

	<p>सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in</p>	
A. File No.	: GEN/ADJ/COMM/137/2025-Adjn-O/o Pr Commr-Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-54-25-26	
C. Passed by	: Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order Date of issue:	: 02.02.2026 02.02.2026	
E. SCN No. & Date	: GEN/ADJ/COMM/137/2025 dated 12.03.2025	
F. Noticee(s) / Party / Exporter	: M/s Maheshwari Agro (IEC No. AARFM0255E)	
G. DIN	: 20260271MO0000824952	

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 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 3-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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

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

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

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

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

BRIEF FACTS OF THE CASE:

The present case pertains to the evasion of export duty by M/s Maheshwari Agro, New Survey No. 1746 (Old S. No. 949/1/1), Beside Ashirwad Agro, Near Bavla Railway Crossing, Sanand Bavla Road, Bavla, Ahmedabad, Gujarat - 382220, having IEC No. AARFM0255E (hereinafter referred to as 'the exporter' for sake of brevity), who were found to have indulged in short payment of export duty by resorting to undervaluation by claiming abatement of duty from the assessable value. Thus, export duty was not being paid on the transaction value of the export goods (i.e. FOB Value) as provided u/s 14 of the Customs Act, 1962 instead the same was being paid on a reduced value by wrongly declaring the same as FOB Value thus causing short-payment of the appropriate duty of Customs.

2. Intelligence was gathered by the officers of the Directorate of Revenue Intelligence (Hqrs.) (hereinafter referred to as 'DRI') which indicated undervaluation in the export of rice. The intelligence further indicated that after imposition of duty on export of rice with effect from 09.09.2022, several exporters, including M/s Maheshwari Agro were found to be indulging in evasion of duty.

2.1 Preliminary analysis of the Intelligence revealed that export duty at the rate of 20% ad valorem was imposed on export of rice vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022. Scrutiny of the export data pertaining to the said exporter revealed that they were evading duty on export of rice by adopting two different methods i.e. (i) by claiming wrongful deduction of export duty from the transaction value, and (ii) by declaring

excess freight amounts. The exporter negotiated a specific price for sale of their export consignment which was received by them from the overseas buyer as 'consideration' for sale of rice. Thus the 'consideration/negotiated price' was 'the actual transaction value' for their export consignment on which the exporter ought to have paid the 20% export duty. However, to evade duty, the exporter had artificially bifurcated the afore-said negotiated price/total consideration, in two parts i.e. (i) 'price of goods' and (ii) 'export duty amount'. The exporter had declared the reduced value 'price of goods' as their transaction value and the other part of the consideration which was equal to the 'export duty amount' was not included by them in their 'transaction value'. Instead, the same was claimed as 'deduction' and was declared in the Shipping Bills under the Head "Deduct/Deduction". Thus, a part of consideration, equal to the 'export duty amount', was not included in the transaction value for payment of export duty causing short payment of duty.

2.2 In several other cases of export of rice on CIF/CF incoterm basis, investigation revealed that the exporter had declared excess freight amounts than the actual freight amounts paid by them to the shipping lines/freight forwarders. In such shipments, FOB price is deduced from the CIF/CF prices by deducting the actual freight amounts paid by the exporter. By claiming excess freight amounts in the shipping bills, the exporter had wrongly deducted a part of the consideration/transaction value which is equal to the excess freight amounts claimed by them. Thus, a part of consideration, was not included in the transaction value for the payment of export duty in all such export shipments causing short payment of duty.

2.3 From the preliminary scrutiny of the export data, discussed in above paras, it appeared that the exporter had treated the actual transaction value (i.e. actual FOB Value) of their export goods as cum-duty FOB Value and they have declared the lesser transaction value by wrongly claiming abatement of duty from the actual transaction value and by claiming excess freight amounts in the shipping bills. By adopting the above-mentioned modus operandi, the exporter had been evading the payment of duty on the

differential value between the actual transaction value of the export goods (i.e. FOB Value) and their declared reduced FOB value.

2.4 The practice of payment of export duty on cum-duty FOB Value was prevalent prior to the year 2009. CBIC Circular No. 18/2008-Cus. dated 10.11.2008 stipulated that with effect from 01.01.2009, export duty shall be computed on the transaction value, i.e. the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, which shall be the FOB price of such goods at the time and place of exportation.

Initiation of investigation:

3.1 Pursuant to the afore-said intelligence and apparent undervaluation of the export goods, investigation was initiated against various exporters of the said commodity including M/s Maheshwari Agro, by issuance of summons under the provisions of section 108 of the Customs Act, 1962. It was a partnership firm having Sh. Dilip Rathi and Sh. Ghanshyam Maheshwari as its partners. Vide summons dated 27.10.2023, 14.11.2023, 19.01.2024, 04.07.2024 and 13.01.2025 issued to M/s Maheshwari Agro under the provisions of Section 108 of the Customs Act, 1962, documents related to the investigation such as shipping bills, export invoices, freight invoices, bill of lading and Bank Realization Certificates etc. were requested from the exporter.

3.2 In pursuance of the summons issued to M/s Maheshwari Agro, vide letter dated 30.11.2023, Sh. Dilip Rathi, Partner of M/s Maheshwari Agro submitted copies of the export documents in respect of the export to rice for the period from July, 2022 to Sept., 2023 including copies of the export invoice cum packing list, Shipping Bill, Bill of Lading, Bank Realization Certificate, contract with the overseas buyer/proforma invoice and expense ledger, bank account statements totally consisting of 1780 pages.

3.3 Vide email dated 12.07.2024, M/s Maheshwari Agro, submitted the details of payments received in respect of each shipping bill and expenses

made towards payments of ocean freight & insurance charges in respect of consignments exported on basis of CF, CI and CIF inco terms. Further, vide emails dated 27.01.2025, M/s Maheshwari Agro submitted the copies of the freight invoices in respect of the shipments of rice exported by them on CF, CI and CIF inco-term basis.

4. During investigation, statement of Sh. Dilip Rathi, Partner of M/s Maheshwari Agro was recorded on 30.11.2023 u/s 108 of the Customs Act, 1962. The facts of statement have been mentioned in the Show Cause Notice and the records of statement had been attached to Show Cause Notice as RUDs. For sake of brevity contents of statement are not produced hereunder.

5. Vide his statement dated 30.11.2023, Shri Dilip Rathi, Partner of M/s Maheshwari Agro, admitted his mistake and undertook to calculate their total differential duty liability on account of such short payment of duty due to wrong claim of deductions amounts by them and undertook to deposit their entire duty liability at the earliest. Vide letter dated 31.01.2024, Partner of M/s Maheshwari Agro, submitted that they have calculated their differential duty payable on account of wrong claim of deduction amount out of FOB value of the exports and submitted two Demand Drafts, for voluntary payment of the differential duty amount of **Rs. 1,61,58,959/-**, as below:

- i. Demand Draft No. 241916 dated 29.01.2024 for **Rs. 76,72,159/-** in favour of Commissioner of Customs, Kandla A/c Maheshwari Agro payable at Kandla for payment of duty by M/s Maheshwari Agro. The said demand draft was forwarded to Kandla Port for depositing in the Govt. Account vide DRI Letter dated 01.02.2024.
- ii. Demand Draft No. 241915 dated 29.01.2024 for **Rs. 84,86,800/-** in favour of Commissioner of Customs, Mundra A/c Maheshwari Agro payable at Mundra payable at Mundra for payment of duty by M/s Maheshwari Agro. Deposited at the Mundra Port vide Challan no. 2311 dated 16.02.2024. The said demand draft was forwarded to

Kandla Port for depositing in the Govt. Account vide DRI Letter dated 01.02.2024.

6.1 The export documents and details submitted by the exporter during investigation were analysed and it was revealed that M/s Maheshwari Agro had exported rice having description as Indian Non-Basmati Raw Rice/ Indian IR-64 White Rice / Indian Long Grain Rice etc. by classifying the same under CTH 10063090 which were liable to export duty @ 20% *ad valorem* vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022 and 49 /2023-Customs dated the 25th August, 2023. In their export documents (Shipping Bills), they have declared the following three values (i) Total Value, (ii) Invoice Value and (iii) FOB Value. The Total Value declared by them was inclusive of export duty and indicated the total consideration received by them from the overseas buyer. Invoice Value was declared after deducting from the Total Value, an amount equal to the export duty paid by them in respect of their export goods. FOB Value was declared after deduction of the ocean freight amounts and insurance amounts from the afore-said Invoice Value. Thus, total amount of deductions of Rs. 8,07,35,276/- were wrongly claimed by the exporter from the actual FOB Value in respect of their 20 export shipments as shown below.

6.2 Deduction amounts wrongly claimed by the exporter from the actual FOB Value of exports which were equal to the export duty:

Scrutiny of the export documents and details submitted by the exporter during investigation revealed that the exporter had at the time of filing of shipping bills claimed the deduction of an amount of **Rs. 7,61,23,592/-** in respect of the following 18 shipping bills filed by them. The export duty amounts paid by them in respect of these 18 shipping bills were also at **Rs. 7,61,23,593/-**. Therefore, the amounts claimed as 'deduction/deduct' were equal to the export duty amounts paid by them at the time of filing of these 18 shipping bills. Investigation has revealed that these amounts claimed as 'deduction/deduct' were also recovered by the exporter from the overseas

buyer in their bank accounts. The exporter had also confirmed these facts in his submission and statement recorded u/s 108 of the Customs Act, 1962.

