



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
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DIN: 20250771MN0000818549

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-100/ICD/O&A/HQ/2020-21
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-100/ICD/O&A/HQ/2020-21 dated 13.08.2021
C	मूल आदेश संख्या/ Order-In-Original No.	:	76/ADC/SR/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	02.07.2025
E	जारी करनेकी तारीख/ Date of Issue	:	02.07.2025
F	द्वारापारित/ Passed By	:	SHRAVAN RAM, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/S PREMJI KANJI MASANI PVT. LTD. 1011, SAKAR-V, BEHIND NATRAJ CINEMA, NEAR GANDHIDHAM RAILWAY CROSSING OFF ASHRAM ROAD, AHMEDABAD 380009
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हड्डों भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

M/s. Dev International, IEC No. 0803001398 and GSTIN 24AFBPS8940K1Z2, having their office at 1203, 12th Floor, Addor Aspire, Near Regional Passport Office, University Road, Panjrapole, Ahmedabad 380015 (hereinafter referred to as the “Exporter”) filed 05 Shipping Bills [RUDs to the SCN] by declaring the goods meant for export as “Abrasive”, classifiable under CTH No. 25132090 of the first schedule to Customs Tariff Act, 1975 through their Customs Broker **M/S PREMJI KANJI MASANI PVT. LTD.** holding Customs House Broker License no. AAICP8172HCH002 and their

office at 1011, Sakar-V, Behind Natraj Cinema, Near Gandhidham Railway Crossing, Off Ashram Road, Ahmedabad 380009 (hereinafter referred to as the “the CHA” or “the noticee”) as per Table-1 below:-

Table-1

Sr. No.	Shipping Bill No. & Date	Description of Goods declared in Shipping Bill	CTH declared in Shipping Bill	Quantity (Kg.)	FOB Value of the Goods Declared (Amount In Rs.)
1	7493779 dated 10.10.2019	Abrasive	25132090	120500	22,79,970/-
2	7494704 dated 10.10.2019	Abrasive	25132090	56200	10,57,877/-
3	7494824 dated 10.10.2019	Abrasive	25132090	56200	10,89,439/-
4	7672644 dated 18.10.2019	Abrasive	25132090	196700	44,26,695/-
5	7689015 dated 18.10.2019	Abrasive	25132090	54200	12,57,814/-
TOTAL				483800	1,01,11,795/-

2. The Directorate General of Foreign Trade, New Delhi, (“DGFT”), vide Notification No. 26/2015-20, dated 21.08.2018 has made amendment in export policy of “Beach Sand Minerals” in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import items. Text of para 2, 3, & 4 of the said notification are re-produced below:

“

2. *The existing entries in the 'Note' of Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import Items 2018 are substituted as under :*

“*NOTE:*

1. *Export of Rare Earth compounds classified as Beach Sand Minerals (BSM), namely [Ilmenite, Rutile, Leucoxene (Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)], shall be regulated in terms of Sl. No. 98A of Chapter 26 Schedule 2 of ITC (HS) Classification.*
2. *Other minerals under code 2617 are freely exportable, except those which have been notified as prescribed substances and controlled under Atomic Energy Act, 1962”.*
3. *A new entry at Sl. No. 98A is inserted in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export & Import Items 2018 as follows:*

S. No.	Tariff Item HS Code	Unit	Item Description	Export Policy	Policy Condition
98A	2508 5031 2508 5032 2508 5039 2612 1000 2612 2000 2614 0010 2614 0020 2614 0031 2614 0039 2614 0090 2615 1000 2513 2030	Kg	Beach Sand Minerals [Ilmenite, Rutile, Leucoxene (Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)]	STE (State Trading Enterprise)	Export through Indian Rare Earths Limited (IREL)

4. Effect of this Notification':

Export of Beach Sand Minerals have been brought under STE and shall be canalized through Indian Rare Earths Limited (IREL). Beach sand minerals, permitted anywhere in the export policy, will now be regulated in terms of policy under at SI. No. 98A of Chapter 26 of Schedule 2 Export Policy."

2.1 Vide above referred notification, export of Beach Sand Minerals which include a mineral called Garnet, has been regulated and export of the same is allowed through canalizing authority viz. Indian Rare Earths Limited (IREL) –now M/s IREL (India) Ltd.

