प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
"सीमा शुल्क भवन ," पहली मंजिल ,पुराने हाई कोर्ट के सामने ,नवरंगपुरा,
अहमदाबाद – 380 009.
दूरभाष :(079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in फैक्स :(079) 2754 2343

DIN: 20250371MN000000EE90

PREAMBLE

A	फ़ाइल संख्या / File No.	:	VIII/10-158/ICD-Khod/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	VIII/22-12/ICD/Audit/2015 dated 01.07.2024
C	मूल आदेश संख्या / Order-In-Original No.	:	**302/ADC/SRV/O&A/2024-25**
D	आदेश तिथि / Date of Order-In-Original	:	**28.03.2025**
E	जारी करने की तारीख / Date of Issue	:	**28.03.2025**
F	द्वारा पारित / Passed By	:	**SHREE RAM VISHNOI**, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	**M/S. RASNA PVT. LTD.,** RASNA HOUSE, OPP. SEARS TOWER, GULBAI TEKRA, AHMEDABAD, GUJARAT – 380006.
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 %(अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

M/S. RASNA PVT. LTD., Rasna House, Opp. Sears Tower, Gulbai Tekra, Ahmedabad, Gujarat - 380006 (herein after referred to as 'M/s. Rasna Pvt. Ltd.', 'the importer' or 'the noticee' for the sake of brevity) is having Import Export Code (IEC) **0897001532**.

2. The said importer filed Bill of Entry No. 5916928 dated 04.02.2012 for re-import of "Rasna Instant Drink Powder" of different flavours, falling under Chapter Sub-heading 200899 of First Schedule to the Customs Tariff Act, 1975, by availing benefit of Sr. No. 2 of Notification No. 158/1995-Cus. dated 14.11.1995, as amended. The said re-imported goods were earlier exported vide Invoice No. RPL/QAT/11-12/027 dated 28.07.2011. it was informed by the said importer that their buyer i.e. United International Trading Co., Qatar registered their product with Health Authority at Qatar for self-life of 18 months, whereas the shipment, which was exported, mentioned the self-life of 24 months, hence the Health Authority had rejected the cargo. The importer declared that after re-processing / re-labelling, they would re-export the goods within 6 months from the date of import.

3. Sr. No. 2 of Notification No. 158/1995-Cus. provides exemption to the goods manufactured in India and re-imported for (a) reprocessing; or (b) refining; or (c) re-marking; or any process similar to the processes referred to in (a) to (c), when such re-importation takes place within 1 year from the date of exportation and such goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow. The relevant excerpts is as below:-

"...

S.No.	Description of goods	Conditions
(1)	(2)	(3)
1.	Goods manufactured in India and parts of such goods whether of Indian or foreign manufacture and re-imported into India for repairs or for reconditioning.	1. Such re-importation takes place within 3 years from the date of exportation; Provided that such re-importation takes place within10 years from the date of exportation in case of Nepal and Bhutan; 2. Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; 3. The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied as regards identity of the goods;

		4. The importers at the time of importation executes a bond undertaking to- (a) export the goods after repairs or reconditioning within the period as stipulated; (b) pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation but for the exemption contained herein.
2.	Goods manufactured in India and reimported for (a) reprocessing; or (b) refining; or (c) re-marking; or (d) subject to any process similar to the processes referred to in clauses (a) to (c) above.	1. Such reimportation takes place within one year from the date of exportation. 2. Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; 3. The Assistant Commissioner of Customs or Deputy Commissioner of Customs, is satisfied as regards identity of the goods. 4. The importer executes a bond to the effect - (a) that such reprocessing, refining or remaking or similar processes shall be carried out in any factory under Central Excise control following the procedure laid down under rule 173MM of the Central Excise Rules, 1944 or in a Customs bond provisions of section 65 of the Customs Act, 1962 (52 of 1962); (b) that he shall maintain a due account of the use of the said re-imported goods received in the premises specified in item (a) above and shall produce the said accounts duly certified by the officer of Central Excise or Customs, as the case may be, incharge of the factory or the bonded premises to the effect that the goods tendered for re-import are reprocessed, refined or remade or subjected to any process, as the case may be, from the said re-imported goods; (c) that in case any waste or scrap arising during such operations and the importer agrees to destroy the same before the officer of Central Excise or Customs, as the case may be, or to pay on such waste or scrap the appropriate duties of customs as if such waste or scrap is imported;

		(d) that he shall pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty leviable on such goods at the time of importation but for the exemption contained herein. Provided that in case of reprocessing, refining or remaking or similar process, if any loss of imported goods is noticed during such operations, the quantity of such loss shall be exempted from the whole of the duties of customs (basic customs duty and additional customs duty, etc.) subject to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that such loss has occurred during such operations.

3.1 As per one of the conditions of Sr. No. 2 of Notification No. 158/95-Cus., the whole of the duty of Customs specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the whole of the additional duty leviable under section 3 of the said Customs Tariff Act, is exempted subject to the condition that Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow.

3.2 In terms of the conditions of Notification No. 158/1995-Cus., the importer is also required to execute a bond, undertaking *inter-alia* to pay, on demand, in the event of his failure to comply with any of the conditions, an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation but for the exemption contained in the said Notification. As per the condition of the said Notification, the said importer submitted Bond for Rs. 17,73,406/- which has been registered with Bond No. 2000252337 dated 16.03.2012 at ICD - Khodiyar.

3.3 It has been observed during the course of audit from the EDI Systems and available records that the said importer had neither applied for extension of the period for re-export, nor such extension of period for re-export has been allowed to them. However, even after expiry of one year from the import of the said goods, the said importer had not submitted proof of re-exportation of the said goods to the satisfaction of the Deputy / Assistant Commissioner of Customs, as required under the conditions of Notification No. 158/95-Cus.