Table: A

Table A1: (Deduction amount claimed is equal to Export Duty amount paid by them)								
S. No.	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (INR)	Declared Total Value (INR)	Declared Invoice Value (INR)	Deduction claimed in Shipping Bill (INR)	Amount received through Reimbursement of taxes in INR, as confirmed by the exporter
1	8382720	10-03-2023	1,26,71,250	25,34,250	1,88,02,500	1,62,68,250	25,34,250	25,34,250
2	8747427	25-03-2023	5,08,09,000	1,01,61,800	6,09,70,800	5,08,09,000	1,01,61,800	1,01,61,800
3	8860194	28-03-2023	50,80,900	10,16,180	60,97,080	50,80,900	10,16,180	10,16,180
4	8860195	28-03-2023	50,80,900	10,16,180	60,97,080	50,80,900	10,16,180	10,16,180
5	8860200	28-03-2023	5,08,09,000	1,01,61,800	6,09,70,800	5,08,09,000	1,01,61,800	1,01,61,800
6	8873716	28-03-2023	25,40,450	5,08,090	30,48,540	25,40,450	5,08,090	5,08,090
7	8875517	28-03-2023	6,98,62,375	1,39,72,475	8,38,34,850	6,98,62,375	1,39,72,475	1,39,72,475
8	8875518	28-03-2023	38,10,675	7,62,135	45,72,810	38,10,675	7,62,135	7,62,135
9	8875519	28-03-2023	38,10,675	7,62,135	45,72,810	38,10,675	7,62,135	7,62,135
10	8918170	29-03-2023	1,68,30,481	33,66,096	2,01,96,578	1,68,30,481	33,66,096	33,66,096
11	8918208	29-03-2023	1,68,30,481	33,66,096	2,01,96,578	1,68,30,481	33,66,096	33,66,096
12	9192907	10-04-2023	1,33,24,730	26,64,946	1,59,89,676	1,33,24,730	26,64,946	26,64,946
13	9236778	12-04-2023	3,33,11,825	66,62,365	4,83,02,146	4,16,39,781	66,62,365	66,62,365
14	9261811	13-04-2023	3,33,11,825	66,62,365	4,83,02,146	4,16,39,781	66,62,365	66,62,365
15	9353879	17-04-2023	1,66,55,913	33,31,183	1,99,87,095	1,66,55,913	33,31,183	33,31,183
16	9435897	20-04-2023	1,66,55,913	33,31,183	1,99,87,095	1,66,55,913	33,31,183	33,31,183
17	9489510	24-04-2023	1,26,17,000	25,23,400	1,79,08,000	1,53,84,600	25,23,400	25,23,400
18	9900466	09-05-2023	1,66,04,569	33,20,914	1,99,25,483	1,66,04,569	33,20,914	33,20,914
	Total		38,06,17,961	7,61,23,593	47,97,62,066	40,36,38,474	7,61,23,592	7,61,23,592

Scrutiny of the export documents and details submitted by the exporter during investigation revealed that the exporter had at the time of filing of shipping bills claimed the deduction of an amount of **Rs.**

46,11,684/- in respect of the following 2 shipping bills filed by them. The export duty amounts paid by them in respect of these 2 shipping bills were at **Rs. 29,75,280/-**. Therefore, the amounts claimed as 'deduction/deduct' were higher than to the export duty amounts paid by them at the time of filing of these 2 shipping bills. Investigation has revealed that these amounts claimed as 'deduction/deduct' were also recovered by the exporter from the overseas buyer in their bank accounts. The exporter had also confirmed these facts in his submission and statement recorded u/s 108 of the Customs Act, 1962. Therefore, the entire deduction claim amount of **Rs. 46,11,684/-** which were recovered by them from the overseas buyer are liable to be included in their actual transaction value in respect of these 2 shipping bills.

Table A2: (Deduction amount claimed is more than Export Duty amount paid by them)								
	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (INR)	Declared Total Value (INR)	Declared Invoice Value (INR)	Deduction claimed in Shipping Bill (INR)	Amount received through Reimbursement of taxes in INR, as confirmed by the exporter
1	9958698	11-05-2023	71,14,800	14,22,960	93,20,388	71,14,800	22,05,588	22,05,588
2	9959693	11-05-2023	77,61,600	15,52,320	1,01,67,696	77,61,600	24,06,096	24,06,096
	Total		1,48,76,400	29,75,280	1,94,88,084	1,48,76,400	46,11,684	46,11,684

6.2.1 For ease of reference, Shipping Bill No. **9489510** dated **24.04.2023** was taken as an example (as mentioned under para 8.2.1 of the SCN) wherein it had been clearly indicated that deduction of Rs. 25,23,400/- (equivalent to USD 31000) in the Shipping Bill was equal to the cess amount (i.e. Export Duty) of **Rs. 25,23,400/-** paid by them. The said amount was deducted by the exporter from the actual transaction value (i.e. FOB Value) and export duty has not been paid on the said differential value of **Rs. 25,23,400/-** which is though part of the consideration received by the exporter from the overseas buyer for sale of the consignment. For receipt and processing of the said export duty amount of **Rs. 25,23,400/- (equivalent to USD 31000)**, in their bank account, separate

Reimbursement Invoice has been issued by the exporter to the buyer/bank authorities.

6.3 For reimbursement of the export duty from the overseas buyer, the exporter had declared RBI Accounting Purpose Code No. P1306 which is for refund of taxes, however, the following discussion indicate that the said purpose code is not meant for the receipt of export duty and export proceeds -

The exporter had claimed that the deduction/deduct amount claimed by them in the shipping bill have been received by them from the overseas buyers in the form of reimbursement of taxes. The said transactions have been made under the RBI purpose code P1306.

RBI purpose codes are unique identifiers assigned to international transactions to enable banks and financial institutions to classify and process remittances accurately. RBI has notified purpose codes for reporting forex transactions for Payment and Receipt purposes. The Purpose codes for reporting forex transactions (for the purpose of *Receipt of amounts*) are further categorized into 16 different 'Purpose Group Name' which includes Exports (of Goods), Transportation, Travel, Financial Services, Royalties & License Fees, Transfers among others. The following purpose codes pertaining to Export (of Goods) refers to the receipt of forex in respect of exports made from India.

Gr. No.	Purpose Group Name	Purpose Code	Description
01	Exports (of Goods)	P0101	Value of export bills negotiated / purchased/discounted etc. (covered under GR/PP/SOFTEX/EC copy of shipping bills etc.)
		P0102	Realisation of export bills (in respect of goods) sent on collection (full invoice value)
		P0103	Advance receipts against export contracts, which will be covered later by GR/PP/SOFTEX/SDF
		P0104	Receipts against export of goods not covered by the GR/PP/SOFTEX/EC copy of shipping bill etc.
		P0105	Export bills (in respect of goods) sent on collection.
		P0106	Conversion of overdue export bills from NPD to collection mode
		P0107	Realisation of NPD export bills (full value of bill to be reported)

Further, the purpose code P1306 referred by the exporter for reimbursement of taxes (i.e. export duty) falls under the group 'Transfer'.

Gr. No.	Purpose Group Name	Purpose Code	Description
13	Transfers	P1301	Inward remittance from Indian non-residents towards family maintenance and savings
		P1302	Personal gifts and donations
		P1303	Donations to religious and charitable institutions in India
		P1304	Grants and donations to governments and charitable institutions established by the governments
		P1306	Receipts / Refund of taxes

From the above, it is evident that the purpose codes under the group 'Transfer' pertain to forex transactions of personal nature such as personal gifts, family maintenance, donations etc., and the accounting purpose code P1306 falling under this category is clearly not associated with payments received in respect of exported goods. Thus, the exporter had used wrong purpose for receipt of the export duty amounts from the buyers and misrepresented the facts before the bank authorities to process such receipts. These amounts are not reflected in the bank realisation certificates obtained by the exporter from the bank.

6.4 Excess Ocean freight amounts wrongly declared in the Shipping Bills:

In addition to the shipments discussed in above para, in respect of the following **07** shipments of rice, the exporter had **declared higher amounts of ocean freight** in comparison to the actual ocean freight amounts paid by them, thus causing short payment of duty on the differential ocean freight amount in respect of these 07 shipments also. The total amount of excess freight declared by the exporter in respect of these shipments stood at **Rs. 1,03,84,094/-**. During investigation, the exporter had submitted the freight invoices indicating the actual freight amounts paid by them to the Freight forwarders/Shipping line, which clearly indicated that in these **07** shipments, they have declared excess freight amounts in the shipping bills in comparison to actual freight amounts paid by them.

Table-B

S.No.	Shipping Bill Number	Shipping Bill DATE	Declared FOB Value (INR)	Cess Amount Paid (INR)	Declared Freight Amount as per Shipping Bill (INR)	Actual Freight Amount Paid as per Freight Invoice (INR)	Excess Freight Declared (INR)
1	2075668	28-06-2023	86,87,773	17,37,555	44,27,962	17,37,555	26,90,407
2	2206627	04-07-2023	66,82,903	13,36,581	29,10,296	13,36,581	15,73,715
3	2217432	04-07-2023	66,82,903	13,36,581	29,10,296	13,36,581	15,73,715
4	2217434	04-07-2023	66,82,903	13,36,581	29,10,296	13,36,581	15,73,715
5	8382720	10-03-2023	1,26,71,250	25,34,250	35,97,000	25,34,250	10,62,750
6	9236778	12-04-2023	3,33,11,825	66,62,365	83,27,956	66,62,365	16,65,591
7	9489510	24-04-2023	1,26,17,000	25,23,400	27,67,600	25,23,400	2,44,200
	Total		8,73,36,556	1,74,67,313	2,78,51,407	1,74,67,313	1,03,84,094

In respect of these shipments also, the exporter had not declared the true facts, before the customs authorities at the port of export at the time of effecting exports. They have declared the higher ocean freight amounts in their export documents such as shipping bills filed by them, in comparison to the actual freight amounts paid by them to the freight forwarders/shipping lines. It is a fact on record that the exporter had recovered the higher freight amounts from the overseas buyers of the export goods in comparison to the amounts paid by them to the freight forwarders & shipping lines in respect of their export shipments. These facts have been confirmed by the exporter in the details of their export shipments submitted by them under the provisions of section 108 of the Customs Act, 1962.

6.4.1 For ease of reference, Shipping Bill No. Shipping Bill Number 2075668 dated 28-06-2023 was taken as an example (as mentioned under para 8.4.1 of the SCN) wherein the ocean freight amount declared in respect of the said shipment is Rs. 44,27,962/- whereas during investigation, the exporter had submitted the actual freight amount paid by them in respect of the aforesaid shipping bill which stood at Rs.17,37,555/-. Thus, excess freight amount declared in respect of the aforesaid shipment works out to be

at Rs.26,90,407/. The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on the said excess freight amount which is part and parcel of the actual assessable value of the export goods.