3. In this regard, for the sake of clarity, M/s. IREL (now M/s IREL (India) Ltd.), Mumbai have supplied typical specifications of OR Coarse grade (-30 + 60) Garnet and OR Medium Garnet for guidance, vide letter dated 28.12.2018 issued from F. No. IREL/CAN/Mum/2018-19 **[RUD to the SCN]**. It was also suggested in the said letter that any product with predominant content of Garnet in the export consignments needs to be classified as Garnet under ITC (HS) code 25132030.

4. While assessing the said export consignments, instruction were given to the examining officer to draw the representative sample of the goods to get it tested. Accordingly, samples were drawn and sent to CRCL, Vadodara with test query to the effect "*whether the sample confirms the description given above or otherwise?*" By "*description above*" it meant "*Abrasive*". The consignment wise Test Memo nos. **[RUDs to the SCN]** is as per details given below in table-2:

Table-2

Sr. No.	Shipping Bill No. & Date	Test Memo No. & Date
1	7493779 dtd. 10.10.2019	185444/16.10.2019
2	7494704 dtd. 10.10.2019	185437/16.10.2019
3	7494824 dtd. 10.10.2019	185443/16.10.2019
4	7672644 dtd. 18.10.2019	185569/21.10.2019
5	7689015 dtd. 18.10.2019	185570/21.10.2019

5. The exporter in the meantime, submitted identically worded three representations dated 14.10.2019 **[RUD to the SCN]** and two representations dated 21.10.2019 **[RUD to the SCN]** for each of the shipping bill wherein it was claimed that the goods viz. Abrasives, were not rare earth compound and the same were sourced from Rajasthan and the DGFT Notification No. 26/2015-20 was applicable to Beach Sand

Minerals. The said exporter also requested that consignment entered for export may be allowed to be exported.

6. Test Reports **[RUDs to the SCN]** for samples drawn for each of the Shipping Bills were received in Customs Office at ICD-Khodiyar, as per details given below in Table-3:

Table-3

Sr. No.	Shipping Bill No. & Date	Test Memo No. & Date	Test Report No. & Date
1	7493779 dtd. 10.10.2019	185444/16.10.2019	RCL/AH/Exp./1807 dated 06.12.2019
2	7494704 dtd. 10.10.2019	185437/16.10.2019	RCL/AH/Exp./1809 dated 06.12.2019
3	7494824 dtd. 10.10.2019	185443/16.10.2019	RCL/AH/Exp./1810 dated 06.12.2019
4	7672644 dtd. 18.10.2019	185569/21.10.2019	RCL/AH/Exp./1808 dated 06.12.2019
5	7689015 dtd. 18.10.2019	185570/21.10.2019	RCL/AH/Exp./1806 dated 06.12.2019

7. For all samples from five consignments, the Head Chemical Examiner, Grade-I, CRCL, Vadodara, sent identically worded reports which read as under:

'The sample is in the form of pinkish red coarse powder. It is composed of Silicates of Iron, Aluminum, Magnesium & Calcium. On the basis of physic-chemical constants and XRD examination, it is concluded that the sample u/r has characteristics of Garnet. Sealed remnant returned herewith'

8. Thus, from the Test Reports given by CRCL, Vadodara, it was confirmed that the product which was declared as "Abrasive" and exported under the cover of Shipping Bills referred to in the foregoing paragraphs was actually Garnet.

9. Summons under Section 108 of the Customs Act, 1944 was issued to the exporter on 23.06.2020, asking them to appear on 30.06.2020 for recording their statement. On 30.06.2020, Shri. Sandeep Sodani, Proprietor of M/s Dev International appeared before the Superintendent of Customs, and his statement **[RUD to the SCN]** was recorded wherein it was inter alia, stated:

- That he was actively involved in the field of export of minerals and stones since the last twelve years; that however, IEC was obtained by him in 2002.
- He further stated that check-list supplied by Customs House Broker before filing shipping bills was used to be approved by one of their employees Ms. Madhvi who has already left the job;
- that he indulged in the trading of minerals like talc, mica apart from abrasive; that abrasives were mainly obtained from traders based in Bhilwara and Ajmer Districts of Rajasthan;
- that he did not know from where the traders sourced Abrasive but practice in Rajasthan was that abrasive was obtained from construction sand by using magnet;
- that in common parlance, abrasive is called natural abrasive/garnet and their foreign buyers placed orders terming it as natural abrasive;
- that they were registered with Indian Rare Earths Ltd. (IREL) but had not transacted business through IREL;

- that he agreed natural abrasive means Garnet; that the goods were declared as Abrasive as Natural Abrasive meant Garnet and he was advised by Customs House Broker to classify the goods under CTH 25132090 and not under CTH 25132030;
- that product exported by them was not beach sand mineral and they had obtained the same from Rajasthan which does not have beach;
- That he was aware that export of garnet was restricted vide DGFT Notification No. 26/2015-20 dated 21.08.2018, but his understanding was that only beach sand minerals were restricted for export.

