



OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE KANDLA.
NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, KANDLA, KUTCH, GUJARAT.

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A. File No.	:	F.No. S/14-01/EXP/VC/2024-25
B. Order-in- Original No.	:	KDL/ADC/DPB/02/2024-25
C. Passed by	:	Dev Prakash Bamanavat, Additional Commissioner of Customs Customs House, Kandla
D. Date of order /Date of issue	:	21.05.2024
E. Investigation Report Issued from	:	F.No. CUS/SIIB/HOC/53/2024 dated 10.05.2024 issued by AC (SIIB), Customs House, Kandla.
E. Show Cause Notice No. &Date	:	Exporter requested for waiver of Show Cause Notice and Personal Hearing.
F. Noticee(s)/Party/ Exporter	:	M/s. VERMA CORPORATION, (IEC no. AAPFV8663F), OFFICE NO.115, PLOT NO.93, SECTOR-8, RISHAB CORNER, GHANDHIDHAM, GUJARAT - 370201.
G. DIN	:	20240571MLO00000EA17

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

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

“सीमा शुल्क आयुक्त (अपील), कांडला

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद-380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानीचाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य मंलग्न किया जाए।

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

(i) उक्त अपील की एक प्रति और A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रतिजिम पर अनुमूल्य-1 के अनुमार न्यायालय शुल्क अधिनियम-1870 के मादर्स-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

5. अपील ज्ञापन के साथ ड्यूटी/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण मंलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करने समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

Brief Facts of the Case:

M/s. Verma Corporation (hereinafter referred to as the noticee/ exporter) having IEC no. AAPFV8663F is engaged in the business of trading of imported Coal, Quartz etc. The exporter filed shipping bill no. 9318091 dated 22.04.2024 and 9318417 dated 22.04.2024 for export of "Indian Origin Fresh Potatoes" under CTH 07019000 through their CHA **M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.** The details of the Shipping Bills are as under:

S.No.	Shipping Bill No. & Date	Declared Goods	Qty.	Container No.
1.	9318091/22.04.2024	INDIAN ORIGIN FRESH POTATOES	82800	TRIU8437052 TRIU8193790 TNU8019504
2.	9318417/22.04.2024	INDIAN ORIGIN FRESH POTATOES	81000	TRIU8032711 TCLU1214643 TRIU8422108

1.1. The above mentioned Shipping Bills were facilitated by the RMS, however as per the Intelligence received by the SIIB, Custom House, Kandla, the Shipping Bills were put on Hold and the goods were taken up for examination by the SIIB. The goods were examined in KICT Terminal, Kandla Port on 27.04.2024 in the presence of the independent panchas, Shri Jagdish Vadiya, Shift Incharge of M/s KICT Terminal, Kandla Port and Shri Bharat Babulal Sapela, G Card Holder of CHA i.e. M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.

2. Action Taken and Investigation Conducted:

2.1 The goods were 100% examined in KICT Terminal, Kandla Port on 27.04.2024 in the presence of Shri Jagdish Vadiya, Shift Incharge of M/s KICT Terminal, Kandla Port and Shri Bharat Babulal Sapela, G Card Holder of CHA i.e. M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. On examination of the goods it was found that all the six containers were fully packed with "Red Onions" packed in sacks of around 20 Kg capacity each instead of the declared goods of description "Indian Origin Fresh Potato".

2.2 All the six containers of 40 feet size were fully loaded with red onions and not with the described goods "Indian Origin fresh potato" as mentioned in the Shipping Bills. Details of the onion bags found in each container are as follows:-

S.No.	SB No. & Date	Container No.	No. of Bags	Total weight (in Kgs.)
1	9318091 dated 22.04.2024	TRIU8437052	1380	27600
2		TRIU8193790	1380	27600
3		TNU8019504	1380	27600
4	9318417 dated 22.04.2024	TRIU8032711	1350	27000
5		TCLU1214643	1350	27000
6		TRIU8422108	1350	27000

2.3 Further, DGFT, vide notification 49/2023 dated 07.12.2023 prohibited the export of Onion under CTH 07031019 till 31.03.2024 which was extended for indefinite time till further

orders vide notification no.81/2023 dated 22.03.2024. From the above details, it is evident that the exporter has mis-declared and mis-classified the goods covered under the said Shipping Bills No. 9318091 dated 22.04.2024 and 9318417 dated 22.04.2024. Therefore, it appears that the goods were brought to the Port with malafide intention to export prohibited goods and hence, the goods appears to be liable for confiscation under Section 113(i) of the Customs Act, 1962.