4. Therefore, as the benefit of Notification No. 158/1995-Cus. does not appear admissible to the said importer, consultative clarification letters F.No. VIII/22-12/ICD/Audit/2015 dated 28.07.2020, 21.12.2022 and 05.12.2023 have been issued to the said importer informing that the re-export bond was still pending for closure, requesting to submit all the documents pertaining to re-export of the goods within prescribed time limit, failing which action under the provisions of the Customs Act, 1962 would be initiated. However, as per the available records, the said importer has not

submitted the required documents and therefore the aforesaid Bond has not been closed.

5. As per the provisions of Section 143 of the Customs Act, 1962, the said imported goods were allowed clearance by proper officer on execution of bond by the importer wherein the importer bounded themselves to discharge liability in certain manner, which they have failed to do so inasmuch as the said importer has not submitted documentary evidence pertaining to re-export of the subject goods within prescribed time limit. Thus, the said importer appears to have not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond.

5.1 It appeared that the said importer is liable to pay duty forgone of **Rs 7,68,022**/-, as mentioned in **Annexure-A** to the show cause notice, on the said imported goods along with interest at the applicable rate on the imported goods in terms of conditions of the said Notification and conditions of the bond executed by the importer read with Section 143 of the Customs Act, 1962.

LEGAL PROVISIONS:

6. The relevant provisions of the Customs Act, 1962 and the rules made there under are as follows:-

(A) **"*Section 143. Power to allow import or export on execution of bonds in certain cases.* -**

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law."

(B) ***SECTION 17. Assessment of duty.*** *—*

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty if any, leviable on such goods.

(C) ***Section 46(4)***

"*The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed].*"

Section 46(4A)

"The importer who presents a bill of entry shall ensure the following, namely —

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

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

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

(D) ***Section 112.***

Penalty for improper importation of goods, etc.

- Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

(iii) [in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereinafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees] whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]"

(D) *Section 114A. Penalty for short-levy or non-levy of duty in certain cases.*

- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:]

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

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the purposes of this section, the duty or interest as reduced of increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, alongwith the interest payable thereon under section 28-AA, and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation.-For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under [sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

7. In the present case, it appeared that the said importer has failed to discharge the conditions laid down under Notification No. 158/1995-Cus. Dated 14.11.1995 inasmuch as they have not submitted documentary evidence pertaining to re-export of the said imported goods within prescribed time limit. Thus, the said importer appeared to have not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond. Therefore, the said importer appeared to have wrongly claimed and availed the benefit of the above-mentioned notification and therefore contravened the above said provisions with an intent to evade payment of Customs Duty leviable and payable on the import of subject goods. It appeared that the said importer had contravened the provisions of sub-section (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as while filing Bill of Entry, they had to ensure the accuracy and completeness of the information given therein for assessment of Customs duty. Therefore, the said importer appeared liable to pay duty amounting to **Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only),** as mentioned in **Annexure-A** to the show cause notice, in respect of the said imported goods along with interest at the applicable rate, in terms of the condition of Re-export Bond executed by the importer and Section 143 of the Customs Act,1962 and also the Re-export Bonds and Provisional Duty Bonds furnished by the importer are required to be enforced/appropriated for such recovery.

8. As per clause (o) of Section 111 of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962 or any other law for the time being in force, in respect of which the condition is not observed, shall be liable to confiscation. As the exemption under Notification No. 158/1995-Cus. was granted to the said containers of durable nature, subject to the condition of their re-exportation within prescribed time limit,

whereas the said condition has not been observed, therefore, the aforesaid goods appeared liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, the said goods totally valued at **Rs. 17,73,406/- (Rupees Seventeen Lakh Seventy Three Thousand Four Hundred Six Only),** as mentioned in **Annexure-A** to the show cause notice, appeared liable for confiscation under Section 111(o) of the Customs Act, 1962.

9. The aforesaid acts of omission and commission on the part of the said importer appeared to have rendered them liable to penalty as provided under Section 112(a) / 114A of the Customs Act, 1962.

10. Thereafter, a Show Cause Notice was issued to M/s. Rasna Pvt. Ltd. from F. No. F. No. VIII/22-12/ICD /Audit/2015 dated 01.07.2024, to show cause to the Additional Commissioner of Customs, as to why:-

(i) The exemption under Notification No. 158/1995-Cus dated 14.11.1995, claimed and availed in respect of Bill of Entry No. 5916928 dated 04.02.2012 should not be denied and said Bill of Entry be re-assessed / finalized accordingly;

(ii) The imported goods of declared Assessable value of Rs. 17,73,406/- (Rupees Seventeen Lakh Seventy Three Thousand Four Hundred Six Only), should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act,1962 read with Notification No. 158/1995-Cus dated 14.11.1995 as amended / applicable and why redemption fine should not be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962;

(iii) Duty Forgone amount of Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only) along with applicable interest (from the date of clearance of goods to the date of payment of duty) should not be demanded and recovered from them in terms of conditions of Bond executed under section 143 of the Customs Act, 1962 read Notification No. 158/1995-Cus. dated 14.11.1995, as amended;

(iv) Penalty should not be imposed on the importer under Section 112(a) / 114A of the Customs Act, 1962 for the acts of omission and commission;

(v) Re-export Bonds and Provisional Duty Bonds furnished by the importer should not be enforced for recovery of duty, interest, penalty and Redemption Fine, if any.