9.1 On being shown all test reports received from CRCL, Vadodara, in respect of samples drawn from consignments exported by him, he stated that he agreed with the test report terming exported product as garnet. He also put his dated signature on all the test reports. He further stated that there was no need to send remnant samples for re-tests as there was no dispute about abrasive being garnet.

10. Subsequently, a summons was issued under Section 108 of the Customs Act, 1962 on 04.07.2020 to M/s Premji Kanji Masani Pvt. Ltd, Customs House Broker. On 08.07.2020, Shri. Tarun H Masani, Director of M/s Premji Kanji Masani Pvt. Ltd, Customs House Broker, appeared for recording of his statement wherein he, inter alia, stated that he did not agree with deposition of Shri Sandeep Sodani made in his statement recorded on 30.06.2020 **[RUD to the SCN]** to the effect that they had advised M/s Dev International to classify the product under CTH 25132090; that in fact, the exporter had forwarded documents declaring the goods as abrasive and not as natural garnet; that check-list was approved by them.

11. It appeared from the documents presented at the time of export, Chemical Test Reports given by CRCL, Vadodara, and statements of the exporter which is a proprietary firm, as well as authorized representative of the Customs House Broker, that the exporter who is in the business of trading of minerals since long knew that product being exported by him was a prohibited / regulated item. The exporter, in his statement has also accepted that he knew the item was regulated. Further, the Customs House Broker too, in his statement has prepared check-lists and filed Shipping Bills without verifying accuracy of the description and classification of the product and thereby not exercised due diligence despite it being an obligation on them under the Customs Broker Licensing Regulation, 2018. The responses of exporter as well as Customs House Broker when confronted with the question about approval of check-lists appeared to be quite evasive. Statements of both of them appeared to be establishing that it was a well-planned out operation to export an item export of which was regulated and thereby not freely exportable.

12. It appeared that the exporter has violated provision contained in DGFT Notification No. 26/2015-20 dated 21.08.2018, in as much as he exported Garnet classifiable under CTH 25132030, which was a regulated product for export as the Government had appointed canalizing agency viz. M/s Indian Rare Earth Ltd. (IREL) -

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(now M/s IREL(India) Ltd.) for export of Garnet under CTH 25132030, vide the aforesaid notification dated 21.08.2018.

13. It appeared that the said exporter has mis-declared the description of the goods entered for exportation by them in as much as the Chemical Reports given by CRCL, Vadodara, for the samples drawn from consignments exported conclude that the samples have characteristics of Garnet whereas the exporter, in connivance with the Customs House Broker declared the goods as "Abrasive".

13.1 It appeared that the said exporter has mis-classified the goods entered for exportation and later on exported by them in as much as the Chemical Reports given by CRCL, Vadodara for the samples drawn from consignments exported conclude that the samples have characteristics of Garnet - a product for which there is specific Customs Tariff Head 25132030 whereas the exporter in connivance with the Customs House Broker had classified the goods under CTH 25132090 in their documents. The classification declared by the exporter is for "other" products under CTH 2513 and not for Garnet.

13.2 As per the provisions of sub-section (2) of Section 50 the Customs Act, 1962, the exporter, while presenting a shipping bill has to subscribe to a declaration as to the truth of contents of the shipping bill so filed. Further, as per sub-section (3) of section 50 of the Customs Act, 1962, the exporter presenting Shipping Bill or Bill of Export has to ensure apart from other things also the accuracy and completeness of the information given therein. The said exporter, by mis-declaring the description as well as classification of the goods has violated the provisions of Section 50(3) of the Customs Act, 1962. The said exporter, by subscribing to a declaration as to the truth of the contents of the shipping Bill presented by declaring wrong/incorrect description as well as classification of the goods, has made an attempt to misguide the Customs authorities. Therefore, the goods exported appear to be liable for confiscation in terms of Section 113 (i) of the Customs Act, 1962.