7. The aforesaid deduction amounts claimed by the exporter, as detailed in Table A1 & A2 above and the excess freight amounts declared by them in their export documents in respect of the shipments as detailed in Tables B above, were not included in the declared FOB Value of goods in respect of these shipments, as discussed 8 above. Investigation has revealed that these deduction amounts have also been claimed and/or recovered by them from the overseas buyer of the export goods in their bank accounts. Therefore, the deduction amounts taken by the exporter from the overseas buyer in any manner whether or not by declaring the same in the export documents or by mis-declaration of freight amounts in the export documents appears to be forming part of the consideration received by the exporter for delivery of the export goods on board the vessel after clearance of the shipments through the customs authorities at the port of export. Thus, these excess freight amounts and deduction amounts claimed by the exporter at the time of filing shipping bills as discussed in above paras, also appear liable to be included in the FOB Value for the purpose of calculation of the export duty.

8. The investigation into undervaluation of rice shipments exported by **M/s Maheshwari Agro** vide above mentioned Shipping Bills as discussed in **Tables A1, A2 & B** above, revealed deliberate mis-statement and suppression of facts on part of the exporter, who was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade appropriate export duty leviable on *ad valorem* basis on such goods. As discussed in above paras, the exporter had mis-declared the ocean freight amounts whereas they were very well aware of the actual freight amounts paid by them in respect of these shipments exported vide Shipping Bills mentioned in **Table B** above. In respect of the goods exported by them through shipping bills as discussed in **Table A1 and A2** above, the exporter had wrongly claimed the deduction in the shipping bills for export duty amounts and in two shipments even more than duty amount and the

exporter had claimed duty/deduction amounts by raising separate Reimbursement invoices to the buyer but have not declared the same in the shipping bills and export invoices submitted to the customs authorities and thus have mis-declared the actual transaction value. Thus, the exporter had not declared the actual FOB Values in the shipping bills thereby intentionally evading the applicable duties of customs on such undue deduction amounts/excess freight amounts.

8.1 As discussed in above paras, the valuation of export goods under the Customs Act, 1962, is governed by the provisions of Section 14 *ibid*, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [hereinafter referred as 'CVR (E), 2007']. As per the provisions of Section 14 of the Customs Act, 1962, the value of export goods shall be the 'transaction value' of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation (i.e., the FOB price) when price is the sole consideration. As such, the sum total of price paid by the overseas buyer for delivery at the time and place of exportation would be the 'transaction value' of such goods.

8.2 for the purpose of charging export duty, the value to be considered is the FOB price. This is so because, the terms "*for export from India for delivery at the time and place of exportation*" appearing in Section 14 of the Customs Act, 1962, means to FOB (Free On Board) value only. This has been clarified also by the Central Board of Excise and Customs (CBEC) vide Circular No. 18/2008, dated 10.11.2008, wherein it stated that in case of export shipments, *for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.*

8.3 In this case, the value of the export goods shall be the transaction value thereof when the price is the sole consideration. As such, **for determination of the transaction value of the export goods, the sole**

consideration received by the exporter from the buyer should be taken in to account, then it should be seen as to which prices are compulsory for delivery of the export goods on board the vessel. In this case, the exporter is insisting that the export duty is on reimbursement basis from the overseas buyer of the export goods. By doing so, the exporter is separately receiving a part of the export proceeds from the overseas buyer and not including the same in the assessable value of the export goods. It can be stated that the seller has imposed a condition on the buyer of the export goods which states that if the buyer does not pay him a fixed amount (equal to the 20% export duty on their declared lesser FOB value), they would not sell the export goods to the overseas buyer and would not deliver the same at the time and place of exportation. Thus, all such agreements wherein the seller had imposed a condition on the buyer by which buyer has to pay a part of the payment separately in the bank accounts of the seller on account of sale of the export goods, such payments are necessarily part of the consideration received by the seller for sale of the export goods. Likewise, the excess ocean freight amounts declared by the exporter are also part of the consideration received by the exporter from the buyer for sale of the export goods as such excess ocean freight amounts have not be paid by them to the shipping lines/freight forwarders for the transportation of the export goods. All such amounts which are equal to the export duty amounts claimed/recovered from the buyer and excess ocean freight amounts declared in the shipping bills are liable to be added in their declared FOB Values for determination of their actual FOB Value for calculation of applicable export duties thereon.

9.1 The method of calculation of FOB Value has been provided at the website of various reputed platforms such as 'Freightos', which also support the contention of DRI that export duty is also includible in the FOB Value if the same has been recovered by the seller from the buyer.

The description of the said platform as available on their website under the heading 'About Freightos' states that Freightos® (NASDAQ: CRGO) is the leading, vendor-neutral booking and payment platform for international freight, improving world trade. WebCargo® by Freightos and 7LFreight by WebCargo form the largest global air cargo booking platform, connecting airlines and freight

*forwarders. Over ten thousand freight forwarder offices, including the top twenty global forwarders, place thousands of eBookings a day on the platform with over fifty airlines. These airlines represent over 2/3rds of global air cargo capacity. Alongside ebookings, freight forwarders use WebCargo and 7LFreight to automate rate management, procurement, pricing and sales of freight services, across all modes, resulting in more efficient and more transparent freight services. More information is available at [freightos.com/investors](https://www.freightos.com/investors). The website of freightos <https://www.freightos.com/freight-resources/fob-calculator> was visited which provide FOB calculator tools for the ease of international freight industry. As per the said website, FOB (Free on Board) Calculator is a tool used in international trade to determine the total cost of goods when they are shipped from the seller's location to the buyer's destination. **The FOB price includes the cost of the goods, as well as various expenses incurred until the goods are loaded onto the vessel, such as packaging, loading, and inland transportation to the port of departure. It does not include the freight charges for transporting the goods from the port of departure to the port of destination or any other charges or taxes beyond the point of loading.***

From the above details available on their website, it is evident that all taxes before the point of loading of the export goods on board the vessel are included in the term 'FOB'. In the case of export of goods, loading of the export goods starts after issuance of the 'Let Export Order (LEO)' by the proper officer of the Customs. LEO is issued after payment of the export duty. As the export duty is leviable before the point of loading of the export goods on to the vessel the same is includible in the FOB Value of the export goods.

9.2 The above contention of DRI is also supported by the Incoterms which are widely used in the international transactions. Incoterm or International Commercial Terms which are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. These incoterms define the responsibility of the importers and exporters in the arrangement of shipments and transfer of liability involved at various stages of transaction. They are widely used in the international commercial transactions and procurement processes. These incoterms rules are accepted by governments, legal authorities

worldwide for the interpretation of most commonly used terms in the international trade. They are intended to reduce or remove altogether uncertainties arising from the differing interpretations of the rules in different countries.

10. Rejection & Redetermination of the Transaction Value:

10.1 As discussed in the above paragraphs, valuation of export goods under the Customs Act, 1962, is governed by the provisions of Section 14, *ibid*, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [here-in-after referred as the CVR (E), 2007]. The export proceeds receivable in full consequent to negotiation and finalization of sale price between the exporter from India and their overseas buyer form 'transaction value' of such goods. The export Customs duty is leviable on the actual sale price at which the goods were sold. Where such sale price has been mis-declared and under-stated by the exporter, the actual sale price, i.e. the Transaction Value, needs to be taken into account for the purpose of valuation of the impugned export goods.

10.2 In respect of the shipments covered by the Shipping Bills as shown in the Tables **A1, A2 & B** above, it appeared that **M/s Maheshwari Agro** negotiated and finalized one price with their overseas buyer but in the contracts, the said price was intentionally bifurcated in two parts. The amount of duty payable by the exporter was deducted from the transaction value. In the shipping bills filed by the exporter, such undervalued and mis-declared transaction value was shown, which was lesser than the price that was actually finalized with the overseas buyer as consideration for the export goods. A part of the consideration was intentionally excluded from the transaction value of the export goods by adopting two different modus operandi as discussed in para 8 above. The difference between the actual price finalized with the overseas buyer and the price shown in the export documents were recovered/claimed by the exporter from the buyer separately by an arrangement of the buyer and the seller in this regard. The exporter and buyer may enter into any contract (oral or written), they may sell and purchase the export goods on any terms (such as FOB, CIF, CF, CI

or ex-works basis) but for the purposes of calculation of the export duty, the transaction value in terms with the provisions of Section 14 of the Customs Act, 1962 has to be derived and such transaction value is the FOB Value of the export goods as discussed in above paras and for the purpose of calculation of the FOB Value of the export goods, abatement of the export duty is not available as per Section 14 of the Customs Act, 1962 read with CBIC Circular No. 18/2008-Customs dated 10.11.2008.

10.3 The receipt of these deduction amounts from the overseas buyers was apparently never disclosed to the concerned Customs authorities. The said amounts were received from the overseas buyer, as reimbursement of taxes/duties under wrong RBI Purpose code P1306 which is not meant for receipt of the export duty. The reduced FOB Value declared in the export documents was presented as the true Transaction Value being paid for the export goods by the overseas buyer as the deduction amount was not reflected in the Bank Realization Certificate (BRC) in respect of these export shipment. The deduction amount was recovered separately in their bank account as reimbursement of taxes and other charges. Hence, it appears that the value declared by M/s Maheshwari Agro to the concerned Customs authorities as the Transaction Value of the export cargo in respect of the shipments of rice covered by the Shipping Bills as shown in the Tables A1, A2 & B above, is liable to be rejected under Rule 8 of the CVR(E), 2007 and the impugned export goods are liable to be valued at their actual Transaction Value as established by the present investigation, in accordance with the provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of the CVR(E), 2007.

10.4 The amount wrongly excluded from the FOB price was indeed part of the consideration negotiated and finalized between the exporter M/s Maheshwari Agro and their respective overseas buyers and the said amount which was excluded from the FOB Value was duly claimed /received by the exporter from the overseas buyer in their bank account. Therefore, the differential value (equal to the deduction amount/excess freight amount as shown in the Tables A1, A2 & B above appear to be includible in the declared value (FOB Value) of the respective export shipments to arrive at

the correct transaction value at which the said goods were sold for export from India for delivery at the time and place of exportation and export Customs duty as per the prevailing rate needs to be charged on the said value. M/s Maheshwari Agro appears to be liable to pay the resultant differential duty in addition to the duty already paid by them.

10.5 In view of the above, in accordance with the provisions of Section 14 of the Customs Act, 1962, the amount of differential customs duty in respect of the Shipping Bills as mentioned in the Tables A1, A2 & B 8 above, wherein a part of export proceeds was apparently not declared to the concerned Customs authorities, and the same was not included in the declared transaction value, has to be worked out on the basis of actual Transaction Value of the export goods revealed during the investigation.