WRITTEN SUBMISSION AND PERSONAL HEARING:-

11. In response to the show cause notice, M/s. Rasna Pvt. Ltd. have submitted any a written submission dated 24.01.2025 vide which they stated:-

- The noticee exported "Rasna Instant Drink Powder" of different flavours vide invoice dated 28.07.2011. The Health Authority of the importing country had registered the product with shelf life of 18 months, while the shipment mentioned the shelf life of 24 months.
- The noticee re-imported the said consignment vide Bill of Entry No. 5916928 dated 04.02.2012 by availing benefit of Noti. No. 158/1995-Cus dated 14.11.1995.
- The said goods were re-exported the goods as under:-

Description of Goods	Re-imported under BE No. 5916928	Re-export of Goods (Shipping Bill Nos.)					
		3084528	8371791	9402689	1571149	1647259	2745751
750gm Glass Jar x 15 pack of 3 (OR-OR MG XS packs)	250	-	205	45	-	-	-
2.5 kg Tin x 6 ORG + 500 gm ORG	200	200	-	-	-	-	-
2.5 kg Tin x 6 MG + 500 gm MG	50	50	-	-	-	-	-
2.5 kg Tin x 6 Lemon + 500 gm ORG	50	-	50	-	-	-	-
750 gm refill pouch x 15 MG	150	-	150	-	-	-	-
1 kg. refill pouch x 15 ORG	150	50	-	-	-	-	100
500 gm HDPE Jar x 24 ORG	100	50	-	25	-	25	-
500 gm HDPE Jar x 24 MG	100	50	-	25	-	25	-
500 gm HDPE Jar x 24 Water melon	50	50	-	-	-	-	-
500 gm HDPE Jar x 24 Guava	80	-	-	25	20	-	-
Total Cases	1180	450	405	120	20	50	100

- In shipping Bill Nos. 3084528 dated 25.05.2012, 9371791 dated 13.06.2012 and 9402689 dated 15.06.2012, it was clearly mentioned that "Goods re-exported after re-processing etc. as per Not. No. 158/95-Cus (imported vide B E No. 5366434 Dt. 02.12.2011 and B E No. 5916928 dt. 04.02.2012)".

- In shipping Bill Nos. 1571149 dated 01.09.2012, 1647259 dated 07.09.2012 and 2745751 dated 26.11.2012, the goods were re-exported, however, it was inadvertently left to write “Goods re-exported after re-processing etc. as per Not. No. 158/95-Cus ...”
- In respect of a quantity of 35 cases of 500 gm. HDPE Jar x 24 Guava , the re-export documents are not readily available.
- It is therefore requested to take the aforesaid Shipping Bills, Invoices and other documents, pertaining to re-export of goods re-imported vide Bill of Entry No. 5916928 dated 04.02.201 2, into consideration and drop the Show Cause Notice.
- It is settled principle of law that when no period of limitation is prescribed, show cause notice must be issued within reasonable period. Show Cause Notice issued after more than 12 years from the Bill of Entry is barred by limitation and may be dropped on this ground alone. They relied on the judgment of
    - Hon’ble SC in the case of State of Punjab Versus Bhatinda District Co. Op. Milk P. Union Ltd. [2007 (217) E.L.T.325 (S.C.)]
    - Hon'ble High Court of Punjab & Haryana, in the case of Famina Knit Fabs [2020 (371) E.L.T. 97 (P&H)]
- the Noticee has followed all the procedures and fulfilled conditions of Notification No. 158/1995-Cus. and re-exported the goods which were re-imported vide Bill of Entry No. 5916928 dated 04.02.2012. Therefore, exemption under Notification No. 158/1995-Cus. has rightly been availed by the Noticee.
- the Noticee has followed all the procedure and fulfilled all the conditions of Notification No. 158/1995-Cus. and re-exported the goods imported by availing benefit of the said Notification. Therefore, the goods re-imported by the Noticee vide Bill of Entry No. 5916928 dated 04.02.2012 are not liable for confiscation.
- The Hon'ble CESTAT (Larger Bench), in the case of Shiv Kripa Ispat Pvt. Ltd. Versus Commissioner of Central Excise & Customs, Nasik [2009 (235) E.L.T.623 (Tri. - LB)l has held that goods cannot be confiscated when not available and redemption fine cannot be imposed. As the goods re-imported vide Bill of Entry No. 5916928 dated 04.02.2012 are not available for confiscation, the same cannot be confiscated and no Redemption Fine can be imposed.
- the Noticee has followed all the procedures and fulfilled all the conditions prescribed under Notification No. 158/1995-Cus. in respect of goods re-imported vide Bill of Entry No. 5916928 dated 04.02.2012, therefore penalty under Section I l2(a) cannot be imposed on the Noticee.
- the Noticee has not short paid the Customs Duty by reason of suppression of facts, penalty under Section 114A of the Customs Act, 1962 cannot be imposed on the Noticee. Furthermore, the penalty under Section 114A of the Customs Act, 1962 can be imposed on a person who is liable to pay the duty or interest determined under subsection (8) of section 28 of the Customs Act, 1962. It is pertinent to mention here that the Show Cause Notice does not propose to demand duty or interest from the Noticee under Section 28 of the Customs Act,

1962. For this reason also, penalty under Section I l4A of the Customs Act, 1962 cannot be imposed on the Noticee.

- the Noticee request that the Show Cause Notice be withdrawn / dropped against them. The Noticee wishes to be heard in person.

12. Accordingly, opportunities to be heard in person were given to the noticee on 05.12.2024, 24.12.2024, and 09.01.2025 in compliance with Principle of Natural Justice. All the personal hearing letters were sent as per the provisions of Section 153(1) of the Customs Act, 1962. Further on request of the noticee, 03 more opportunities were given on 11.02.2025, 03.03.2025, 17.03.2025 and 24.03.2025. However, the noticee did not attend any of the Personal Hearing.

13. From the aforesaid facts, it is observed that sufficient opportunity has been granted to the noticee, but they chose not to join the personal hearing.

DISCUSSIONS AND FINDINGS:

14. I have carefully gone through the show cause notice and written submissions in the present case.

14.1 Now I proceed to adjudicate the subject show cause notice dated 01.07.2024. I find that the show cause notice was issued to M/s. Rasna Pvt. Ltd. due to observations of the audit of the EDI Systems and available records that the noticee failed to re-export the said goods in time frame imported under Bill of Entry No. 5916928 dated 04.02.2012. I also find that as per records no such extension of period for re-export has been allowed to them. Therefore, the Customs duty Forgone amount of **Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only),** appeared to be recoverable along with applicable interest in terms of conditions of Bond executed under section 143 of the Customs Act, 1962 read with Notification No. 158/1995-Cus dated 14.11.1995 as amended. Also, penalty appeared imposable on the importer under Section 112(a)/114A of the Customs Act, 1962 for the acts of omission and commission.

