	Date of S/B	Invoice No	Date of Invoice	Quantity (Meters)	FOB Value (Rs.)	DBK influenced on Higher Rate (HR) @8.5% (Rs.)	DBK applicable on Lower Rate(LR) @1.8% (Rs.)	Diff. Drawback Recoverable (HR - LR) (Rs.)
8705272	16.09.2017	SA/ 2017/ 123	15.09.2017	55,257.50	41,30,862	3,51,123	74,356	2,76,767
8901770	26.09.2017	SA/ 2017/ 125	23.09.2017	75742.50	64,02,324	5,44,198	1,15,242	4,28,956
TOTAL				**1,31,000**	**1,05,33,186**	**8,95,321**	**1,89,598**	**7,05,723**

exported during the month of July-2017 to September-2017, the Appellant has availed cenvat credit as well as Drawback under category 'A' of the Drawback schedule thereby violating the conditions of the Notification No.131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Customs (NT) dated 29.06.2017. It is pertinent to mention that when cenvat credit/input tax credit on inputs is availed, Drawback under category 'B' (lower rate) was allowed, therefore, in the instant case, as input tax credit had been

availed, the Appellant was eligible for Drawback under category 'B'. Thus, the excess Drawback amounting to Rs.7,05,723/- (Rupees Seven Lakhs Five Thousand Seven Hundred Twenty-Three only) as calculated in Table-A, wrongly availed by M/s Samyak Synthetics Pvt Ltd. for the export consignments as detailed in Table-A was not proper and legal and is recoverable from them under Rule 16 of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act 1962 along with applicable interest.

2.16 In view of the above stated facts, it appeared that the Appellant had exported finished fabric manufactured by using 42,366 Kg of Yarn on which cenvat credit was availed in TRAN-1 return filed by them and subsequently exported availing higher rate of duty Drawback. The act of exporting finished goods manufactured from raw material on which cenvat credit was availed and carried forward in TRAN-1 return and availing Drawback at higher rate at the time of export of these goods, is violation of Customs Notification No. 59/2017-Customs (NT) dated 29.06.2017. Therefore, the Drawback availed at higher rate by exporting such goods is liable to be recovered from the Appellant. Taking into consideration input output ratio stated by the Appellant in his statement dated 31.01.2023 and market practice, from 42,366 Kg of Yarn, Appellant manufactured 1,31,000 Mtrs of finished goods. The Appellant by following FIFO method, exported 1,31,000 Mtrs of finished goods vide Shipping Bill No. 8705272 dated 16.09.2017 and Shipping Bill No. 8901770 dated 26.09.2017. Total quantity of finished fabric exported vide Shipping Bill No. 8705272 dated 16.09.2017 was 96377.76 Mtrs however out of 96377.76 Mtrs of fabric, 55257.50 Mtrs fabric was manufactured from the stock of raw material, i.e. 42,366 Kg Yarn held by Appellant as on 30.06.2017 on which cenvat credit was availed and was carried forward in TRAN1 return. Further, from the foregoing facts, it appeared that out of 1,31,000 Mtrs of finished fabric, they exported 75742.50 Mtrs of fabric vide Shipping Bill No. 8901770 dated 26.09.2017 and rest quantity of 55,257.5 Mtrs finished fabric was exported vide Shipping Bill No. 8705272 dated 16.09.2017. Accordingly, Drawback pertaining to Shipping Bill No. 8901770 dated 26.09.2017 and proportionate Drawback pertaining to Shipping Blend No. 8705272 dated 16.09.2017, whereby 1,31,000 Mtrs of finished fabric was exported, is recoverable from the Appellant. M/s Samyak Synthetics Pvt Ltd. had exported goods from Mundra Port, Gujarat, on which they had simultaneously availed cenvat credit as well as Drawback under category-A during the month of September-2017. The details of export made by them is summarized as above in Table-A.