11. Calculation of Differential Duty:

11.1 As discussed in above paras, the exporter had undervalued their export shipments of rice. For this two modus operandi were adopted by the exporter. In some of their export shipments mentioned at Table A1 above, the FOB price were undervalued by an amount equal to the amount of export duty paid by them at the time of export. In such shipping bills, actual transaction value of the export goods has to be re-determined by adding the amount of export duty which were wrongly claimed as deduction in the shipping bills. In some of their export shipments mentioned at Table A2 above, the FOB price were undervalued by an amount equal to the amount of export duty paid by them at the time of export plus some other expenses incurred by the exporter. In such shipping bills, actual transaction value of the export goods has to be re-determined by adding the entire amount of deduction claimed in the shipping bills. These deduction amounts are liable to be included in the actual assessable value of the export goods and differential duty of Rs. 1,61,47,055/- is liable to be recovered from the exporter in respect of these deduction amounts claimed/recovered in respect of the 20 shipments mentioned in Table A1 and A2 above. The differential duty amount payable in respect of these 20 shipments is as summarized

below. The detailed calculation of differential duty is shown in Annexure- I to the SCN

Table-C

Port Code	No of SBs	Declared FOB Value in Rs.	Cess Amount Paid in Rs.	Deduction amounts claimed from FOB in Rs.	Reimbursement amount received from overseas buyer (INR)	Re-determined FOB value (after adding the Deduction amount) in Rs.	Duty payable on re-determined FOB in Rs.	Differential duty due to deductions claimed in Rs.
INMUN1	12	20,36,90,386	4,07,38,078	4,23,74,481	4,23,74,481	24,60,64,868	4,92,12,974	84,74,896
INIXY1	8	19,18,03,975	3,83,60,795	3,83,60,795	3,83,60,795	23,01,64,770	4,60,32,954	76,72,159
Total	20	39,54,94,361	7,90,98,873	8,07,35,276	8,07,35,276	47,62,29,638	9,52,45,928	1,61,47,055

11.2 Apart from the above, in several shipments of rice, as detailed in **Table B**, the exporter had declared excess freight amounts in comparison to the actual freight amounts paid by them to the freight forwarders/shipping lines for transportation of the export goods to the country of destination. Only the ocean freight amounts actually paid by the exporter are eligible for deduction from the CIF/CF value for calculation of the FOB Value of the export goods. Therefore, the excess freight amounts declared by the exporter are not eligible/allowed for deduction as per the provisions of Section 14 of the Customs Act, 1962. These excess freight amounts claimed by the exporter are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of Rs. 20,76,817/- is liable to be recovered from the exporter in respect of these excess freight amounts also. The detailed calculation of differential duty is shown in **Annexure- II** to the SCN.

Table - D

Port Code	No of SBs	Declared FOB value in Rs.	Cess Amount Paid in Rs.	Declared Freight Amount as per Shipping Bill	Actual Freight Amount Paid as per Freight Invoice	Excess Freight claimed (INR)	Re-determined FOB on account of excess freight	Differential Duty (INR)
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				(INR)	(INR)		(INR)	
INMUN1	7	8,73,36,5 56	1,74,67,3 13	2,78,51,4 07	1,74,67,3 13	1,03,84,0 94	9,77,20,6 50	20,76,8 17
Total	7	8,73,36, 556	1,74,67, 313	2,78,51, 407	1,74,67, 313	1,03,84, 094	9,77,20,6 50	20,76, 817

11.3 In view of the above-mentioned two modus operandi followed by the exporter for evasion of export duty, their re-determined assessable value in respect of total 24 export shipments have been calculated as shown in below table. Accordingly, the differential duty payable by the exporter M/s Maheshwari Agro works out to be at **Rs. 1,82,23,871/-** as shown in below Table. The detailed calculation of the differential duty amounts has been shown in **Annexure I & II** of the Show Cause Notice. The port wise summary of differential duty payable by M/s Maheshwari Agro is as under:

Table-E

Port Code	No of SBs	Declared FOB Value in Rs.	Cess Amount (INR)	Re-determined FOB (INR)	Total differential duty payable (INR)
INMUN1	16	23,24,26,86 7	4,64,85,37 6	28,51,85,44 2	1,05,51,712
INIXY1	8	19,18,03,97 5	3,83,60,79 5	23,01,64,77 0	76,72,159
Total	24	42,42,30,84 2	8,48,46,17 1	51,53,50,21 2	1,82,23,871

12. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. Under the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. In view of the discussion supra, it is evident that the exporter firm M/s Maheshwari Agro, was well aware about the actual transaction value of the export goods. They have knowingly

got indulged in preparation and planning of forged / manipulated export documents, which they used to forward to the Customs broker in relation to Customs clearance of the said export goods at the time of exportation by way of wilful mis-declaration and intentional suppression of these facts in the Shipping Bills filed by them and thus they appear to have evaded the applicable Customs duty on export of rice. In this case, it appears that the exporter had knowingly and deliberately mis-declared the transaction value (i.e. FOB Value) of the export goods. Hence, the extended period of five years appeared to be invocable in this case to recover the differential duty as detailed in Annexure –I and Annexure –II of the Show Cause Notice. Further, M/s Maheshwari Agro also appeared to be liable for payment of interest under the provisions of Section 28AA of the Customs Act, 1962.

13. From the scrutiny of the documents gathered/submitted during investigation by the exporter M/s Maheshwari Agro, scrutiny of the export data and statements of Sh. Dilip Rathi, Partner of M/s Maheshwari Agro of the said export firm who was involved in export of rice from various ports of India, it appeared that—

- i. Sh. Dilip Rathi, Partner of M/s Maheshwari Agro was the key person who on behalf of M/s Maheshwari Agro negotiated and finalized the sale price of rice, exported by M/s Maheshwari Agro to various overseas buyers, vide 24 Shipping Bill as detailed in Tables A1, A2 & B in para 8 above.
- ii. The declared FOB value in respect of shipping bills listed in Tables A1, A2 & B did not reflect the correct transaction value of the export goods;
- iii. As discussed in above paras, the actual transaction value (i.e. FOB Value) was not declared by them in their export documents. They have undervalued and mis-declared their transaction value with intent to evade applicable duty of customs which is leviable @ 20% *ad valorem* on the actual transaction value of the export goods in following manners:

- In respect of Shipping bills listed in Table A1 above, the FOB Value was undervalued by them by an amount equal to the amount of export duty paid on export of rice and the said amount was wrongly claimed as deduction in the shipping bills and the said amount was recovered from the overseas buyer on the basis of separate reimbursement invoices raised to the buyer.
- In respect of Shipping bills listed in Table A2 above, the FOB Value was undervalued by them by an amount higher than the amount of export duty paid on export of rice. Thus apart from the expenses of duty several other expenses were also recovered by them from the overseas buyer and all such expenses were wrongly claimed as deduction in the shipping bills. The entire deduction amount was recovered from the overseas buyer on the basis of separate reimbursement invoices raised to the buyer.
- In respect of the shipping bills listed in Table B, the declared FOB Value was further undervalued by an amount equal to the excess freight amounts declared by the exporter in the shipping bills which were over and above the actual freight amounts paid by them. The ocean freight amounts actually paid by the exporter are eligible deductions from the CIF Value. By declaring the excess freight amounts, exporter had wrongly claimed excess deductions of freight amounts which are not eligible. Thus, exporter had out rightly mis-declared the actual transaction value at the time of export.

Thus, the declared FOB value in respect of all these shipments did not reflect the correct transaction value of the goods for delivery of the export goods at the time and place of exportation (i.e. on board the foreign going vessel after clearance from the customs authorities at the port of export).

- iv. The FOB value of export goods in all these cases was mis-declared by M/s Maheshwari Agro to the Customs authorities in the shipping bills filed by them which was supported by their export invoices for lower value, resulting in suppression and mis-declaration of actual transaction value at the time of assessment of the export goods. As such, the value of export goods in respect of all these Shipping Bills was mis-represented to be lower than the actual transaction value, thereby causing evasion of export duty leviable on rice shipments exported by them;
- v. The value of export goods pertaining to each of these Shipping Bills are liable to be rejected and reassessed as per their actual transaction value as ascertained during investigation, by taking into account the amount which was excluded from the declared value at the time of assessment, as brought out in above paras;
- vi. The balance amount not included in the declared FOB Value and wilfully suppressed by not declaring to Customs with an intention to misrepresent the transaction value of the export goods, is liable to be assessed to duty at the applicable rate as detailed in 'Annexure -I and Annexure -II' of this Show Cause Notice and the same is recoverable along with interest at applicable rate;
- vii. The act of undervaluation and mis-declaration of actual transaction value in respect of Shipping Bills listed in Tables A1, A2 & B by M/s Maheshwari Agro has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 and consequently, M/s Maheshwari Agro has rendered themselves liable to a Penalty under the provisions of Section 114A and Section 114AA of the Customs Act, 1962;
- viii. Sh. Dilip Rathi, Partner of M/s Maheshwari Agro, appears to be the person who knowingly or intentionally either made, signed and used

or caused to be made, signed and used, the custom purpose export invoices, exporter and banking purpose export invoices, reimbursement invoices and Shipping Bills for export of rice by M/s Maheshwari Agro, which were incorrect as regards to the value of export goods for payment of export duty. The goods covered under Shipping Bills listed in Tables A1, A2 & B above, contained the declarations made by M/s Maheshwari Agro which were false and incorrect in material particulars relating to the value of the impugned goods. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were finalized/signed in the overall supervision of Sh. Dilip Rathi who was handling the entire export business of the said export firm. This fact has been admitted by Sh. Dilip Rathi in his statement recorded u/s 108 of the Customs Act, 1962. In view of this, it appears that Sh. Dilip Rathi is the key person who has orchestrated the entire scheme of mis-declaration of value of the export goods, with an intention to evade customs (export) duty. Sh. Dilip Rathi is, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Maheshwari Agro. The act of Sh. Dilip Rathi regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by M/s Maheshwari Agro has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, Sh. Dilip Rathi has rendered himself liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962 for intentionally and knowingly done acts of commission and omission by him.;

14.1 Accordingly, **M/s Maheshwari Agro** (bearing Importer Exporter Code No. AARFM0255E), through its partners Sh. Dilip Rathi and Sh. Ghanshyam Maheshwari, was called upon to show cause as to why—

- i. The declared assessable value of Rs. 42,42,30,842 /- in respect of 24 shipments of rice exported vide Shipping Bills detailed in 'Annexure-I & II', should not be rejected in terms of Rule 8 of the Customs

Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (1) ibid and Section 14 (1) of the Customs Act, 1962;

- ii. The actual assessable value in respect of Shipping Bills detailed in 'Annexure-I & II', should not be re-determined at Rs. 51,53,50,212 /- under the provisions of Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- iii. The differential (export) duty amounting to Rs. 1,82,23,871/- payable, as calculated and shown in 'Annexure-I and II' to this Show Cause Notice should not be demanded and recovered from them, by invoking the extended period of limitation available under the provisions of Section 28 (4) of the Customs Act, 1962;
- iv. The interest on the afore-said total differential duty amount of Rs. 1,82,23,871/- should not be demanded and recovered from them under the provisions of Section 28AA of the Customs Act, 1962;
- v. The voluntary deposit of Rs. 1,61,58,959/- made during investigation should not be appropriated against their aforesaid differential duty liability;
- vi. The shipments of rice exported vide Shipping Bills detailed in 'Annexure-I & II' to the Notice having re-determined assessable value of Rs. 51,53,50,212/-, should not be held liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962;
- vii. Penalty under the provisions of section 114 A and Section 114 AA should not be imposed upon them for the acts of commission and omission as brought out in the Show Cause Notice.