2.4 Statement of Shri Pradeep Prembhai Nainvaya, partner of Export firm M/s Verma Corporation was recorded on 27.04.2024 in which he inter alia stated that they tried to export Onions by mis-declaring it as Potato as his clients abroad offered a good profit margin on "Red Onions" and agreed with the content of below mentioned table:

S.No.	SB No. & Date	CTH Declared	Net Quantity (kgs.)	Value (in Rs.)
1.	9318091 dated 22.04.2024	07019000	82800	15,80,480/-
2.	9318417 dated 22.04.2024	07019000	81000	16,08,598/-
Total			163800	31,89,078/-

2.5 Shri Pradeep Prembhai Nainvaya, partner of Export firm M/s Verma Corporation also admitted that he was unaware about the prohibitions being placed on export of onions currently and the stuffed the onions into reefer containers under Self-Sealing at the Godown premises of Vibrant Logistics Pvt. Ltd., at Godown no. 9, Survey no. 336/1 & 334, MithiRohar, Gandhidham, Kachchh, Gujarat-370240. He further stated that in Indian market, the price of Potato and Onion are same. The partner of the firm submitted that that the CHA firm M/s Shivam Clearing agency was not aware about the items to be exported as the CHA was provided with Invoices for Potatoes and thus, the CHA was told to prepare documents for export of Fresh Potatoes to be presented before Customs authorities.

2.6 On being asked by the officers , Shri Jitendra Thakkar , Supervisor of M/s Vibrant Logistics Pvt. Ltd stated that no stuffing of onions or potatoes have ever been done at the said godown premises since it was taken on rent by M/s Verma Corporation. He further stated that the Godown No.9 was taken on rent by M/s Verma Corporation in March 2024 only.

2.7 The Statement of Shri Pradeep Prembhai Nainvaya, partner of Export firm M/s Verma Corporation was again recorded on 06.05.2024 by SIIB , CH- Kandla in which he inter alia stated that no stuffing of onions was undertaken from our rented godown premises. Instead the onions were loaded into reefer containers at the Mundra Highway Junction, Near Kutch Arcade where there is enough space for 2 trucks to park side by side and load the goods. After filing papers with customs authorities, they directly moved the reefer containers into KICT for the purpose of export.\

2.7 They agreed that before prohibition on export of Onions are imposed, minimum Export price of onions was \$800 Per MT. They have no objection for their goods to be revalued at \$800 per MT in accordance with Notification 45/2023 shown to them. Further, they agreed & satisfied with the calculation as mentioned in below table and the value calculated in their earlier statement dated 27.04.2024 may not be considered.

S.No.	SB No. & Date	CTH Declared	Net Quantity (MT)	Value (in Rs.) as 1\$= 82.70 on date of filing SB
1.	9318091 dated 22.04.2024	07019000	82.800	54,78,048/-
2.	9318417 dated 22.04.2024	07019000	81.000	53,58,960/-
Total			163.800	1,08,37,008/-

3. Relevant Legal Provisions:

3.1 (a) DGFT notification 49/2023 dated 07.12.2023.

DGFT vide notification 49/2023 dated 07.12.2023 prohibited the export of Onion and has amended goods covered under HS Code 07031019 from 'Free' to 'Prohibited' till further orders.

(b) DGFT notification 81/2023 dated 22.03.2024

DGFT vide notification 81/2023 dated 22.03.2024 amends notification no.49/2023 dated 07.12.2023 regarding Export Policy of onions in chapter 07 of schedule 2 of the ITC, (HS), Export Policy, as under : -

HS Code	Unit	Item Descriptions	Export Policy	Revised Export Policy
07031019	Kg.	Onions	Prohibited till 31.03.2024	Prohibited until further orders

(c) (3A) "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

(d) (33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(e) (39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

(f) Section 50(2): The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents

(g) Section 50(3): The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely: —

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

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

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

3.2 This act of omission and commission by the Exporter rendered the export cargo liable for confiscation under section 113 of the Customs Act, 1962. The Section 113) of the Customs Act, 1962 reads as:

Section 113. Confiscation of goods attempted to be improperly exported, etc. -

(a)

(b)

(c) -

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) ...

(f) ...

(g) ...

(h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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

.....