13.3 Vide DGFT Notification No. 26/2016-20 dated 21.06.2018, export of Garnet falling under CTH 25132030 was regulated. The product "Garnet" under CTH 25132030 was not freely exportable but it was to be mandatorily exported through canalizing agency viz. M/s Indian Rare Earths Limited (now M/s IREL (India) Ltd.). It appears that the exporter to circumvent the route of export through canalizing agency mis-declared and mis-classified product as "Abrasive" under CTH 25132090 which as per Test Report of CRCL, Vadodara, was "Garnet" for which there is specific Customs Tariff Head under 25132030. The goods so exported therefore, appeared to be liable to confiscation in terms of Section 113(d) of the Customs Act, 1962, read with Section 2(34) of the Customs Act, 1944.

14. Thus, on account of all the omission and commissions on the part of M/s Dev International, the consignments exported under the cover of Shipping Bills No. (1) 7493779 dated 10.10.2019 (2) 7494704 dated 10.10.2019 (3) 7494824 dated 10.10.2019 (4) 7672644 dated 18.10.2019 and (5) 7689015 dated 18.10.2019 appeared to be liable to confiscation under Section 113 (d) and 113(i) of the Customs Act, 1962

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and the said M/s Dev International appeared to be liable for penalty under Section 114 of the Customs Act, 1962 and Section 114AA of the Customs Act, 1962 for the offence committed, details of which are elaborated above.

15. Further, the said exporter by subscribing to a declaration in the shipping bill, whose contents were not true, appeared to have made themselves liable to penalty under Section 117 of the Customs Act, 1962.

16. The documents presented to the Customs authorities by Customs House Broker firm M/s Premji Kanji Masani Pvt. Ltd were not proper but mis-guiding and appeared to be presented without applying due diligence about the correctness of description as well as classification of the goods. Further, due to brazen act on the part of M/s Premji Kanji Masani Pvt. Ltd. to hoodwink the Customs authorities by presenting documents, for a product whose export was regulated /prohibited, wherein description of goods was mis-declared and it was mis-classified. Thus, it appeared that the said Customs House Broker facilitated export of regulated product which was thus liable for confiscation under Section 113(d) and Section 113 (i) of the Customs Act, 1962. Thus, it appeared that M/s Premji Kanji Msani Pvt. Ltd. have made themselves liable to penalty under Section 114 and Section 114AA of the Customs Act, 1962.

17. Thereafter, the Show Cause Notice was issued vide F. No. VIII/10-100/ICD/O&A/HQ/2020-21 dated 13.08.2021 to M/s. Dev International to show cause to the Additional Commissioner of Customs, Ahmedabad as to why:

- (i) Goods declared as “abrasive” and classified under CTH 25132090 by M/s. Dev International, should not be classified under CTH 25132030 as Natural Garnet;
- (ii) Goods declared as “abrasive” and classified under CTH 25132090 covered under Shipping Bill No. (1) 7493779 dated 10.10.2019 (2) 7494704 dated 10.10.2019 (3) 7494824 dated 10.10.2019 (4) 7672644 dated 18.10.2019 and (5) 7689015 dated 18.10.2019 having total F.O.B Value of Rs. 1,01,11,795/- (Rupees One Crore One Lakh Eleven Thousand Seven Hundred Ninety Five only) should not be confiscated under the provisions of Section 113 (d) and Section 113 (i) of the Customs Act, 1962;
- (iii) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- (iv) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;
- (v) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

17.2 Vide the Show Cause Notice F. No. VIII/10-100/ICD/O&A/HQ/2020-21 dated 13.08.2021, M/s Premji Kanji Masani Pvt. Ltd were also called upon to show cause to the Additional Commissioner, Customs, Ahmedabad as to why:

- (i) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- (ii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

DEFENCE SUBMISSION & PERSONAL HEARING AT ORIGINAL ADJUDICATION PHASE:

18. Personal Hearing in the matter was held on 25.07.2022 in virtual mode and was attended by Shri Chirag Gandhi, General Manager of M/s. Dev International. Shri Chirag Gandhi submitted that the export goods was sourced from traders based in Bhilwara and Ajmer District of Rajasthan and the goods was not beach sand material. He also submitted that they did not agree with the classification proposed and would submit written submission within a week.