14.2 Further, **Shri Dilip Rathi**, Partner of M/s Maheshwari Agro was also called upon to show cause as to why penalty under the provisions of section 114 (ii) and Section 114AA of the Customs Act, 1962 should not be imposed upon him for his acts and omissions in evasion of Customs Duty amounting to Rs. 1,82,23,871/- on export of rice through his export firm.

15.1 DEFENCE SUBMISSIONS: The Noticee, through their authorised representatives, made the following submissions:

(i) The Noticees have submitted that the Hon'ble Supreme Court, in *Pushpam Pharmaceuticals v. CCE*, has held that "suppression" requires a deliberate act to keep the department in the dark. In the present case, they contend that all relevant documents, including the Invoice and Packing List, were duly submitted at the time of filing the Bills of Export. According to them, there was no act of concealment or misdeclaration, as all relevant particulars such as invoice value, FOB value, freight and deductions were correctly mentioned in the appropriate columns of the shipping bills. It is further submitted that there was no misdeclaration or intentional suppression of facts in the shipping bills with any intent to evade export duty and, therefore, invocation of the extended period of limitation for issuance of the show cause notice under Section 28(4) of the Customs Act, 1962 is not proper.

(ii) The Noticees have further submitted that the shipping bills were filed under a bona fide belief that the FOB price was a cum-duty price for the purpose of calculation of export duty, which, according to them, was the prevailing practice up to 31.12.2008 and was also in accordance with normal trade practice. They have stated that any error in declaration of value at the time of export was a bona fide mistake and that there was no intention to evade payment of duty. It is also submitted that the differential duty, as pointed out by the officers of the DRI, was deposited during the investigation stage. According to the Noticees, the manner of arriving at the transaction value is a matter of legal interpretation rather than fraud. They have further contended that, since there is no evidence of collusion, wilful misstatement or suppression, the essential ingredients of Section 28(4) are not satisfied, and consequently, Section 114A, which is contingent upon proof of such factors, cannot be invoked.

(iii) The Noticees have submitted that there was no forging or manipulation of documents as alleged. They state that all relevant

particulars, including Invoice Value, FOB value, Freight and deductions, were duly declared in the appropriate columns of the Shipping Bills, and therefore no material information was concealed from the Customs authorities.

(iv) The Noticees further submit that for imposition of penalty under Section 114AA of the Customs Act, 1962, two essential ingredients must be established, namely: (a) intent to evade duty (mens rea), and (b) use of false or incorrect material. According to them, both these essential conditions are absent in the present case. They assert that there was no intent to evade payment of duty and that no false or incorrect documents or material were placed before the Customs department. Consequently, they submit that, since the statutory prerequisites for invoking Section 114AA are not satisfied, no penalty under the said provision can be imposed.

(v) They stated that they have paid Rs. 76,72,159/- vide Demand Draft No. 24196 dated 29.01.2024 for export made through Kandla Port and Rs. 84,86,800/- vide Demand Draft No. 241915 dated 29.01.2024 for export made through Mundra Port.

(vi) They further contended that they do not agree with the demand of Rs. 20,76,817/- on alleged excess freight collected because excess freight is not a consideration towards the sale of goods and hence it's not part of transaction value.

15.2 RECORDS OF PERSONAL HEARING

➤ Following the principles of natural justice, opportunities of personal hearing were granted on dated 29.12.2025 & 06.01.2026 to the noticee in the subject case. Shri Dilip Agarwal and Mr. Kushagr Agarwal (Authorised representative) appeared for hearing on 06.01.2026 through physical mode and explained the facts of the case. On the request of the authorised representative, hearing was done in physical mode. They have submitted their written submission dated 06.01.2026 and stated that the deduction were claimed as per the trade practice followed at the time of export

shipments. The exporter has made the said shipments first time and followed the practice adopted by the other exporters. There was no intention to evade duty. The mistake was bonafide due to interpretation issue of Notification No. 49/2022-Cus. Dated 08.09.2022. Exporter had paid almost entire amount of the differential duty during the investigation period as per the direction of the investigating officer, only a nominal amount is remaining to be paid. This was also not paid due to calculation issue at our part. They further stated that the Noticee is agree to pay the remaining duty amount, penalty portion, as deemed fit by the adjudicating authority. They further requested to take a lenient view while imposing penalty, as this is the first case wherein department had issued Show Cause Notice against the Noticee.

DISCUSSION AND FINDINGS

16. I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. I find that the authorised representative, in principle during the personal hearing, agreed with the charges proposed in the Show Cause Notice although initially though written submission they have disputed the fright charges allegation. I note that during the personal hearing held on 06.01.2026, they submitted that the deductions were claimed as per the prevailing trade practice and that the exports were undertaken for the first time, without any intention to evade duty. I further note that the noticee has paid almost the entire differential duty during investigation and has agreed to pay the remaining duty and penalty as deemed fit, while requesting a lenient view considering the bona fide nature of the lapse and their cooperative conduct. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided:

- (i) Whether the declared assessable value of Rs. 42,42,30,842/- in respect of 24 shipments of rice exported is liable to be rejected and the same is required to be re-determined at Rs. 51,53,50,212 /- or otherwise.
- (ii) Whether the differential (export) duty amounting to Rs. 1,82,23,871/- is liable to be recovered and demanded under the provisions of Section 28(4) of the Customs Act, 1962 or otherwise.
- (iii) Whether the interest on the afore-said total differential duty amount of is required to be recovered under the provisions of Section 28AA of the Customs Act, 1962 or otherwise.
- (iv) Whether the subject shipments of rice exported having proposed re-determined assessable value of Rs. 51,53,50,212/- are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962 or otherwise.
- (v) Whether the Exporter is liable for penal action under Section 114A and Section 114AA of the customs Act, 1962 or otherwise.
- (vi) Whether Shri Dilip Rathi, Partner of M/s Maheshwari Agro is liable for penal action under Section 114(ii) and Section 114AA of the customs Act, 1962 or otherwise

16.1 I find that the present case revolves around the export of total 24 shipments of rice exports by M/s Maheshwari Agro. The goods exported having descriptions as Rice and the same were classified under Customs Tariff Headings 10062000, 10063010 and 10063090. These shipments were liable to payment of export duty at the rate of 20% *ad valorem*, imposed vide Notification No. 49/2022-Cus., dated 08.09.2022 and continued vide Notification No. 49/2023-Cus., dated 25.08.2023.

16.2 I find it appropriate to mention here that Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007) stipulates that the value of export goods shall be

based on the transaction value that is, the actual price paid or payable for the goods when sold for export from India at the time and place of exportation, provided that the buyer and seller are not related and the price is the sole consideration. I noticed that the Central Board of Excise and Customs (CBIC) vide Circular No. 18/2008-Cus., dated 10.11.2008 has clarified that, for assessment of export duty, the transaction value should be taken as the FOB value of the export goods at the time and place of exportation and no abatement of export duty is permissible from this value.

16.3. I noticed that export duty at the rate of 20% *ad valorem* was imposed on export of rice vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022. Investigation revealed that the exporter used to negotiate a specific price for sale of their export consignment which was received by them from the overseas buyer as 'consideration' for sale of rice. Thus the 'consideration/negotiated price' was 'the actual transaction value' for their export consignment on which the exporter ought to have paid the 20% export duty. I find that the exporter had declared three values in their shipping bills, namely (i) Total Value, (ii) Invoice Value, and (iii) FOB Value. The "Total Value" included the element of export duty and represented the gross consideration negotiated with the overseas buyer. From this Total Value, the exporter deducted an amount equal to the export duty payable, and declared the balance as "Invoice Value". Further, from this Invoice Value, they deducted freight and insurance amounts to arrive at "FOB Value". By this practice, deductions were wrongly claimed. Therefore, by these modus, they reduced the transaction value on which less export duty was discharged/paid.

17. I find that that the exporter had adopted two distinct modus operandi to exclude portions of consideration from the declared transaction values:

(i) Deduction of export duty amounts (Table A): In respect of 18 shipping bills, the exporter deducted amounts equal to the export duty paid and declared these reduced values as FOB values for export of the goods covered under the subject shipping bills for payment of export duty. During investigation it has been noticed the amounts deducted from declared FOB

value matched the export duty amounts payable, and the said deducted amount were subsequently recovered from the overseas buyers through debit notes and credited into the exporter's bank account. The recovery of these amounts has been admitted by the exporter in their statements recorded during the investigation under Section 108 of the Customs Act, 1962. Further, the investigation had also revealed that in respect of two shipments (as detailed under table-A2), the amounts claimed as 'deduction/deduct' were higher than to the export duty amounts paid by them at the time of filing of these 02 shipping bills. These amounts claimed as 'deduction/deduct' were also recovered by the exporter from the overseas buyer in their bank accounts. The exporter had also confirmed these facts in his submission and statement recorded u/s 108 of the Customs Act, 1962.

(ii) Declaration of excess freight (Table B): In 7 shipping bills, the exporter declared freight amounts higher than the actual freight paid to shipping lines/freight forwarders. I noticed that only actual freight paid is eligible for deduction from CIF/CF values to calculate FOB value. By inflating freight charges, the exporter claimed excess deductions and thereby reduced FOB values. The difference was retained by the exporter, being part of the consideration recovered from the buyer, but was not disclosed in the declared FOB value. The total excess freight declared by the exporter calculate at Rs. 91.82 Lakh.