2.17 Accordingly, a Show Cause Notice F. No. Cus/DBK/SCN/14/2023-DBK dated 19.05.2023 was issued to M/s Samyak Synthetics Pvt Ltd. by the Addl. Commissioner of Customs, Mundra proposing as to why:

i. The duty Drawback amounting to Rs.7,05,723/- (Rupees Seven Lakhs Five Thousand Seven Hundred Twenty-Three only) sanctioned against 2 Shipping Bills as detailed in Table-A should not be demanded and recovered from them under Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as amended read with Section 75 of the Customs Act 1962;

ii. Interest under Section 75A(2) of the Customs Act, 1962 should not be demanded and recovered from them on the wrongly availed Drawback as in para (i) above;

iii. 1,31,000 Meters of finished fabric totally valued at Rs.1,05,33,186/-exported under 2 Shipping Bills as detailed in Table-A should not be confiscated under Section 113(ia) of the Customs Act, 1962 and RF should not be imposed in lieu of confiscation in terms of Section 125 of the Customs Act, 1962;

iv. Penalty should not be imposed upon M/s Samyak Synthetics Pvt Ltd. under Section 114(iii) of the Customs Act, 1962 for omissions discussed above.

2.10 Then after, the adjudicating authority passed the impugned OIO ordering as follows:

i. He demanded and ordered to recover the duty Drawback amounting to Rs.7,05,723/- (Rupees Seven Lakhs Five Thousand Seven Hundred Twenty-Three only) sanctioned against 2 Shipping Bills as detailed in Table-A from M/s Samyak Synthetics Pvt. Ltd. under Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as amended read with Section 75 of the Customs Act 1962;

ii. He demanded and ordered to recover Interest under Section 75A(2) of the Customs Act, 1962 from M/s Samyak Synthetics Pvt. Ltd. on the wrongly availed Drawback as in para (i) above;

iii. He confiscated 1,31,000 Meters of finished fabric totally valued at

Rs.1,05,33,186/- exported under 2 Shipping Bills as detailed in Table-A under Section 113(ia) of the Customs Act, 1962. However, he refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically not available for confiscation.

iv. He imposed a penalty Equal to Differential Duty Drawback Amount upon M/s Samyak Synthetics Pvt Ltd. under Section 114(iii) of the Customs Act, 1962 for omissions discussed above.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 It is submitted as per para 11 and 12A of the principal notification as stood amended by Notification No. 59/2017 (NT) dt. 29.06.2017 it can be transpired that higher duty Drawback rates under category 'A' can be availed for the product exported when no input tax credit in relation to such product or raw material/inputs/input service consumed in that product has been availed. Further at the time of bringing that product for export, exporter has to declare that no input tax credit of CGST or IGST has been availed on such product or on any input/input services used in the manufacture of that product and in the case necessary, shall establish the said fact to the satisfaction of the Assistant Commissioner or Deputy Commissioner of Customs.

3.2 In this case appellant has exported finished fabric satisfying the aforesaid condition enumerated in the principal notification. Appellant had 1,78,265.52 kgs of yarn, 1,77,661.37 meters of grey fabric and 4,76,517.79 meters of finish fabric as on 30.06.2017 in hand. All the finished fabric exported by the appellant has been produced from the aforesaid stock only. Even otherwise, if the proposed finished fabric as derived by department by converting the stock in hand on 30.06.2017 is considered, the same would be around 10,31,138 meters of finish fabric which is in excess of 3637 meters from the finish fabric exported at higher duty Drawback. At the time of export of goods, appellant has declared that no ITC or CENVAT credit has been taken on the inputs /input services which was also reflected in the invoices prepared for the exported goods. The goods were exported after filing all the relevant documents and making necessary declaration before the excise officers and customs officers.