14.2 Now therefore, the issues before me are to decide:-

a. Whether the exemption under Notification No. 158/1995-Cus dated 14.11.1995, in respect of above said Bill of Entry No. 5916928 dated 04.02.2012 is available to the noticee.

b. Whether the imported goods of declared Assessable value of Rs. 17,73,406/- (Rupees Seventeen Lakh Seventy Three Thousand Four Hundred Six Only), are liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act,1962 read with Notification No. 158/1995-Cus dated 14.11.1995, as amended.

c. Whether Duty Forgone amount of Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only) is recoverable along with applicable interest in terms of conditions of Bond executed under section

143 of the Customs Act, 1962 read with Notification No. 158/1995-Cus dated 14.11.1995, as amended / applicable.

d. Whether penalty is imposable on the importer under Section 112(a)/114A of the Customs Act, 1962.

14.3 Now, I proceed to decide whether the exemption under Notification No. 158/1995-Cus dated 14.11.1995, in respect of above said Bill of Entry No. 5916928 dated 04.02.2012 is available to the noticee.

14.3.1 I find that the M/s. Rasna Pvt. Ltd. submitted their written submission dated 24.01.2025 vide which they submitted details of several shipping bills as given in Table-1 below, wherein they submitted that they had re-exported part quantities as imported vide Bill of Entry No. 5916928 dated 04.02.2012:

Table-1

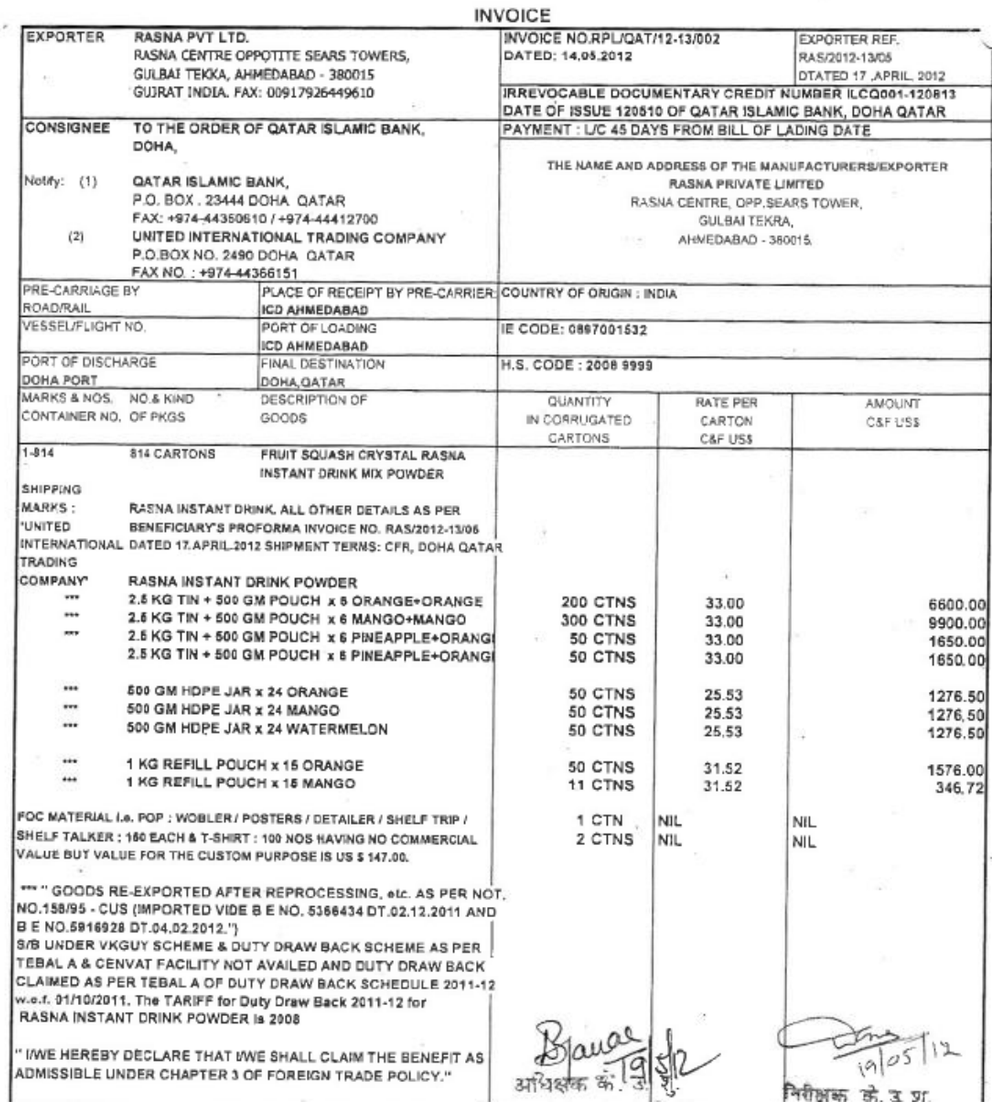
Shipping Bill No./Date	**Time lapsed after OOC**	**Whether any remarks regarding Re-export on the Shipping Bill**
3084528 dated 25.05.2012	Within 06 months	Yes, "Goods re-exported after reprocessing etc. as per Not. No. 158/95-Cus (imported vide B E No. 5366434 dt. 02.12.2011 and BE No. 5916928 dt. 04.02.2012)"
9371791 dated 13.06.2012	Within 06 months	Yes, "Goods re-exported after reprocessing etc. as per Not. No. 158/95-Cus (imported vide B E No. 5366434 dt. 02.12.2011 and BE No. 5916928 dt. 04.02.2012)"
9402689 dated 15.06.2012	Within 06 months	Yes, "Goods re-exported after reprocessing etc. as per Not. No. 158/95-Cus (imported vide B E No. 5366434 dt. 02.12.2011 and BE No. 5916928 dt. 04.02.2012)"
1511149 dated 01.09.2012	Beyond 06 months	No
1647259 dated 07.09.2012	Beyond 06 months	No
2745751 dated 26.11.2012	Beyond 06 months	No