3.3 **Section 114.** Penalty for attempt to export goods improperly, etc. -

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

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

3.4 **Section 114AA.** Penalty for use of false and incorrect material. -

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

3.5 By this act of commission, the exporter appears to have failed to comply with the provisions of Section 50 of the Customs Act, 1962 rendering themselves liable for penalty under Section 117 of the Customs Act, 1962

Section 117. Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

3.6 ***Section 11 of the FTDR Act, 1992 specifies as follow:***

11. Contravention of provisions of this Act, rules, orders and export and import policy.

(1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person signs or uses, or causes to be made signed or used, any declaration, statement or document submitted to the Director General or any officer authorised by him, under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tampered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.

(4)...

(5)....

(6)

(7)

(8) Where any contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy has been, is being, or is attempted to be, made, the goods (including the goods connected with services or technology) together with any package, covering or receptacle and any conveyances shall, subject to such conditions

and requirement as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(9) The goods (including the goods connected with services or technology) or the conveyance confiscated under sub-section (8) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

3.7 **Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993 provides as follow:**

11. Declaration as to value and quality of imported goods. -

On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

14. Prohibition regarding making, signing of any declaration, statement or documents.-

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.

4. Summary of the Investigation:

4.1 From the foregoing paras, it appears that there is intentional mis-declaration of quantity of the goods declared and it appears that the goods were brought to the port with an intention to export the prohibited goods, i.e. Onions, by the exporter. On being pointed out the same to the exporter, the exporter admitted his mistake and made a confessional statement that they tried to export prohibited goods. They filed the shipping bills by misdeclaring the cargo as Potato instead of Onions, and submitted documents which are totally false and misleading. Hence, the said goods have become liable for confiscation under section 113(d) of the Customs Act, 1962. As no declaration of Onions being exported was included in the shipping bills hence the goods have also become liable for confiscation under Section 113 (h) of the Customs Act, 1962. Further, as the exporter has intentionally filed shipping bills by mis-declaring Onions as Potato

thereby rendering false information and making the goods also liable to confiscation under 113(i) of the Act, ibid. Therefore, the above said goods viz. Red Onions were seized under Seizure Memo dated 29.04.2024 having DIN 20240471ML0000000F42 and handed over to the Custodian i.e. M/s. KICT, Kandla. The exporter for their above acts of omission and commission made themselves liable for penal action under Section 114(i) as they tried to export prohibited goods. Further, as the exporter has intentionally misdeclared and filed false and incorrect information with the customs authorities, thereby making thereby liable to penal action under 114AA and Section 117 of the Customs Act, 1962.

5. Records of Personal Hearing:

The Investigation Report does mention the desire expressed by the exporter in their letter dated 29.04.2024 regarding requisition for waiver of Show Cause Notice and Personal Hearing by the adjudicating authority. Besides, the exporter was also offered opportunity for personal hearing. In response a letter no. NIL dated 20.05.2024 has been received from M/s Verma Corporation thereby requesting this office to adjudicate the proceedings without issuing any Show Cause Notice and personal hearing as their goods is perishable and allow Back to Town permission. The exporter also agreed to pay the penalty and fine on the spot with submission to not to contest or file any appeal against the Order.

Discussion and Findings:

6. I have carefully considered facts of the case, allegation made in the Investigation Report and the applicable provisions of the law under Customs Act/Rules, I find that following main issues are involved in the Investigation Report, which are required to be decided as under:

- (i) Whether the mis-declared goods attempted to be exported vide Shipping Bill No. 9318091 dated 22.04.2024 and 9318417 dated 22.04.2024, having declared FOB value of goods as Rs. 31, 89,078/- being in contravention of Section 50 of the Customs Act are liable for confiscation under Section 113(d), 113(h) and 113(i) of the Customs Act, 1962.
- (ii) Whether Penalty on the exporter, viz., M/s. VERMA CORPORATION, OFFICE NO.115, PLOT NO.93, SECTOR-8, RISHAB CORNER, GHANDHIDHAM, GUJARAT – 370201 holding IEC no. AAPFV8663F who attempted to export mis-declared goods is imposable under Section 114(i), 114AA & 117 of the Customs Act, 1962.