17.1 I find that in the said two categories of shipments, the exporter had negotiated and finalized a composite price with overseas buyers. However, instead of declaring the entire agreed consideration as transaction value, the exporter artificially bifurcated the same into "price of goods" and "duty element" or inflated freight deductions. These bifurcations are not allowed under Section 14 of the Customs Act, 1962. The statute mandate to include all amounts which the buyer is required to pay to the seller as a condition of sale. The amounts separately recovered through debit notes or retained through inflated freight clearly forms part of the "price actually paid or payable".

17.2. I find that export duty is a statutory levy and therefore form part of transaction value. In the present case the exporter has not borne the incidence of duty but the duty amounts were recovered by the exporter from the buyers as part of sale consideration. Hence, these recovered amounts must be included in transaction value. I find that that all taxes/expenses before the point of loading of the export goods on board the vessel are included in the definition of 'FOB'. In the case of export of goods, loading of the export goods starts after issuance of the 'Let Export Order (LEO)' by the proper officer of the Customs. LEO is issued after payment of the export duty. As the export duty is leviable before the point of loading of the export goods on to the vessel the same is includible in the FOB Value of the export goods in the present case. I find that the provisions of the Incoterm or International Commercial Terms, which are widely used in the international transactions, published by the International Chamber of Commerce clearly define the responsibility of the importers and exporters in the arrangement of shipments and transfer of liability involved at various stages of transaction. I noticed that these incoterms rules are accepted by governments, legal authorities worldwide for the interpretation of most commonly used terms in the international trade. They are intended to reduce or remove altogether uncertainties arising from the differing interpretations of the rules in different countries. As per Incoterms 2020 published by ICC, the term 'FOB' has been defined as ***“Under FOB terms the seller bears all costs and risks up to the point the goods are loaded on board the vessel. The seller's responsibility does not end at that point unless the goods are "appropriated to the contract" that is, they are "clearly set aside or otherwise identified as the contract goods". Therefore, FOB contract requires a seller to deliver goods on board a vessel that is to be designated by the buyer in a manner customary at the particular port. In this case, the seller must also arrange for export clearance. On the other hand, the buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination.”***

From the above definition, it is evident that definition of “FOB” includes all cost until the loading of export goods on board the foreign going

vessel including customs clearance and related charges which are to be borne by the seller. Since export duty discharged prior to issuance of the Let Export Order and before the goods are physically loaded on board, it is evident that duty portion is an integral part of the costs which is to be borne by the seller. Therefore, I find that where the seller has recovered the export duty amount separately from the buyer, such recovered amount become a part of the consideration for the sale of export goods. Thus, the said amount is liable to be included in the FOB value for determining the correct assessable value. Accordingly, I hold that the export duty recovered from overseas buyers is includible in the FOB value of the export goods.

18. MODUS OF DUTY EVASION: I find it necessary to examine in detail the specific methods adopted by the exporter for undervaluation and recovery of amount from foreign buyers. The following discussion examines each modus operandi separately, with a view to establishing whether the charges proposed in the show cause notice against the noticees are sustainable.

18.1.1 I find that in respect of Shipping Bills as mentioned in Table-A1 at para 6.2 of this order, M/s Maheshwari Agro, had wrongly claimed deductions equal to the export duty amounts payable at the time of export. I noticed that the deduction amounts of Rs. 7,61,23,593/- were claimed in the said Shipping Bills. These deductions were found equal to the export duty amounts paid by the exporter. This fact indicate clearly that the exporter deliberately reduced the declared FOB Value by the duty component and therefore, mis-declared the transaction value for the purpose of assessment. The exporter in the invoices and shipping bills had mentioned duty paid amounts separately. They did not include these amounts in the total invoice value or the FOB value declared before the Customs Authority. On the contrary, they showed these as deductions under the head "Deduct/Deduction" in the shipping bills. By doing these act, the exporter had suppressed the actual consideration received from the overseas buyers and presented an artificially reduced FOB Value to the Customs authorities at the time of export.

18.1.2 I also find that the exporter in respect of the 02 shipping bills (as mentioned under table-A2 at para 6.2 of this order, claimed the deduction of an amount of Rs. 46,11,684/-. However, they have paid total duty of Rs. 29,75,280/-. Therefore, the amounts claimed as 'deduction/deduct' were higher than to the export duty amounts paid by them at the time of filing of these 02 shipping bills. However, as admitted by the exporter, the total amount of Rs. 46,11,684/- was also recovered by the exporter from the overseas buyer in their bank accounts. This, the exporter had suppressed the actual consideration received from the overseas buyers in these two shipping bills also.

18.1.3 I find that from the admission made in their statements recorded under Section 108 of the Customs Act, 1962, that these deducted amounts were in fact recovered from the overseas buyers. I notice that the said recovery was made through raising separate debit notes, and the said amounts were duly realized in the bank accounts of the exporter. However, these receipts were not reflected in BRCs. Thus, the fact were never discovered that the declared invoice value was not the sole amount received by the exporter from the foreign buyer. These acts show a deliberate attempt by the exporter to suppress facts and make false statements.

18.1.4 I have also examined the Shipping Bill No. 9489510 dated 24.04.2023 and noticed that the deduction amount exactly matched the export duty amount. The Deduction of Rs. 25,23,400/- was claimed in that shipping bill and that amount is equal to the export duty leviable on the goods covered under the said shipping bill. The exporter deducted this amount from the actual transaction value however received the same from the overseas buyer as part of the sale proceeds. By treating the actual FOB Value as a cum-duty price and deducting the duty amount, the exporter attempted to take an abatement of duty which is not permissible to them in subject shipping bills as detailed under Table-A.

18.1.5 I find that as per Section 14 of the Customs Act, 1962, the transaction value is defined as the price actually paid or payable for the

goods when sold for export from India for delivery at the time and place of exportation. Export duty is leviable on such transaction value, which includes all consideration received by the exporter from the overseas buyer. When the exporter recovers the export duty amount separately from the buyer through debit notes, that recovery becomes part of the sale consideration. Excluding such amounts from the declared FOB Value is contrary to Section 14 of the Customs Act, 1962 read with Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. In view of the above, I hold that the declared FOB Value in respect of the subject shipping bills covered under Table-A1 & A2 is liable for rejection under Rule 8 of the CVR(E), 2007. The actual transaction value has to be re-determined by including the deduction amounts wrongly excluded by the exporter.

18.2.1 I find that in respect of the 07 shipping bills covered under Table-B, the Exporter declared inflated amounts of ocean freight in their shipping bills as compared to the actual freight paid to the freight forwarders/shipping lines. By adopting this method, the exporter artificially reduced the assessable FOB value declared before Customs and thereby resulting in short-payment of export duty. From the investigation, it is evident that the excess freight amounts were not borne by the exporter and the same were actually recovered from their overseas buyers as part of the total consideration for the consignments. The exporter inflated freight amount in the shipping bills which reduced the FOB values declared before the Customs. However, the exporter collected the full payment from their overseas buyers. The discrepancy between declared freight and actual freight paid was also accepted by the exporter during the investigation period by submitting the details of shipments.

18.2.2 For example, in the Shipping Bill No. 2075668 dated 28.06.2023, the exporter declared freight of Rs. 44,27,962/-. However, records produced during investigation showed that the actual freight paid to the shipping line was only Rs. 17,37,555/-. The excess freight declared of Rs. 36,90,407/- which was deducted from the CIF value reduced the FOB

value declared before the customs at the time of export. I find that this excess freight was also recovered from the overseas buyer but was not included in the amount for duty assessment at the time of export. This instance demonstrates the method adopted by the exporter for all shipments covered under Table-B.

18.2.3 I state that under Section 14 of the Customs Act, 1962, the transaction value is defined as the price actually paid or payable for the goods at the time and place of exportation, where price is the sole consideration. In CIF contracts, deductions can only be made for actual freight and insurance incurred by the exporter. Any excess freight declared over and above the actual cost is not a deductible expense but represents part of the consideration payable by the buyer to the seller, and therefore forms part of the FOB value. By declaring inflated freight in the shipping bills, the exporter contravened the statutory arrangement, leading to suppression of the true transaction value. In view of the above, I hold that the FOB values declared in respect of the 07 shipping bills covered under Table-B are liable to rejection under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and the values have to be re-determined by adding the excess freight amounts of Rs. 1,03,84,094/- to the declared FOB values under the provisions of Section 14 of the Customs Act, 1962. Accordingly, I hold the re-determined FOB Value comes to Rs. 9,77,20,650/- against the declared Rs. 8,73,36,556/-, as calculated in Table-D of the SCN.

19. From the above, it is evident that M/s Maheshwari Agro undervalued their rice export consignments by using two different methods. For the shipping bills listed in Table-A1 & A2, the exporter wrongly deducted export duty amounts in the shipping bills. These amounts were separately collected from overseas buyers through debit notes but not included in the declared FOB values. The exporter collected duty amounts separately from buyers through debit notes and misused the RBI purpose code P1306 to route these payments. In the case of the shipping bills under Table-B, the exporter declared inflated freight charges in the shipping bills but actually paid much

lower freight costs to shipping lines. This method lowered the declared FOB values, while the excess freight amount was recovered from overseas buyers as part of the sale price. Thus, I find that the exporter had concealed the true transaction values from the customs authority at the time of export. The combined impact of these practices was that the FOB values shown to Customs did not reflect the actual transaction values as required under Section 14 of the Customs Act, 1962. In these two categories of shipments, amounts that were an integral part of the payment received from overseas buyers were deliberately excluded from the declared values. Thus, the omission and commission on the part of the exporter leads suppression of the facts and short-payment of export duty. Therefore, I hold that the FOB values declared in respect of the subject shipping bills is liable be rejected under Rule 8 of the CVR(E), 2007. The correct transaction values are to be re-determined under the provisions of Section 14 of the Customs Act, 1962.