14.3.2 From the above, I find that the noticee has submitted details of 06 shipping bills out of which last 03 shipping bills pertain to time beyond 06 months and have no remarks regarding re-export. I find that the noticee neither requested for extension of time limit beyond 06 months and nor such extension for exceeding period of six months was granted to them by the Assistant Commissioner of Customs. I also find that it is difficult to establish whether imported goods were re-exported under these 03 shipping bills, in absence of any identification or report by the Customs Officers i.e. examining and assessing officers and no remarks on the shipping bills. I find even if it is considered that the goods have been re-exported under these 03 shipping bills, the condition of

time limit was not fulfilled. Hence, I hold that last 03 shipping bills i.e. 1511149 dated 01.09.2012, 1647259 dated 07.09.2012 and 2745751 dated 26.11.2012 cannot be considered as proof of re-export.

14.3.3 I find that for the first 03 shipping bills, the noticee has submitted that remarks were there on the invoices as *"Goods re-exported after reprocessing etc. as per Not. No. 158/ 95-Cus (imported vide B E No. 5366434 dt. 02.12.2011 and BE No. 5916928 dt. 04.02.2012)",* however, the individual item wise details were not provided whether the said items being re-exported were imported under Bill of Entry 5366434 dated 02.12.2011 or 5916928 dated 04.02.2012 as evident from the following Image-1:

Image-1



INVOICE

EXPORTER	RASNA PVT LTD. RASNA CENTRE OPPOTITE SEARS TOWERS, GULBAI TEKKA, AHMEDABAD - 380015 GUJRAT INDIA. FAX: 00917926449610		INVOICE NO.RPL/QAT/12-13/002 DATED: 14.05.2012		EXPORTER REF. RAS/2012-13/05 DTATED 17 ,APRIL, 2012
			IRREVOCABLE DOCUMENTARY CREDIT NUMBER ILCQ001-120813 DATE OF ISSUE 120510 OF QATAR ISLAMIC BANK, DOHA QATAR		
CONSIGNEE	TO THE ORDER OF QATAR ISLAMIC BANK, DOHA,		PAYMENT : L/C 45 DAYS FROM BILL OF LADING DATE		
Notify: (1)	QATAR ISLAMIC BANK, P.O. BOX . 23444 DOHA QATAR FAX: +974-44350610 / +974-44412700		THE NAME AND ADDRESS OF THE MANUFACTURERS/EXPORTER RASNA PRIVATE LIMITED RASNA CENTRE, OPP.SEARS TOWER, GULBAI TEKRA, AHMEDABAD - 380015.		
(2)	UNITED INTERNATIONAL TRADING COMPANY P.O.BOX NO. 2490 DOHA QATAR FAX NO. : +974-44366151				
PRE-CARRIAGE BY ROAD/RAIL		PLACE OF RECEIPT BY PRE-CARRIER ICD AHMEDABAD	COUNTRY OF ORIGIN : INDIA		
VESSEL/FLIGHT NO.		PORT OF LOADING ICD AHMEDABAD	IE CODE: 0897001532		
PORT OF DISCHARGE DOHA PORT		FINAL DESTINATION DOHA,QATAR	H.S. CODE : 2008 9999		
MARKS & NOS. CONTAINER NO.	NO.& KIND OF PKGS	DESCRIPTION OF GOODS	QUANTITY IN CORRUGATED CARTONS	RATE PER CARTON C&F US$	AMOUNT C&F US$
1-814	814 CARTONS	FRUIT SQUASH CRYSTAL RASNA INSTANT DRINK MIX POWDER			
SHIPPING MARKS : 'UNITED INTERNATIONAL TRADING COMPANY'	RASNA INSTANT DRINK, ALL OTHER DETAILS AS PER BENEFICIARY'S PROFORMA INVOICE NO. RAS/2012-13/05 DATED 17.APRIL.2012 SHIPMENT TERMS: CFR, DOHA QATAR				
		RASNA INSTANT DRINK POWDER			
***		2.5 KG TIN + 500 GM POUCH x 6 ORANGE+ORANGE	200 CTNS	33.00	6600.00
***		2.5 KG TIN + 500 GM POUCH x 6 MANGO+MANGO	300 CTNS	33.00	9900.00
***		2.5 KG TIN + 500 GM POUCH x 6 PINEAPPLE+ORANG	50 CTNS	33.00	1650.00
		2.5 KG TIN + 500 GM POUCH x 6 PINEAPPLE+ORANG	50 CTNS	33.00	1650.00
***		500 GM HDPE JAR x 24 ORANGE	50 CTNS	25.53	1276.50
***		500 GM HDPE JAR x 24 MANGO	50 CTNS	25.53	1276.50
***		500 GM HDPE JAR x 24 WATERMELON	50 CTNS	25.53	1276.50
***		1 KG REFILL POUCH x 15 ORANGE	50 CTNS	31.52	1576.00
***		1 KG REFILL POUCH x 15 MANGO	11 CTNS	31.52	346.72
FOC MATERIAL i.e. POP : WOBLER / POSTERS / DETAILER / SHELF TRIP / SHELF TALKER : 160 EACH & T-SHIRT : 100 NOS HAVING NO COMMERCIAL VALUE BUT VALUE FOR THE CUSTOM PURPOSE IS US $ 147.00.			1 CTN 2 CTNS	NIL NIL	NIL NIL
*** " GOODS RE-EXPORTED AFTER REPROCESSING, etc. AS PER NOT. NO.158/95 - CUS (IMPORTED VIDE B E NO. 5366434 DT.02.12.2011 AND B E NO.5916928 DT.04.02.2012.") S/B UNDER VKGUY SCHEME & DUTY DRAW BACK SCHEME AS PER TEBAL A & CENVAT FACILITY NOT AVAILED AND DUTY DRAW BACK CLAIMED AS PER TEBAL A OF DUTY DRAW BACK SCHEDULE 2011-12 w.e.f. 01/10/2011. The TARIFF for Duty Draw Back 2011-12 for RASNA INSTANT DRINK POWDER is 2008 " I/WE HEREBY DECLARE THAT I/WE SHALL CLAIM THE BENEFIT AS ADMISSIBLE UNDER CHAPTER 3 OF FOREIGN TRADE POLICY."					