No objection was raised by the department at the time of export of goods regarding the CENVAT facility or ITC and appellant was not called to prove to the satisfaction of officers that CENVAT credit or ITC has not been claimed by appellant. Thus, the exported goods were not having any cenvatable inputs / input services and were also not having any ITC claimed inputs/input services. The declaration filed by appellant was not disputed by the revenue at the relevant time and therefore, it is now not open to the revenue after the lapse of inordinate time to allege that appellant has claimed CENVAT credit and ITC on the inputs which are used in exported goods on which higher Drawback was claimed. Departmental officers had the authority and discretion to verify, if necessary, the genuineness or correctness of the declaration produced before them and they could have asked appellant to submit relevant documents at the material time to prove that no CENVAT credit has been taken on the inputs or raw materials which are used for manufacture of exported goods. Such exercise was not done at the relevant time would show that the departmental officers were satisfied that no cenvat credit or ITC has been availed by appellant and therefore, the goods were allowed to be exported by claiming higher Drawback under category "A" of the Drawback schedule. Appellant was also under the reasonable belief that the declaration filed by him has been accepted and thereafter the goods have been allowed to be exported. Therefore, the department cannot now dispute the declaration filed by appellant that no cenvat credit or ITC has been availed. It is submitted that the declaration was filed more than 5 years ago and therefore, the department cannot now deny Drawback at higher rate by alleging that appellant has availed ITC or cenvat credit on the inputs/raw materials used in the goods exported during July, 2017 to September, 2017. The Hon'ble Tribunal in case of Ascent Meditech Ltd. vs. Commissioner of Central Excise, Vapi reported in 2014 (309) E.L.T. 712 (Tri. - Ahmd.) wherein it was observed that the assessee was filing declarations under SSI and provided details of the manufacturing process of the goods which was not disputed by the department at the time when the goods were cleared by the assessee. Subsequently, after lapse of considerable time, the department scrutinized the declarations filed by the assessee and raised objections regarding the classification of the goods and demanded duty from the assessee. The Hon'ble Tribunal held that the assessee filed declarations indicating the manufacturing activity and the classification of the product manufactured by them. It is seen from the show cause notice that the the demand has been raised based upon the scrutiny of the declarations filed by the assessee. Therefore, the same exercise, if was required, had to be taken when the declarations were filed by the assessee. Therefore, the Hon'ble Tribunal

held that the demand was time barred. The said decision rendered by the Hon'ble Tribunal was affirmed by the Hon'ble Supreme Court reported in Commissioner v. Ascent Meditech Ltd. - 2015 (320) E.L.T. A281 (S.C.).

3.3 In the present case also, the revenue has not raised any objection regarding the declaration filed by appellant at the time of export in terms of para 12 and 12A of the principal notification and therefore, it is not open now for the revenue to allege that appellant has claimed CENVAT credit and ITC on the inputs. Therefore, the impugned notice as well as order is unsustainable in the eyes of law and the demand confirmed in the case is liable to be quashed and setaside.

3.4 The whole of the impugned notice has been issued and consequent order has been passed on assumption and presumption. Department without evaluating, scrutinizing the records, documents and books maintained by appellant, without gathering enough evidence as to establish that raw material on which input tax credit is claimed or transited is exported at higher Drawback rates and merely on the basis of input-output ratio, concluded the enquiry that appellant has violated the imperial condition of principal notification. That it well settled rule of law that demand cannot be confirmed merely on the theoretical calculation and statement tendered by the witnesses or appellant and it has to be corroborated by tangible documentary evidence. Appellant places reliance on the following case laws in this regard: -

a) In the case of PUNALUR PAPER MILLS LTD. Versus COLLECTOR OF C. EX. & CUS., COCHIN reported in 2009 (244) E.L.T. 204 (Tri. - Bang.) wherein it was held that:

"Clandestine manufacture and removal - Proof - Demands of Rs. 6.98 crores Theoretical demand - Ratio of raw material to final product - SCN enumerating result of search in various purchasers premises evidencing absence of gate passes though goods received - Facts not forming basis of demand - Demand arrived at on theoretical basis on basis of weigh bridge register, RT5 etc. - Quantity of pulp (raw material) used arrived on basis of letter from another company - Formula of pulp quantity multiplied by 100:88 to arrive at quantity of paper - Basis for adoption of ratio 100:88 not clear - Assumption having no basis and method adopted in SCN and O-1-O highly arbitrary - For demand of nearly 7 crores, clear evidences necessary - Figures of another unit having modern machinery not to be basis for arriving

at clandestine manufacture and removal - Revenue should have conducted experiment to arrive at ratio of raw materials to pulp and also pulp to paper - Collector himself observing that there cannot be fixed ratio for conversion of pulp to paper - Demand of Rs. 4,58,71,914 not sustainable - Rule 4 of Central Excise Rules, 2002. - Unless figures arrived at by theoretical calculations are backed by concrete evidence, no demand can be made. The formulas at best can be used only for a rough estimate and not for demanding duty. The abstract of calculation as in Annexure to SCN does not contain actual working out of demand and it is not very clear as to what rate of duty was taken while calculating demand. Further relied upon documents were not supplied to assessee. [paras 8, 9]"

b) In the case of GOA BOTTLING CO. LTD. Versus COMMISSIONER OF CUS. & C. EX., GOA reported in 2001 (135) E.L.T. 741 (Tri. - Mumbai) wherein it was held that:

"2. The Tribunal has considered more than once the validity of demands based upon the theoretical ratio of production between raw material and finished product. In Parle Beverages Ltd. & Others v. C.C.E.- 1999 (114) E.L.T. 872, the Tribunal did not find it possible to sustain the demand for duty issued to the three manufacturers of beverages, arrived at only by applying the theoretical ratio of the quantity of beverage base and the quantity of beverage to be obtained from that base. It noted that the formula was theoretical and did not take into account various factors on account of which waste could arise. It also said that applying such a formula would mean applying Rule 173E. It therefore, set aside the demand. The ratio of this decision has been followed in Pepsico India Holding Ltd. v. C.C.E. - 2000 (117) E.L.T. 659 (Tribunal) = 199935 RLT 654. This latter decision also referred to one unreported decision where it has applied. The Commissioner in his order has not dealt with this contention that was raised before him, that the formula only indicated what can be the expected yield in the ideal condition and the condition under which the appellant manufactured the beverages were not ideal. The difference found by the Department between notional production and the actual production is also not substantial as to warrant suspension. it ranges less than half to one and half percent. Applying the ratio of the decision referred to earlier, we hold that demand on this ground was not sustainable."

c) In the case of JET UNIPEX Versus COMMISSIONER OF CUSTOMS, CHENNAI reported in 2020 (373) E.L.T. 649 (Mad.) wherein it was held that:

> *"Adjudication proceedings under Customs Act, 1962 cannot solely be based on inculpatory statements of witnesses and appellant alone - Such statements can be only used for corroborating case which Department proposes to establish before quasijudicial Authorities - Department bound to prove case based on balance of probabilities as per well-recognised principle of law in case of departmental adjudications. [paras 70, 71]"*
>
> *Emphasis Supplied*

3.5 It is the case of the department that appellant has taken ITC on the raw material purchased during July, 2017 to September, 2017 and these raw materials were used for the manufacture of fabrics exported during this period. goods and simultaneously claimed Drawback at higher rate under category "A" of Drawback schedule which is not permissible under Notification No. 131/2016Cus (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Cus. (NT) dated 29.06.2017. Appellant submit that the allegations leveled in the impugn order are baseless and unsustainable because appellant has not used any raw materials on which ITC was claimed for the manufacture of fabrics exported claiming Drawback under category 'A'. Appellant submit that wherever the raw materials on which ITC claimed were used in exported finished goods, we have claimed Drawback at lower rate and where ITC was not claimed on the raw materials, the exported goods were shipped by claiming higher Drawback as provided under the principal notification. The department has not been able to prove that appellant has claimed higher Drawback and simultaneously claimed ITC of the inputs used in the manufacture of exported goods. Department blatantly alleged that out of 96,377.76 meters of fabric exported under shipping bill no. 8705272 dt. 16.09.2017, 55,257.50 meters were produced from the yarn on which credit was transited in TRAN-1. There is no base to the aforesaid allegation.

3.6 Appellant has further submitted that before alleging that higher Drawback has been claimed along with claiming ITC on inputs used for manufacture of exported goods, the revenue is required to discharge the burden that certain quantity of raw materials purchased during the period from July, 2017 to September, 2017 on which ITC claimed were actually used in

manufacture of exported goods on which higher Drawback was claimed. In the present case, there is nothing on record to suggest that appellant has used such raw material on which ITC was claimed. Therefore, the entire case of the department is based on assumption and presumption. Thus, the show cause notice is vague and demand confirmed pursuant to such notice is liable to be quashed and setaside.

3.7 During the investigation, it has been submitted that the fabric has been exported from the stock either available with appellant as on 30.06 .2017 or were manufactured from the raw material/semi-finished goods available as on 30.06.2017. Therefore, there was no question of using the raw material on which ITC was claimed. Despite that, the department has sought to allege that appellant has exhausted its stock and also used raw materials purchased during July, 2017 to September, 2017 in order to manufacture 1,31,000 meters of exported goods. It is submitted that the show cause notice has not provided any evidence to show that appellant has actually used any raw material which was purchased after availing credit during the month of July, 2017 to September, 2017. The entire case is based on frivolous grounds and therefore, the demand does not have merit.