20. Statement recorded during the investigation:

20.1 I find that Shri Dilip Rathi (Partner of M/s Maheshwari Agro), in his statement dated 30.11.2023, admitted that he looked after the sales including the export sales and marketing work of the said firm. He admitted that separate invoices were generated and reimbursement were separately generated. On showing the the documents pertaining to the Shipping Bill no 9489510-dated 24.04.2023, he admitted that the amount mentioned in Reimbursement Invoice No. 02 (Part B) dated 24.04.2023 was over and above the amount mentioned in Invoice No. 02 dated 24.04.2023 (Part A) which was submitted to the Customs Authorities at the time of export. He clearly admitted that they had received the entire amount for which two invoices invoice no. 02 (Part A) for CIF export price and invoice no. 02 (Part B) for reimbursement of export duty and other expenses, were raised by them to the buyer. From the said statement it is evident that wrongful deduction of amounts equivalent to export duty claimed from the negotiated sale price in certain CFR/CF shipments.

20.2 He further admitted that the actual total invoice value (CFR) were different, however they had bifurcated the actual invoice value in two parts one for Cost and Freight and another for Export clearance charges (i.e. export duty) and had claimed a deduction equal to export duty at the time of declaring the value of the export goods for the purpose of payment of Customs Duty. He admitted that the value declared by them to the Customs Authority for payment of the export duty did not reflect the true transaction value of the export shipment.

20.3 He further explained that that the actual transaction value for the said shipment was USD 440 / MT CFR and thereafter they had deducted freight amounting to USD 68 per MT to arrive at USD 372 per MT; that the value calculated after deduction of the freight amount from the CFR value should be the actual FOB value of the export goods i.e. USD 372 per MT; that in order to save themselves from payment of some duty they had deducted a part of the transaction value (i.e. equal to USD 62/MT) from the total actual FOB value and had paid duty on the balance amount of USD 310/MT; that the value declared by them for the purposes of the payment of Customs duty was calculated by considering the actual FOB Value as cum duty FOB value [USD 440 (CFR) – USD 68 (Freight) = USD 372 (Actual FOB Value) and then USD 372- USD 62 (export duty)= USD 310(declared FOB Value)] instead of the actual FOB Value of USD 372/MT.

20.4 I find from the said statement that after the imposition of duty on export of rice with effect from September, 2022, they started paying the appropriate export duty on the actual FOB price. however, in March 2023, as per the practice followed by some other exporters of rice (as claimed by Shri Dilip Rathi), they started to bifurcate the actual FOB Value in two parts and started claiming reimbursement of the export duty separately from the overseas buyer; that for facilitating the bank remittances, they had generated Reimbursement invoices to the buyer having unit price equivalent to the export clearance charges/export duty.

20.5 I find it significant that Shri Dilip Rathi has admitted having full knowledge of Section 14 of the Customs Act, 1962 and CBIC Circular No. 18/2008-Cus. dated 10.11.2008, and has acknowledged that export duty is payable on the entire FOB value. Despite such knowledge, he consciously adopted the cum-duty FOB method, thereby confirming that the mis-declaration was deliberate and not accidental. He admitted that clearance charges mentioned in the reimbursement invoice (which are equivalent to the export duty paid by them) were also part of their cost and expenses occurred by them for effecting the export of goods on FOB basis and the same had been received by them from the supplier. The said charges should be included in the transaction value for calculation of the export duty.

20.6 In view of said voluntary admissions and further reinforced by voluntary payment of differential duty during investigation, I hold that the exporter has short paid the export duty by way of undervaluation. Shri Dilip Rathi, Partner of M/s Maheshwari Agro, admitted his mistake and undertook to calculate their total differential duty liability on account of such short payment of duty due to wrong claim of deductions amounts by them and undertook to deposit their entire duty liability at the earliest. I also find that the Importer has deposited duty amounts, as mentioned under para 5 of this order. However, this amount was not paid in full, hence, this payment does not absolve them from legal consequence under the provisions of the Customs Act, 1962.

CALCULATION OF DIFFERENTIAL DUTY:

21.1 Calculation of differential duty in respect of shipment covered under Table-A: As discussed under foregoing paras, it has been established that for the 20 rice export shipments listed in Table A1 & A2, the exporter wrongly claimed a deduction equal to the export duty amount from the declared FOB value in the shipping bills. The finding of the investigation and the exporter's own admission during the statements clearly display the full transaction value (including duty) was not revealed at the time of export although the same was recovered from the foreign buyers. I find that the

exporter treated the duty portion as an abatement and paid export duty on the reduced value. This resulted in short-payment of duty. I have already discussed the rejection of the declared value under Rule 8 of CVR (E), 2007 and re-determination of same under Section 14 of the Customs Act, 1962. Based on this re-determination (after adding the duty part in the assessable value) the declared FOB value of Rs. 39,54,94,361/- has been re-determined to Rs. 47,62,29,638/-. Accordingly, the differential export duty that was short-paid amounting to **Rs. 1,61,47,055/-**, is liable to be recovered under Section 28(4) along with applicable interest as per Section 28AA of the Customs Act, 1962. The shipping-bill wise, port-wise consolidated details of the short-paid duty are summarized below:

TABLE-I

Port Code	No of SBs	Declared FOB Value in Rs.	Cess Amount Paid in Rs.	Deduction amounts claimed from FOB in Rs.	Reimbursement amount received from overseas buyer (INR)	Re-determined FOB value (after adding the Deduction amount) in Rs.	Duty payable on re-determined FOB in Rs.	Differential duty due to deductions claimed in Rs.
INMUN1	12	20,36,90,386	4,07,38,078	4,23,74,481	4,23,74,481	24,60,64,868	4,92,12,974	84,74,896
INIXY1	8	19,18,03,975	3,83,60,795	3,83,60,795	3,83,60,795	23,01,64,770	4,60,32,954	76,72,159
Total	20	39,54,94,361	7,90,98,873	8,07,35,276	8,07,35,276	47,62,29,638	9,52,45,928	1,61,47,055

21.2 Calculation of differential duty in respect of shipment covered under Table-B: Apart from the above, as discussed above, in respect of 07 export shipments of rice listed in Table B, the exporter knowingly inflated the freight amount in the export documents. The evidence on record shows that the freight amounts declared in the shipping bills were significantly higher than the actual amounts paid by the exporter to the freight forwarders/shipping lines. For determination of the FOB value under Section 14 of the Customs Act, 1962, only the actual freight paid is eligible for deduction from the CIF value. By declaring inflated freight amounts, the

exporter artificially reduced the FOB value and suppressed the assessable value of the export goods. I find that the declared excess freight amounts are not allowed for deductions under shipping bills and the same are required to be included in the assessable value of the export consignments. These inflated freight amount (later recovered by the exporter from the overseas buyers) are part of the consideration for the goods and are liable to export duty. Accordingly, the FOB value re-determined from Rs. 8,73,36,556/- to Rs. 9,77,20,650/- by adding the excess freight amounts of Rs. 1,03,84,094/-. Therefore, the short-payment of duty to the extent of **Rs. 20,76,817/-** is liable to be recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962. The consolidated port-wise details of such short-paid duty are summarized below:

TABLE-II

Port Code	No of SBs	Declared FOB value in Rs.	Cess Amount Paid in Rs.	Declared Freight Amount as per Shipping Bill (INR)	Actual Freight Amount Paid as per Freight Invoice (INR)	Excess Freight claimed (INR)	Re-determined FOB on account of excess freight (INR)	Differential Duty (INR)
INMUN1	7	8,73,36,556	1,74,67,313	2,78,51,407	1,74,67,313	1,03,84,094	9,77,20,650	20,76,817
Total	7	8,73,36,556	1,74,67,313	2,78,51,407	1,74,67,313	1,03,84,094	9,77,20,650	20,76,817

21.3 Based on the above findings, it has been established that the exporter, adopted two distinct modus operandi to suppress the actual assessable value of their export consignments: (i) wrongful deduction of export duty amounts from the FOB values, and (ii) inflated declaration of freight in shipping bills. I find that after re-determination of the FOB values in terms of Section 14 of the Customs Act, 1962, the differential export duty payable by the exporter works out to be at **Rs. 1,82,23,871/-** is hereby confirmed and the same is liable for recovery under Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the

Customs Act, 1962. A port-wise summary of the confirmed duty is provided under table below.

TABLE-III

Port Code	No of SBs	Declared FOB Value in Rs.	Cess Amount (INR)	Re-determined FOB (INR)	Total differential duty payable (INR)
INMUN1	16	23,24,26,867	4,64,85,376	28,51,85,442	1,05,51,712
INIXY1	8	19,18,03,975	3,83,60,795	23,01,64,770	76,72,159
Total	24	42,42,30,842	8,48,46,171	51,53,50,212	1,82,23,871

22. Demand of duty under Section 28(4) of the Customs Act, 1962:

22.1 It is obligatory on the exporter to subscribe a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, '*Self-Assessment*' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. As per Regulation 4 of the Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulation, 2019 (issued under Section 157 read with Section 50 of the Customs Act, 1962), the Shipping Bill shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the export goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Shipping Bill number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under

the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the exporter to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the export goods.

22.2 From the above provisions, it may be seen that the responsibility lies on the exporter to ensure that all details related to the shipments are correctly declared at the time of filing shipping bills. I have already discussed in detail the modus adopted by the exporter to evade the duty at the time of export. I find that the extended period of five years under Section 28(4) of the Customs Act, 1962 has been correctly invoked in the present case. The pre-condition for such invocation is that the non-levy, short-levy or short-payment of duty should arise due to collusion, wilful misstatement, or suppression of facts with intent to evade duty. In the present matter, I find that evidence brought on record correctly establish the fact that that M/s Maheshwari Agro indulged in deliberate mis-declaration of assessable value of export goods through two different modus operandi i.e. (i) wrongful deduction of duty element from declared FOB value (ii) inflation of actual freight amount to claim unacceptable deductions. Each of these modus is adopted by the exporter with full knowledge by concealment of material facts at the time of filing shipping bills. These act done by the exporter cannot be termed as clerical error or interpretative dispute.

22.3 I find that the Noticee had received payment of export duty from overseas buyers, which directly influenced the determination of transaction values. However, instead of declaring these payment clearly in the shipping bills, the Noticee chose to reflect such receipts under vague heads i.e. "deductions." This method cannot be accepted as transparent disclosure of important information. The essence of statutory compliance under the

Customs Act is clear and truthful declaration of all particulars in the prescribed documents in relation to value, description, and quantity of goods. By concealing duty reimbursements under unrelated fields, the Noticee mis-declared key facts and therefore withheld accurate information at the time of export clearance. Further, the exporter had received payment of duty paid at the time of export separately under a separate RBI purpose code (P1306) and the method for routing these amounts adopted by choosing incorrect purpose code which is no way related to the export of the goods. I find that the exporter had never disclosed the fact before the customs authority that additional amounts over and above declared FOB were being recovered by them by way of debit notes.