अधिक्षक के. उ. शु.

19/05/12

निरीक्षक के. उ. शु.

In view of the above, I find that a clear mapping regarding re-export of imported goods vide Bill of Entry No. 5916928 dated 04.02.2012 is not present and the noticee has not further clarified the same. Hence, it is difficult to consider the same as proof of re-export as the same facts were not even brought to the knowledge of the jurisdictional officers at any time from the import of the impugned goods till date.

14.3.3 I also find that some items, which the noticee claimed to have re-exported vide above said shipping bills, could not be found in any of the shipping bills such as "*2.5 kg Tin x 6 Lemon + 500 gm ORG*". I find that the noticee has contended that the item was re-exported vide shipping bill no. 9371791 dated 13.06.2012, however the exact match could not be found as evident from image-2 below:-

Image-2

INVOICE

EXPORTER	**RASNA PRIVATE LIMITED** RASNA CENTRE, OPP.SEARS TOWER, GULBAI, TEKRA, AHMEDABAD - 380015, GUJARAT, INDIA. TEL.+917926449603/04 FAX.26449610		**INVOICE NO.RPL/BAH/12-13/005** EXPORTER REF. **DATED 09.06.2012** RAS/BAH/2012-2013/002 DT.10.04.2012 **PAYMENT TERMS : 100 % D P AT SIGHT BANK TO BANK**	
CONSIGNEE	**BABASONS S.P.C.** P.O.BOX 23599 MUHARRAK, KINGDOM OF BAHRAIN TEL:00973 17 730478 EXT.103		**NAME AND ADDRESS OF THE MANUFACTURER/EXPORTER** **RASNA PRIVATE LIMITED** RASNA CENTRE, OPP.SEARS TOWER, GULBAI, TEKRA, AHMEDABAD - 380015, GUJARAT, INDIA. TEL.+917926449603/04 FAX.26449610	
NOTIFY :	**BABASONS S.P.C.** P.O.BOX 23599 MUHARRAK, KINGDOM OF BAHRAIN TEL:00973 17 730478 EXT.103			
BANK DETAILS:	**ARAB BANK P.O.BOX:395 MANAMA KINGDOM OF BAHRAIN** A/C NO: 623964-080 SWIFT: ARABBHBMMAN TEL:00973 17 549000 FAX:00973 17 541116		**COUNTRY OF ORIGIN OF GOODS: INDIA**	
PRE-CARRIAGE BY ROAD/RAIL		PLACE OF RECEIPT BY PRE-CARRIER : AHMEDABAD	**IE CODE: 0897001532**	
VESSEL/FLIGHT NO.		PORT OF LOADING **ICD-KHODIYAR PORT**	**HS CODE: 20089999**	
PORT OF DISCHARGE **MANAMA, BAHRAIN**		FINAL DESTINATION **MANAMA, BAHRAIN**		
MARKS & NOS. CONTAINER NO.	NO.& KIND OF PKGS	DESCRIPTION OF GOODS	QUANTITY IN CORRUGATED CARTONS	RATE PER CARTON US$	AMOUNT US$
1-1158 **SHIPPING MARK :** **BABASONS KINGDOM OF BAHRAIN**	**1158 CORRUGATED CARTONS**	**FRUIT SQUASH CRYSTAL RASNA INSTANT DRINK MIX**			
		750 GM x 15 GLASS JAR			
	***	**ORANGE**	**125 CTNS**	**27.49**	**3436.25**
	***	**MANGO**	**80 CTNS**	**27.49**	**2199.20**
		LEMON	**40 CTNS**	**27.49**	**1099.60**
		PINEAPPLE	**40 CTNS**	**27.49**	**1099.60**
		PINK GUAVA	**55 CTNS**	**27.49**	**1511.95**
		WATERMELON	**35 CTNS**	**27.49**	**962.15**
		750 GM x 15 REFILL POUCH			
	***	**ORANGE**	**100 CTNS**	**19.25**	**1925.00**
		ORANGE	**100 CTNS**	**19.25**	**1925.00**
	***	**MANGO**	**100 CTNS**	**19.25**	**1925.00**
		MANGO	**100 CTNS**	**19.25**	**1925.00**
		LEMON	**60 CTNS**	**19.25**	**1155.00**
		PINEAPPLE	**80 CTNS**	**19.25**	**1540.00**
		2.5 KG x 6 TIN			
		MANGO	**63 CTNS**	**29.00**	**1827.00**
	***	**LEMON**	**50 CTNS**	**29.00**	**1450.00**
		PINEAPPLE	**40 CTNS**	**29.00**	**1160.00**
		PINK GUAVA	**50 CTNS**	**29.00**	**1450.00**
		WATERMELON	**40 CTNS**	**29.00**	**1160.00**

In view of the above and in absence of clear mapping, I hold that the shipping bills as provided by the noticee cannot be considered as proof of re-export.

14.3.4 I find from the foregoing paras that the noticee has failed to submit the proof of re-export of subject goods as per conditions of Notification No. 158/1995-Cus dated 14.11.1995. exempts containers which are of durable nature, from the whole of the duty of Customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the whole of the additional duty leviable under section 3 of the said Customs Tariff Act, subject to the condition that the said containers are re-exported within six months from the date of their importation or such extended period not exceeding a further period of six months as the Assistant Commissioner of Customs may allow.