3.8 Even for the stock of goods available prior to 30.06.2017, for which CENVAT Credit has been claimed in TRAN-1, it is stated that the said raw material was not used for export of goods on which higher Drawback was claimed. That neither the principal notification nor amending notification mandated maintaining of separate accounts for establishing as to use of raw material in exports made at higher Drawback rates and use of raw materials in exports made at lower Drawback rates. Notification demanded of satisfying the custom officers as to non-availment of credit in relation to goods exported at Higher Drawback Rates which appellant had satisfied. Appellant acting prudently in the case has utilized the non-cenvatable raw material, semi-finished and finished stock in goods exported at higher Drawback and the cenvatable raw-material or on which input tax credit is availed, in goods exported at lower Drawback and supplied in domestic territory. Department has not verified through the records and also not put forth any evidence to suggest that the CENVAT credit of Rs. 6,89,904/- was related to the stock which was utilized in goods exported at higher Drawback rates. It has been merely assumed in the order that appellant has used inputs on which either CENVAT credit or ITC was claimed in goods exported at higher Drawback.

3.9 It is submitted that the entire case is based on assumptions and presumptions and therefore, there is no merit in the present order and the present order is liable to be quashed. Further, there is no method prescribed under the said notification as to how the goods cleared under higher Drawback and lower Drawback are to be traced. As per the principal notification, it has only to be established at the satisfaction of the proper officer that input tax credit has not been availed for the goods exported at higher Drawback, which in the case has been satisfied by the appellant. Department failed to acknowledged that and prepared the case solely on the basis of FIFO method. Even if the holistic view is adopted (as suggested by department), appellant had stock to the tune of 10,31,138 meters of finish fabric (converted) as on 30.06.2017 on which no CENVAT credit availed, he had exported 10,27,501 meters at higher Drawback. The remaining stock of 3637 meter is either exported at lower Drawback rate or in domestic market on which output tax is discharged. There is as such no revenue loss to the government and the impugned order is liable to be quashed.

3.10 In the present case, the demand relates to the period July, 2017 to September, 2017. The show cause notice is served only on 19.05.2023 i.e., after five years from the last date of export. In other words, the entire notice is beyond normal and extended period of limitation. The Appellant submits that the demand beyond normal period is not maintainable even under the Drawback Rules in view of the well settled legal position. From the perusal of Rule 16 of the Drawback Rules, there is no doubt that no specific time period has been prescribed for issuing the show cause notice for demand of erroneously/excess payment of Drawback. However, it is settled legal position that if no time period for issuing the show cause notice is prescribed, the same could be demanded within a reasonable period. This view is supported by following decisions:

(i) Government of India v. Citadel Fine Pharmaceuticals, 1989 (42) ELT 515 (SC):

(ii) Anil Elastic Industries v. Union of India, 2008 (222) ELT 340 (Guj):

(iii) Neelahara Weaving Factory v. DGFT 2007 (210) ELT 658 (P&H):

(iv) Brakes India Ltd v. CCE, 1997 (96) ELT 434 (Tri-Chennai)

3.11 Appellant further relies on the decision of Hon'ble High Court of

Gujarat in case of Pratibha Syntex Ltd. Versus Union of India reported in 2013 (287) E.L.T. 290 (Guj.) wherein the Hon'ble High Court dealt with the issue where the Drawback already disbursed to the assessee was sought to be recovered under Rule 16 of the Drawback Rules by issuing show cause notice after more than three years. The Hon'ble High Court held that though Rule 16 of the Drawback Rules does not provide for any limitation, a reasonable period of limitation has to be read into the same. The Hon'ble High Court held that the Drawback was paid more than three years prior to the issuance of the show cause notice and no efforts were made to recover the Drawback paid to the petitioners at the relevant time. Thus, the assessee was entitled to form a belief that the matter has attained finality and arrange their finances accordingly. The Hon'ble High Court further held that after a period of more than three years elapsed, if the revenue seeks to recover the amount of Drawback paid, it would tantamount to disturb the rights of the assessee. Therefore, the show cause notice was held in the tine barred. The Hon'ble High Court in para 26 of the said Judgment held that the period of 3 years can be said to be a reasonable period to issue show cause notice under section 16 of the Drawback Rules beyond which no show cause notice can be issued as it would be clearly barred by the limitation of time.