22.4 As discussed above, it is clear that the exporter inflated freight amount in the shipping bills for the purpose to reduce the declared FOB values before the Customs. The fact is now not in dispute that the exporter received the full payment from their overseas buyers. The noticees did not bother to inform the authorities at the time of export that excess freight amounts were not borne by them but ultimately will be recovered from their overseas buyers as part of the total value for the consignments. I find that inflating the price, wrongly claim under “deduction” heads, inflating freight amounts, receiving payment from buyers, using wrong RBI purpose code; leaves no scopes for not invoking extended period of time. These acts on the part of the exporter supports the finding that the Noticee had received these amounts and concealed the true nature of the transaction from Customs by suppression the fact and by not disclosing the complete details before the Customs Authority. I find that in the present case the duty reimbursement was masked under not permissible deduction under the shipping bills and separate remittance codes were used purposely to evade the legitimate Customs Duty. These acts on the part the of Noticee amounts to suppression and mis-statement at their end. The deliberate undervaluation and suppression of true assessable value set up a fit case for application of the extended limitation period. In view of the above, I hold that the conditions for invoking Section 28(4) are squarely satisfied in this case. Therefore, the extended period has been rightly invoked, and the

demand of differential duty as proposed in the Show Cause Notice is sustainable.

23. SCN has alleged that the goods are liable for confiscation under Section 113(i) of the Customs Act, 1962. The relevant legal provisions of Section 113(i) of the Customs Act, 1962 are reproduced below: -

“(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;”

On plain reading of the above provisions of the Section 113(i) of the Customs Act, 1962, it is clear that any goods, which are entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act, will be liable to confiscation. As discussed in the foregoing paras, the said noticee has claimed wrongful deduction in the different shipping bills and inflated the freight charges. By doing these acts of wilful mis-statements and suppression of the facts in respect of the impugned export consignments, the exporter has rendered the impugned goods having re-determined assessable value of Rs. 51,53,50,212/- liable to confiscation under Sections 113(i) of the Customs Act, 1962.

23.1 As the impugned goods are found to be liable for confiscation under Section 113(i) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been exported and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon’ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for

confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in **C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]**. Para 23 of the said Judgment is as follows:

“The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate 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.”

23.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I

find that goods are liable for confiscation and redemption fine can be imposed.

23.3 I further observe that present case does not involve export of prohibited or restricted goods. The description of the goods declared in the shipping bills has not been found to be false or misleading. There is no evidence on record to suggest any deliberate attempt to smuggle goods out of the country. Further, export of goods resulted in receipt of foreign remittance into the country. The dispute in the present case is confined to valuation of the goods at the time of exports. I further note that the entire undue benefit that had accrued to the exporter on account of such under valuation is already ordered to be recovered in the form of differential duty. I also find that a penalty equal to the duty amount is also going to be imposed under Section 114A of the Customs Act, 1962.

23.4 Considering these factors, the ends of justice would be met if a lenient view is taken for goods which are not available for confiscation and the redemption fine is restricted to 25% of differential duty.

24. Penalty under Section 114/114A/114AA of the Customs Act, 1962:

24.1 I have already decided that the goods are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962 for the reasons explained under foregoing paras. Consequently penalty under **Section 114A** is found leviable on the exporter as the elements for penalty as per said Section 114A is *pari materia* with Section 28(4) of the Customs Act, 1962.

24.2 From the above discussion and findings, it is evident that Shri Dilip Rathi (Partner of M/s. Maheshwari Agro), was looking after the sales including the export sales and marketing work of the company. He also accepted reducing the FOB value by deducting export duty even though the same amounts were recovered from buyers. He further accepted that debit notes were separately raised for duty reimbursement but were not disclosed in the shipping bills. These acts done by him confirmed his direct involvement in mis-declaration and short-payment of export duty, thus

made the subject goods liable for confiscation under the provisions of Section 113 of the Customs Act, 1962. Therefore, I hold that Shri Dilip Rathi is liable for penalty under **Section 114(ii)** of the Customs Act, 1962.

24.3 In the present case, the deliberate misdeclaration of the FOB value, documents that did not reflect the actual consideration receivable from overseas buyers, and the issuance of separate documents to recover export duty while suppressing the same from shipping bill declarations, clearly fall within the scope of acts covered within the ambit of Section 114AA of the Customs Act, 1962. The investigation has revealed that reimbursement amounts were not reflected in the shipping bills or in the BRCs. These amounts were recovered separately through debit notes and misrepresented through use of incorrect RBI Purpose Code P1306 which is meant for “Transfers” of personal nature and not for export related matters. These acts were done by the exporter with full knowledge by intentional act of misstatements. They were using false and misleading documents for the purpose of customs clearance. These deliberate act of submitting false and incorrect documents with the intent to evade export duty made them liable for penal action under the provisions of Section 114AA of the Customs Act, 1962. Therefore, M/s Maheshwari Agro and Shri Dilip Rathi (Partner of M/s. Maheshwari Agro) are liable to penalty under **Section 114AA** of the Customs Act, 1962.

24.4 Although penalty under Section 114 & 114AA is leviable in the present case, I find that the quantum of such penalty is discretionary and must be determined with regard to the facts and circumstances of the case, the degree of mens rea, and the conduct of the noticee during investigation and adjudication. Penalty provisions under the Customs Act, 1962 are intended to deter violations while ensuring that the punishment imposed is proportionate to the gravity of the offence and the conduct of the noticee. In the present case, I find that the exporter voluntarily paid a substantial portion of the differential export duty amounting to Rs. 1,61,58,959/- during the course of investigation, even prior to adjudication. I also note that this payment was not made under protest, which reflects acceptance of

the duty liability arising from the incorrect valuation adopted. Such voluntary compliance, though not absolving the exporter from penal consequences, is a relevant factor while determining the quantum of penalty under Section 114AA of the Customs Act, 1962.

24.5 I am of the considered view that leniency cannot be equated with immunity. I note that in some cases the noticee voluntarily accepts the lapse, fully cooperates during the investigation, and approaches the Department for early conclusion of proceedings while seeking a lenient view. Such cases deserve due consideration at the stage of determining the quantum of fine and penalty. These cases are distinct from situations where the noticee disputes liability despite clear evidence, refuses to accept the contravention, or adopts a non-cooperative approach. In the present case, the exporter has acknowledged the error pointed out by the Department, has come forward to pay the major portion of the differential duty, and has requested early closure of the case on a lenient basis. Therefore, the present case cannot be equated with cases of deliberate non-compliance or outright denial of liability. Accordingly, a lenient approach can be taken in the present case while determining the quantum of penalty under Section 114(ii) and 114AA of the Customs Act, 1962.

25. In view of above discussions and findings supra, I pass the following order:

ORDER

- i. I order to reject the declared assessable value of Rs. 42,42,30,842/- in respect of 24 shipments (as detailed in 'Annexures -I & II of the SCN) in terms of Rule 8 of the CVR (E), 2007 and order to re-determine the same at Rs. 51,53,50,212/- under the provisions of Section 14(1) of the Customs Act, 1962 read with read with Rule 3(1) CVR (E), 2007.
- ii. I confirm the demand of differential (export) duty amounting to **Rs. 1,82,23,871/-** by invoking extended period under Section 28(4) of the Customs Act, 1962.

- iii. I order to recover interest on the differential duty amount confirmed at sr. no (ii) under the provisions of Section 28AA of the Customs Act, 1962;
- iv. I hold that the goods exported vide Shipping Bills (as detailed under 'Annexures-I & II' to the SCN) having re-determined assessable value of Rs. 51,53,50,212/- are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. I impose redemption fine of **Rs. 45,60,000/- (Rupees Forty Five Lakhs Sixty Thousand only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.
- v. I impose a penalty equal to the differential duty amount i.e. **Rs. 1,82,23,871/- (Rupees One Crore Eighty Two Lakhs Twenty Three Thousand Eight Hundred and Seventy One only)** upon the Exporter M/s. Maheshwari Agro under section 114A of the Customs Act, 1962. However, in case the said exporter pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be reduced to 25% of the penalty amount, as per provisions of Section 114A of the Customs Act, 1962.
- vi. I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** upon the Exporter M/s. Maheshwari Agro under section 114AA of the Customs Act, 1962.
- vii. I impose a penalty of **Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only)** upon Shri Dilip Rathi (Partner of M/s. Maheshwari Agro) under section 114(ii) of the Customs Act, 1962.
- viii. I impose a penalty of **Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only)** upon Shri Dilip Rathi (Partner of M/s. Maheshwari Agro) under section 114AA of the Customs Act, 1962.
- ix. I order to appropriate the amount of Rs. 1,61,58,959/- deposited voluntarily during investigation towards their duty liability.

26. The Order is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or any other law for the time being in force.

(NITIN SAINI)
Commissioner of Customs
Custom House, Mundra.

DIN: 20260271MO0000824952

To the Noticee by Hand/Email/Post,

- 1) M/s. Maheshwari Agro, M/s Maheshwari Agro, New Survey No. 1746 (Old S. No. 949/1/1), Beside Ashirwad Agro, Near Bavla Railway Crossing, Sanand Bavla Road, Bavla, Ahmedabad, Gujarat – 382220.
- 2) Sh. Dilip Rathi S/o Late Shri Jasroopdas Rathi, R/o: A-1/703, Green Acre Flat, Prahaladnagar, Ahmedabad – 380015
Also at Sivajee Park, Dhanera, Banaskatha, Gujarat – 385310

Copy for necessary action to: -

- i. The Chief Commissioner of Customs Gujarat Customs Zone, Ahmedabad
- ii. The Superintendent (EDI/Disposal/Recovery/Legal), Customs House, Mundra.
- iii. SIO, B-Cell, CI Section, Directorate of Revenue Intelligence (Headquarters) 7th Floor, Drum Shaped Building, D- Block, IP Bhawan, IP Estate, New Delhi -110002
- iv. The Commissioner of Customs, Kandla, Kandla Custom House, Near Balaji Temple, Kandla-370210 (INIXY1), **Email: commr-cuskandla@nic.in**