14.3.5 I further find In terms of the conditions of Notification No. 158/1995-Cus., the importer is also required to execute a bond, binding himself (a) to export the said

containers within the stipulated period and to furnish documentary evidence thereof to the satisfaction of the Assistant Commissioner; and (b) to pay the duty leviable thereon in the event of the importer's failure to do so.

14.3.6 I find that M/s. Rasna Pvt. Ltd. submitted Re-export Bond in respect of Bill of Entry No. 5916928 dated 04.02.2012. I find from the available records, that the importer had neither applied for extension of the period for re-export, nor such extension of period for re-export, had been allowed to them. However, even after expiry of one year from the import of the said goods, the said importer had not submitted proof of re-exportation of the said goods to the satisfaction of the Deputy / Assistant Commissioner of Customs, as required under the conditions of Notification No. 158/1995-Cus. As the said importer had not submitted the required documents and therefore the aforesaid Bonds have not been closed.

14.3.7 Further, I find that the Consultative clarification letters F. No. VIII/22-12/ICD/Audit/2015 dated 28.07.2020, 21.12.2022 and 05.12.2023 had been issued to the importer informing that the re-export bonds were still pending for closure, requesting to submit all the documents pertaining to re-export of the goods within prescribed time limit. Therefore, I hold that the said goods have not been re-exported within time limits as per the notification No. 158/1995-Cus dated 14.11.1995.

14.3.8 I would like to rely on the judgment of Hon'ble Supreme Court in the matter of ***M/S. NOVOPAN INDIA LTD. REPORTED AT 1994 (73) ELT 769 (SC)***, wherein the Hon'ble SC held that:

> *"18. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) E.L.T. (J 350) (SC) = 1969 (2) S.C.R. 253) that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be*

governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

14.3.9 Further, I would like to rely on the judgment of the Constitutional Bench in Hon'ble Supreme Court in the matter of ***M/S. DILIP KUMAR & COMPANY. REPORTED AT 2018 (361) ELT 577 (SC)***, wherein the Hon'ble SC held that:

"48. The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.

49. The ratio in Mangalore Chemicals case (supra) was approved by a three-Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :

"We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State...."

50. In Tata Iron & Steel Co. Ltd. v. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -

"The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd. v. CCE and Customs)."

...

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

14.3.10 Further, I would like to quote the lines from the case of ***COLLECTOR OF CUSTOMS, BANGALORE & ANR. VS. M/S. MAESTRO MOTORS LTD. & ANR. 2004 (10) SCALE 253***, wherein the Court held:

"It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language."

In view of above case laws, I find that the burden of proving the claim of exemption notification is squarely on the noticee, which he failed to due to non-observance of conditions of the said notification 104/94 -Customs. I find that the said importer had neither applied for extension of the period for re-export before expiry of the said time limit, nor such extension of period for re-export has been allowed to them. I also find that, even after expiry of one year from the import of the said goods, the said importer had not submitted proof of re-exportation of the said goods to the satisfaction of the Deputy / Assistant Commissioner of Customs, as required under the conditions of Notification No. 104/94-Cus. Therefore, I hold that the exemption under Notification No. 104/94-Cus dated 14.11.1995, in respect of Bill of Entry No. 5916928 dated 04.02.2012 is **NOT** available to the noticee i.e. M/s. Rasna Pvt. Ltd.

14.4 Now I decide whether the imported goods of declared Assessable value of Rs. 17,73,406/- (Rupees Seventeen Lakh Seventy Three Thousand Four Hundred Six Only), are liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act,1962 read with Notification No. 158/1995-Cus dated 14.11.1995, as amended.

14.4.1 I find from the foregoing Paras that M/s. Rasna Pvt. Ltd. have not fulfilled their conditions of the notification No. 158/1995-Cus dated 14.11.1995 by not re-exporting the said goods within Six months or the stipulated time period, therefore, as per Section 143 (3) –

"(3) If the thing is not done within the time specified in the bond, the [1][Assistant Commissioner of Customs or Deputy Commissioner of Customs]

shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law."

14.4.2 I further find that as per clause (o) of Section 111 of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962 or any other law for the time being in force, in respect of which the condition is not observed, shall be liable to confiscation. As the exemption under Notification No. 158/1995-Cus. was granted to the said re-imported goods subject to the condition of their re-exportation within prescribed time limit, whereas the said condition has not been observed, therefore, the aforesaid goods appear liable for confiscation under Section 111(o) of the Customs Act, 1962.

14.4.3 I find that in terms of Section 17 of the Customs Act, "self-assessment" has been provided for the duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit, or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the noticee and aforesaid fact came to light only subsequent to the in-depth investigation. Further I find that the noticee was not able to justify the delay in the re-export. I find that the said importer has failed to discharge the conditions laid down under Notification No. 158/1995-Cus. dated 14.11.1995 inasmuch as they have not submitted documentary evidence pertaining to re-export of the said re-imported goods within prescribed time limit. Thus, I find that M/s. Rasna Pvt. Ltd. have violated the provisions of Section 46 (4) of the Customs Act, 1962 and these acts on part of M/s. Rasna Pvt. Ltd. I hold the imported goods valued at **Rs. 17,73,406/- (Rupees Seventeen Lakh Seventy Three Thousand Four Hundred Six Only),** liable to confiscation under Section 111 (o) of the Customs Act, 1962.

14.4.4 As the impugned goods are found liable to confiscation under Section 111 (0) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

"***125 Option to pay fine in lieu of confiscation*** –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose

possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit…"

14.4.5 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of ***M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as under:

"….

….

….

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ….", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

….

…."

14.4.6 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of ***SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.),*** has followed the dictum as laid down by the Madras High Court. In view of the above, I find that subject goods can be allowed to be redeemed on payment of redemption fine under Section 125 of the Customs Act, 1962, hence redemption fine in lieu of confiscation is imposable on the said imported goods.

14.5 Now, I decide Whether Duty Forgone amount of Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only) is recoverable along with applicable interest in terms of conditions of Bond executed under section 143 of the Customs Act, 1962 read with the Notification No. 158/1995-Cus dated 14.11.1995, as amended / applicable.