3.12 The decision rendered in the case of Pratibha Syntex Ltd. (Supra) was followed by the Hon'ble High Court of Gujarat in case of S.J.S. International Versus Union of India reported in 2022 (380) E.L.T. 577 (Guj.) and the Hon'ble High Court held that it is a settled legal position that show cause notice cannot be issued beyond the period of three years of payment of the duty Drawback under Rule 16 of the Drawback Rules. In case of Padmini Exports Versus Union of India reported in 2012 (284) E.L.T. 490 (Guj.), the Hon'ble High Court held that the recovery of Drawback in the year 2000 for the Drawback claimed in the year 1996 under Rule 16 of the Drawback Rules is not permissible in law. The Hon'ble High Court relied upon the decision of Pratibha Syntex Ltd. (Supra) and held that the reasonable time in case of recovery of Drawback under rule 16 is three years beyond which no show cause notice can be issued by the department.

3.13 Further in the case of Government of India v. Citadel Fine Pharmaceuticals, reported in 1989 (42) ELT 515 (SC) the Hon'ble Supreme Court held that if no time period has been prescribed under the statue, then the authority need to exercise its power within a reasonable period. The relevant portion of the given case has been extracted below for reference:

"6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

3.14 In the present case, as per the submission in the aforementioned paragraphs it is quite clear that the appellant did not hide or suppress any fact from the department, rather all the facts were very well known to the department at the time of export of the goods. There is no further discovery of the information which was not available at the time of export. The goods were allowed to be exported without any objection and only after proper assessment by the Customs the goods and Drawback claim was cleared. It would be totally unjust and improper on the part of the Customs now to allege that the Drawback claim has been erroneously paid by suppressing the facts when already all the facts were known to them. As clarified in the preceding paragraphs, the appellant did not hide any fact from the department at the time of exportation of the goods. Therefore, the contention of the department that the appellant has claimed the Drawback by mis-representing or suppressing the facts is not maintainable in the scenario. In view of the above submissions, it is clear that the period of 3 years for demanding the erroneous Drawback will apply as the same would be the 'reasonable period' in view of the law laid down by the Courts as discussed supra. The demand raised for a period beyond of 5 years is not legal and

appropriate in the scenario and the entire demand is therefore liable to be setaside.

3.15 In the foregoing paragraphs, it has been submitted in detail that no Drawback is refundable. For the same reasons, no penalty is sustainable. For the sake of brevity and in order to avoid unnecessary repetition, appellant request that the submissions made with regard to the Drawback portion may be considered as part of the submissions relating to the imposition of penalty. Therefore, for the same ground no penalty is sustainable. It has been alleged in the order that appellant has suppressed and misrepresented the facts deliberately in order to avail excess Drawback. The fact of non-availment of input tax credit was duly reflected in the commercial invoice, shipping bills submitted with the Custom Office at the time of exporting the goods. Therefore, allegation of suppression and misrepresentation is totally misplaced. Rather, all the facts were in the notice of the jurisdictional custom authority. Without prejudice to the above contentions, it is respectfully submitted that as per the provisions of Section 114 of the Customs Act, penalty is imposable on any person who in relation to any goods, does or omits to do any act where such act or omission would render goods liable to confiscation under section 113, or abets the doing or omission of such an act. Therefore, the penalty under this sub-section is linked to the liability of the goods to confiscation. As submitted in the foregoing paragraphs, that appellant has neither done nor omitted to do any act which act or omission has rendered the goods liable to confiscation nor has the appellant abetted the doing or omissions of such an act. Therefore, no penalty under this sub-section can be imposed on the appellant.

3.16 Further, the invocation of this Section requires presence of mens rea, knowledge of the person concerned that the goods are liable to confiscation. As already submitted, the conduct of the Appellant was bonafide. The Appellant had no knowledge of the liability of the goods to confiscation. Consequently, penalty under Section 114 cannot be imposed on the Appellant. This proposition is supported by the judgment of the Hon'ble Supreme Court in the case of Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)]. This judgment of the Apex Court has been followed by the Hon'ble High Courts and the Tribunal in a large number of cases. As submitted above, the appellant acted in bonafide belief and there was no mens rea. In the case of Metro Marine Services Pvt. Ltd. v. Commissioner of Customs, Kandla [2008 (223) ELT 227 (Tri.-Chennai)], it was held by the Hon'ble Tribunal that penalty under Section 112(b)

cannot be imposed on firms, as firms cannot have mens rea. On similar lines, penalty under Section 114 is not imposable on the Company as well.