7. Before deciding the issue, I would like to take up the facts-of the case before me for the adjudication brought out in the investigation Report and thereafter put up which indicate that:

- The exporter viz., M/s. Verma Corporation have filed shipping bill no. 9318091 dated 22.04.2024 and 9318417 dated 22.04.2024 for export of "Indian Origin Fresh Potatoes" having declared FOB value of Rs.31,89,078/- through their CHA M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. under CTH 07019000. The goods mentioned in the above Shipping Bills is revalued at \$800 per MT in accordance with Notification 45/2023. The value of their goods is Rs. 1, 08,37,008/- . They have no objection for their goods to be revalued at \$800 per MT in accordance with Notification 45/2023 shown to them. Further, They agreed & satisfied with the calculation.
- Pursuant to Intelligence received, the goods were de-stuffed and examined, as a result of which it was found that all the six containers were fully packed with "Red Onions" packed in sacks of around 20 Kg capacity each instead of the declared goods of description "Indian Origin Fresh Potato".
- The exporter has contravened the provisions of Section 50 of Customs Act, 1962 and thus, the goods are liable for confiscation under Section 113(d), 113 (h) and 113(i) of the Customs Act, 1962.
- The exporter has made themselves liable for penalty under Section 114(i), 114AA & 117 of Customs Act, 1962.
- The exporter has requested to this office to adjudicate the proceedings without issuing any Show Cause Notice and personal hearing as their goods is perishable and allow Back to Town permission. The exporter also agreed to pay the applicable penalty and fine.
- Assistant Commissioner, SIIB, Kandla vide their Investigation Report has proposed for **confiscation of goods declared in the Shipping Bill u/s 113(d), 113 (h) and 113(i) of Customs Act, 1962 and imposition of Penalty on the exporter u/s 114 (i) , 114 AA & 117 of the Customs Act, 1962.**

8. Before deciding the issue, I would like to take cognizance of the fact which is on record and placed before me to the effect that the exporter had accepted their offence and as a consequence of which it is a fit case for Back to Town permission in this matter.

9. I find that the said goods were declared in concealed mode, that is to say the fair, transparent and equitable declarations were found devoid of and amidst all, its mis-declaration and mis-classification by the exporter, viz. M/s Verma Corporation and their CHA, viz., M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. Therefore, the Exporter/CHA/Customs Broker in brief all the stakeholders should have declared the said goods as Prohibited Goods. It is on record that the said Prohibited goods have entered the Indian Customs Area for the purpose of export in contravention to Prohibitions imposed by the Customs Act, 1962. Therefore, I find that the impugned goods have been brought in the Customs Area by way of improper declaration. They were needed to adhere to laid down operational requirements. Despite the fact that the subject goods are of prohibited one, they have improperly brought and the consignment arrived without proper declaration and identification before the Customs Authorities, thereby making them liable for confiscation under the Customs Act, 1962.

10. I refer **notification 49/2023 dated 07.12.2023** by which the DGFT prohibited the export of Onion and has amended goods covered under HS Code 07031019 from 'Free' to 'Prohibited' till further orders. Also, DGFT **notification 81/2023 dated 22.03.2024** amends notification no.49/2023 dated 07.12.2023 regarding Export Policy of onions in chapter 07 of schedule 2 of the ITC, (HS), Export Policy, as under :-

HS Code	Unit	Item Descriptions	Export Policy	Revised Export Policy
07031019	Kg.	Onions	Prohibited till 31.03.2024	Prohibited until further orders

11. From the detailed discussion as above, it is established that the impugned goods are liable for confiscation under Section 113 of the Customs Act, 1962 in as much as the goods were attempted to be exported in contravention to the Prohibition imposed by the DGFT and Customs Act.

12. I have deduced that it is hard to believe that they were totally ignorant of the mis-declared items and feigning ignorance regarding its Prohibition for the purpose of export, they cannot put themselves entitled for any liberty, whatever it may be in this regard. Being a regular exporter, pleading ignorance of the law, rules and regulations cannot be taken shelter of.

13. Moreover, after going through the Investigation Report minutely, I also infer that their conduct does not falls under the category of genuine mistake but paved towards establishment of *mens rea*. I also conclude with all the reasonable belief that it is quite apparent to the effect that there was a well-defined understanding/motive between the exporter and the Customs Broker towards the impending clearance of export goods without any hassles. It is pretty much clear that they have all air tight intentions to clear the goods in question. Theirs expanded collusion and adventurism in the merchandise domain can not be easily wished away. Both have attempted to thrive testing the boundaries of law.