14.5.1 I find from the foregoing Paras that M/s. Rasna Pvt. Ltd. have not fulfilled their conditions of the notification No. 158/1995-Cus dated 14.11.1995 by not re-exporting the said goods within Six months or the stipulated time period.

14.5.2 I find that the importer had executed RE-Bond, binding himself to re-export the said goods within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said the Deputy/Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so. However, as discussed in foregoing paras, the importer have neither re-exported the same within time nor paid the Customs duty leviable thereon in terms of the Bonds executed by them. At this juncture, it is to mention that the term "Bond" is not defined under the Customs Act, 1962. However, the same has been defined under Sub-section (5) of Section 2 of the Indian Stamp Act, 1899 as under:

> *(5) "Bond" —"Bond" includes—*
> *(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;*
> *(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and*
> *(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:*

Likewise, Section 2(d) of The Limitation Act, 1963 defines the term 'Bond' as under:

> *(d) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;*

14.5.3 In light of the definition of the term 'Bond' it is expressly clear that the importer has undertaken the obligation to pay Customs Duty alongwith Interest in the event of non-fulfillment of export obligation. Such act of the importer to the effect of not paying Customs Duty alongwith Interest tantamount to dishonoring the Bond executed by them. Therefore, I hold that M/s. Rasna Pvt. Ltd. are liable to pay the Customs duty to the tune of **Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only)** along with applicable interest (from the date of clearance of goods to the date of payment of duty) in terms of conditions of Bond executed under section 143 of the

Customs Act, 1962 read Notification No. 158/1995-Cus. dated 14.11.1995, as amended.

14.6 Whether penalty is imposable on the importer under Section 112(a)/114A of the Customs Act, 1962.

14.6.1 Section 112 reads as follows:

> ***"SECTION 112. Penalty for improper importation of goods, etc.-***
>
> *Any person, -*
>
> *(a)* ***who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111,*** *or abets the doing or omission of such an act, or*
>
> *…*
>
> *shall be liable, -*
>
> *…*
>
> *[2] [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher …"*

14.6.2 I find from the foregoing Paras that M/s. Rasna Pvt. Ltd. have not fulfilled their conditions of the notification No. 158/1995-Cus dated 14.11.1995 by not re-exporting the said goods within Six months or the stipulated time period, therefore, the goods were liable to confiscation under Section 111(o) and the importer is liable for penalty under Section 12(a)(ii) of the Customs Act, 1962.

14.6.3 Penalty under Section 114A of the Customs Act, 1962: I find that the demand of duty of **Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only)** has been made under provisions of the Customs Act, 1962 from M/s. Rasna Pvt. Ltd. In the present case, it is evident that the actual facts were only known to the noticee and aforesaid fact came to light only subsequent to the in-depth investigation. Further I find that the noticee was not able to justify the no –observance of re-export.

14.6.4 I find that the said importer has failed to discharge the conditions laid down under Notification No. 158/1995-Cus dated 14.11.1995 inasmuch as they have not submitted documentary evidence pertaining to re-export of the said re-imported goods within prescribed time limit. Thus, I find that M/s. Rasna Pvt. Ltd. have violated the provisions of Section 46 (4) of the Customs Act, 1962. In the instant case, the ingredient of suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of

quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid as proposed in the Show Cause Notice.

14.6.5 I find that fifth proviso to Section 114A stipulates that *"where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114"*. Hence, I refrain from imposing penalty on M/s. Rasna Pvt. Ltd. under Section 112 of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

15. Therefore, I pass the following order -

ORDER

a) I deny the benefit of exemption Notification No. 158/1995-Cus dated 14.11.1995, to M/s. Rasna Pvt. Ltd., claimed and availed in respect of Bill of Entry No. 5916928 dated 04.02.2012;

b) I hold the imported goods of declared Assessable value of **Rs. 17,73,406/- (Rupees Seventeen Lakh Seventy Three Thousand Four Hundred Six Only)**, liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act,1962 read with Notification No. 158/1995-Cus dated 14.11.1995 as amended / applicable. However I given M/s. Rasna Pvt. Ltd.an option to redeem the said imported goods on payment of fine of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** under Section 125 of the Customs Act, 1962;

c) I order to demand Duty of an amount of **Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only)** along with applicable interest (from the date of clearance of goods to the date of payment of duty) and recover from M/s. Rasna Pvt. Ltd. in terms of conditions of Bond executed under section 143 of the Customs Act, 1962 read Notification No. 158/1995-Cus. dated 14.11.1995, as amended;

d) I impose a Penalty of **Rs. 7,68,022/- (Rupees Seven Lakh Sixty Eight Thousand Twenty Two Only) plus interest as determined in para (c) above** on the importer under Section 114A of the Customs Act, 1962 for the acts of omission and commission. I refrain from imposing penalty on them under Section 112 for the reasons discussed in foregoing Paras;

e) I order to enforce the Re-export Bonds furnished by the importer for recovery of duty, interest, penalty and Redemption Fine.

16. The Show Cause Notice No. VIII/22-12/ICD /Audit/2015 dated 01.07.2024 is disposed of in terms of the para above.

Signed by
Shree Ram Vishnoi
Date: 28-03-2025 17:02:57

(SHREE RAM VISHNOI)
Additional Commissioner

DIN: 20250371MN000000EE90

F. No. VIII/10-158/ICD-Khod/O&A/HQ/2024-25 Date: **28.03.2025**

By Speed post/RPAD

To,

M/S. RASNA PVT. LTD.,
RASNA HOUSE, OPP. SEARS TOWER,
GULBAI TEKRA, AHMEDABAD,
GUJARAT – 380006.

Copy to:-

(i) The Principal Commissioner, Customs Ahmedabad (Kind Attention: RRA Section).

(ii) The Assistant Commissioner of Customs, ICD – Khodiyar, Ahmedabad

(iii) The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad

(iv) The Superintendent (Task Force), Customs-Ahmedabad

(v) Guard File