3.17 As already submitted, the conduct of the Appellant was bonafide. Therefore, it cannot be said that the Appellant in any manner, abetted the doing or omission of an act, which act or omission rendered the goods liable to confiscation. In view of the above, it is respectfully submitted that no penalty imposed upon the Appellant is liable to be set-aside.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 12.06.2025, following the principles of natural justice wherein Shri Anil Prahlad Rathi, Advocate, appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Custom House, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 29.04.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 17.10.2023 as 28.03.2024. This office had sent a copy of appeal memorandum to the jurisdictional authority for comments vide letter dtd. 24.06.2024. Further vide letter dtd. 19.06.2025, the Asstt Commissioner (Adjudication), Customs, Mundra was specifically requested to inform the date of service of the impugned order . However, no response has been received by this office. In view of the same, I am left with no option but to consider the date of receipt of the impugned order to be 28.03.2024 as mentioned by the appellant . Accordingly, the appeal is considered to be filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of applicable pre-deposit of Rs.53,000/- vide GAR/TR6 Challan No. MP&SEZ/24-55 dated 23.04.2023. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the case records, as available on file, defense submissions of the Appellant it is understood that the present case relates to the issue of recovery of differential duty Drawback so sanctioned against 3 shipping bills as detailed in the show cause notice under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as amended read with Section 75 of the Customs Act, 1962 along with appropriate interest under Section 75A(2) of the Customs Act, 1962, redemption fine in lieu of confiscation in terms of Section 125 and penalty imposed under Section 114(ii) of the Customs Act, 1962 upon the Appellant.

5.2 At the very outset, I deem it appropriate to address the Appellant's contention regarding the limitation period, as this issue has the potential to decide the entire case without delving into the merits of the demand.

5.3 Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, states:

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

5.4 It is evident from Rule 16 that while it provides for the recovery of erroneously paid or excess Drawback, it does not prescribe a specific time limit for the issuance of a demand notice. In such circumstances, the settled legal position is that any power conferred by a statute, where no time limit is prescribed, must be exercised within a "reasonable period."

5.5 The Hon'ble Supreme Court, in the case of Government of India v. Citadel Fine Pharmaceuticals [1989 (42) ELT 515 (SC)], unequivocally held that "In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case." This principle has been consistently applied by various High Courts. Specifically, the Hon'ble Gujarat High Court has addressed the issue of limitation for recovery of erroneously paid Drawback under Rule 16 of the Drawback Rules on multiple occasions.

5.6 In the case of Pratibha Syntex Ltd. Versus Union of India [2013 (287) E.L.T. 290 (Guj.)], the Hon'ble Gujarat High Court, dealing with a situation where Drawback was sought to be recovered after more than three years, held that:

"though Rule 16 of the Drawback Rules does not provide for any limitation, a reasonable period of limitation has to be read into the same."

5.7 The Court further observed that if the revenue seeks to recover the amount of Drawback paid after a period of more than three years, it would "tantamount to disturb the rights of the assessee," who would have formed a belief that the matter had attained finality. Crucially, the Hon'ble High Court explicitly held in paragraph 26 that "the period of 3 years can be said to be a reasonable period to issue show cause notice under section 16 of the Drawback Rules beyond which no show cause notice can be issued as it would be clearly barred by the limitation of time."

5.8 This ruling in Pratibha Syntex Ltd. has been consistently followed and affirmed. The Hon'ble Gujarat High Court, in S.J.S. International Versus Union of India [2022 (380) E.L.T. 577 (Guj.)], reiterated that "it is a settled legal position that show cause notice cannot be issued beyond the period of three years of payment of the duty Drawback under Rule 16 of the Drawback Rules." Similar observations were made in Padmini Exports Versus Union of India [2012 (284) E.L.T. 490 (Guj.)], holding that "the reasonable time in case of recovery of Drawback under rule 16 is three Years beyond which no show cause notice can be issued by the department."