14. With regards to proposal in the Investigation Report for imposition of Penalty on the export viz., M/s Verma Corporation, Gandhidham under Section 114(i), 114AA, & 117 of the Customs Act 1962, it can be asserted without an iota of doubt that the offender is owner/consignor of the impugned goods or bear all the vested interest in the same. The goods in question were intended to be exported by M/s Verma Corporation. They were advertently brought and unloaded at Kandla Port. It was the sheer case of mis-declaration. At, no point of time, they strived to make intimation of true contents categorically. They have committed the offence and violated/contravened the varied provisions under the Customs Act, 1962. The exporter is the owner/consignor of the goods contained in the entire consignment and hence *mens rea* on their part has been alleged or for that matter established or proved and thus the penal provisions of imposition of penalty ought to be imposed on M/s Verma Corporation,

Gandhidham, Gujarat. Accordingly, I find myself inclined towards imposing Penalty under Section 114 (i) , 114AA & 117 of the Customs Act, 1962. In this regard, I have gone through the Provisions of both the said Sections of Customs Act, 1962 which are as under:

Section 114. *Penalty for attempt to export goods improperly, etc. -*

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

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

114AA *Penalty for use of false and incorrect material –*

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

Section 117. *Penalties for contravention, etc., not expressly mentioned. -*

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

15. It has been noticed that at no point of time, the said exporter has disclosed full, true and correct information about the nature of goods, or intimated to the Department. It has come to the notice only after Customs based investigations. From the evidences, it appears that the said exporter has knowingly suppressed the facts regarding nature of goods. Thus, it is understood that there is a deliberate withholding of essential and material information from the department about the nature of goods. It is seen that these material information have been deliberately, consciously and purposefully to evade scrutiny of impending export goods.

16. Accordingly, I uphold the charges levelled against the exporter in Para 5 of the Investigation Report, as they were actively involved in the export of the said goods. But concurrently, in view of the Para 2.5 & 2.8 of the Investigation Report and after giving a proper thought over the conduct of the exporter, I am of the considered opinion that there is devoid of any element of malafide intention on the part of the exporter as they were unaware of the DGFT Notification regarding Prohibition of export of "Onions". No substantial marked aversions have been found on their part. It is also on record that nowhere at any stage of the Investigation, the exporter has raised the objection or contested the finding out of the Investigation or for that matter any kind of plea. More importantly, it is not out of context to

mention that there is no Revenue loss as the impugned consignment has been applied for the Back to Town by the exporter and there is no claim of benefit of any Government Scheme in respect of already filed Shipping Bill in question. Furthermore, the burden of penalties has to be based on the principle of proportionality, a view endorsed and adopted by the Supreme Court in its Alembic vs. Rohit Prajapati judgement (1st April, 2020). So, after taking into consideration of all facts and circumstances and relying on the material on records, I am much inclined towards a just, fair, reasonable stance towards the Exporter and hence, take the lenient view in the proper perspective.

17. In view of my above findings, I pass the following order:

ORDER

- (i) I hereby order to confiscate the consignment of 163.800 MTs covered under Shipping Bills No. 9318091 dated 22.04.2024 and 9318417 dated 22.04.2024 under the provisions of section 113(d), 113 (h) and 113(i) of the Customs Act, 1962. Since, the goods are physically available for confiscation, in lieu of confiscation, I give the exporter an option to redeem the goods on payment of **Rs.2,00,000/-** (Rupees Two Lakhs Only) under Section 125 of the Customs Act, 1962. On exercising the option to pay Redemption Fine, the goods are allowed for **Back to Town (BTT)**.
- (ii) I hereby impose the penalty of **Rs.6,00,000/-** (Rupees Six Lakhs only) under Section 114(i) of the of the Customs Act, 1962.
- (iii) I hereby impose the penalty of **Rs.2,00,000/-** (Rupees Two Lakhs only) under Section 114AA of the Customs Act, 1962 on Shri Pradeep Prembhai Nainvaya, partner of Export firm M/s Verma Corporation.
- (iv) I hereby impose the penalty of **Rs.1,00,000/-** (Rupees One Lakhs only) under Section 117 of the Customs Act, 1962.

18. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

19. The Investigation Report issued from F.No. CUS/SIIB/HOC/53/2024 dated 10.05.2024 by the Assistant Commissioner (SIIB), Customs House, Kandla, is hereby disposed off.



(Dev Prakash Bamanavat),
Additional Commissioner (Export),
Customs House, Kandla

F.No. S/14-01/EXP/VC/2024-25

To,
M/s. VERMA CORPORATION (IEC no. AAPFV8663F),
OFFICE NO.115, PLOT NO.93, SECTOR-8,
RISHAB CORNER, GHANDHIDHAM, GUJARAT - 370201.

Copy To:-

- (1) The Commissioner, Customs House, Kandla.
- (2) The Assistant Commissioner (SIIB), Customs House, Kandla.
- (3) The Deputy/Assistant Commissioner (TRC), Customs House, Kandla.
- (4) The Deputy/Assistant Commissioner (RRA), Customs House, Kandla.
- (5) The Deputy/Assistant Commissioner (EDI), Customs House, Kandla.
- (6) Guard File.