5.9 More recently, the Hon'ble Gujarat High Court, in the case of M/s Raghav International Vs UOI [(2023) 5 CENTAX 83 (Guj)], relied upon M/s S.J.S. International Vs UOI [2022 (380) ELT 577(Guj.)] and quashed show cause notices that were admittedly beyond the period of three years. This position was further affirmed by the Hon'ble Supreme Court when it dismissed the Special Leave Petition of the Revenue in UOI Vs Asia Exporters (2024) 21 Centax 170 (SC).

5.10 In the instant case, the Drawback amounts were disbursed for shipping bills dated 14.09.2017, 15.09.2017, and 28.09.2017. The Drawback was received by the Appellant on 04.12.2017, 31.10.2017, and 19.12.2017, respectively. The impugned Show Cause Notice F.No. CUS/DBK/SCN/14/2023-

DBK was issued on 19.05.2023. Calculating the period from the earliest date of Drawback receipt (31.10.2017) to the date of SCN issuance (19.05.2023):

- From October 2017 to October 2020: 3 years
- From October 2020 to October 2022: 2 years
- From October 2022 to May 2023: Approximately 7 months.

Thus, the Show Cause Notice was issued well over five years after the Drawback was disbursed to the Appellant.

5.11 The department, in the impugned order, has remained silent on the issue of limitation, despite the Appellant heavily relying on it in their reply to the Show Cause Notice. This omission by the adjudicating authority is a significant procedural infirmity, as the issue of limitation is a fundamental jurisdictional question. The department's argument for demanding the Drawback would inherently rely on the extended period of limitation if there was an allegation of fraud, collusion, willful misstatement, or suppression of facts. However, in cases of Drawback recovery, the extended period of limitation, akin to Section 28 of the Customs Act, 1962 (for duty demands), is generally not explicitly provided under Rule 16.

5.12 Even if such an extended period were to be implicitly read, the Appellant has consistently argued that all facts, including the availment of CENVAT credit and ITC, were disclosed in their commercial invoices and shipping bills, which were available to the Customs authorities at the time of export. They assert that no objection was raised by the department at that time, and they were not called upon to establish non-availment of credit to the satisfaction of the officers.

5.13 As held in Ascent Meditech Ltd., if the department had the opportunity to verify the declarations at the material time but did not do so, it cannot, after a considerable lapse of time, allege misdeclaration or suppression. The non-action by the departmental officers at the relevant time indicates their satisfaction, and the Appellant was under a reasonable belief that their declarations were accepted. Therefore, the contention of suppression or misrepresentation of facts by the Appellant is not sustainable. Since there is no element of fraud, collusion, willful misstatement, or suppression of facts proved on record, the demand cannot be sustained beyond the normal period.

5.14 Based on the consistent pronouncements by the Hon'ble Supreme Court and the Hon'ble Gujarat High Court, the "reasonable period" for issuing a Show Cause Notice under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, is three years. In the present case, the Show Cause Notice was issued on 19.05.2023 for Drawback claims sanctioned in October/December 2017. This period clearly exceeds the three-year reasonable period of limitation. Therefore, the entire demand for recovery of differential Drawback, interest, and imposition of penalty and confiscation is time-barred. When the core demand for Drawback recovery is time-barred, all consequential actions, such as demand for interest, confiscation of goods (even if not physically available for redemption fine), and imposition of penalty, also fall.

6. In light of the detailed discussions and findings, particularly regarding the critical aspect of limitation, I conclude that the Show Cause Notice F.No. CUS/DBK/SCN/14/2023-DBK dated 19.05.2023, issued to M/s Samyak Synthetics Pvt. Ltd., is time-barred. Consequently, the entire proceedings initiated thereunder are unsustainable in law. Therefore, the impugned Order-in-Original No. MCH/ADC/RK/190/2023-24 dated 17.10.2023, passed by the Additional Commissioner, Customs, Mundra, is set aside.

7. In light of the above discussions, the appeal filed by the Appellant, M/s Samyak Synthetics Pvt Ltd., succeeds with consequential relief, if any, as per law.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-27/CUS/MUN/2024-25 1705

Date: 26.06.2025

By Registered post A.D/E-Mail

To,
M/s Samyak Synthetics Pvt. Ltd.
F-30, First Phase, RIICO Industrial Area
Pur Road, Bhilwara-311001

Copy to:

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