18.1 M/s. Dev International submitted their written reply through E-mail on 01.08.2022 interalia they submitted: -

- Beach Sand Mineral is the mineral obtained from the areas close to beach or a sea coast. The material mentioned under the Shipping bill Nos. 7493779, 7494704, 7494824, 7672644, 7689015 in the year 2019, were procured from the suppliers belong to mainly Bhilwara district of Rajasthan. Since the source of the material, which was exported vide Shipping Bills mentioned as above, were from Rajasthan which is quite far from the Beach or a Sea area and therefore doesn't qualify for the definition of B.S.M. Moreover, the intended use stated by the buyers for the material, which was exported by them, was all for the purpose of waterjet cutting and sand blasting only.
- Rock Abrasives (like found in places like Rajasthan) have been used from a very long period of time. This type of mineral is mainly produced in America, Australia and in Western India i.e., Rajasthan. This Mineral is being mined in Rajasthan for more than 200 years, mainly of the Gem stone Grade and Abrasive is the secondary product and widely used as lapping and polishing media for Glass Industries.
- With reference to the show Cause notice and the clarifications sought, they haven't mis-declared the product details or the HS Code. The natural abrasive is a different media with different composition and characters and bears HS Code 25132090. Almost all of their foreign buyers have placed orders with the material as Abrasive / Natural Abrasive. All their purchasing of these material were also under the name of Abrasive and the corresponding HS Code.
- He would like to conclude that in his last almost 20 years of export business and exposure, he has always focused on quality, honesty and transparency with all his foreign buyers. He has never thought of or done any mis-declaration to either his clients or with any government agencies. Only for these shipments (as

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mentioned above), there seems lack of understanding or misunderstanding which has created a major set-back to his reputation and business.

- Looking at his past track record and contribution to the country's economy by way of generating foreign exchange revenues through his export business of so many years, he would like to plead not guilty of any of the charges under sections 113(d), 113(i), 114A, 114AA, and 117 of the Customs Act, 1962.

19. Personal Hearing in the matter was held on 25.07.2022 in virtual mode for M/s. Premji Kanji Masani Pvt. Ltd and was attended by Shri Tarun Masani, Director of M/s. Premji Kanji Masani Pvt. Ltd. Shri Tarun Masani submitted that the exporter had forwarded documents declaring the goods as abrasives. He also submitted that as informed by the exporter, the said goods was sourced from Rajasthan from various traders and he had acted in good faith and had no intention of abetting export of restricted goods. He would submit written submission within a week.

ORIGINAL ADJUDICATION ORDER, APPEAL AGAINST THE OIO AND ORDER-IN-APPEAL:

20. The adjudicating authority vide Order-in-Original (OIO) No. 20/ADC/VM/O&A/2022-23 dated 05.08.2022 passed the following order:-

- i. Rejected the classification of goods declared as "abrasive" under C.T.H. 25132090, by M/s. Dev International, Ahmedabad, in respect of export goods covered under 06 Shipping Bills detailed in Table at Para 01 above;
- ii. Ordered classification of goods declared as "abrasive" under C.T.H. 25132030 as Natural Garnet, by M/ s. Dev International, Ahmedabad, in respect of export goods covered under 06 Shipping Bills detailed in Table at Para 01 above;
- iii. Ordered confiscation of goods exported by M/s. Dev International, Ahmedabad, covered under 06 Shipping Bills detailed in Table at Para 01 above, valued at Rs. 1,01,11,795/-, under Section 113(d) and 113(i) of the Customs Act, 1962 and allowed the exporter to redeem the same on payment of redemption fine of Rs. 5,00,000/- under Section 125 of the Customs Act, 1962;
- iv. Did not impose any penalty on M/s. Dev International, Ahmedabad under Section 114A of the Customs Act, 1962;
- v. Imposed penalty of Rs. 10,00,000/- on M/s. Dev International, Ahmedabad, under Section 114AA of the Customs Act, 1962;
- vi. Imposed penalty of Rs. 1,00,000/- on M/s. Dev International, Ahmedabad, under Section 117 of the Customs Act, 1962;

vii. Did not impose any penalty on M/s. Premji Kanji Masani P. Ltd., Ahmedabad, under Section 1 14A of the Customs Act, 1962;

viii. Imposed a penalty of Rs. 2,00,000/- on M/s. Premji Kanji Masani P. Ltd., Ahmedabad, under Section 114AA of the Customs Act, 1944.

21. Being aggrieved by the above said order, M/s. Premji Kanji Masani P. Ltd., Ahmedabad filed appeals before the Commissioner of Customs (Appeals), Ahmedabad against the said OIO, which vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-457-23-24 dated 23.02.2024, remanded the matter back to adjudicating authority for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee.

21.1 M/s. Dev International did not prefer to appeal against the OIO.

SUBMISSION AND PERSONAL HEARING BEFORE THE DENOVO ADJUDICATION AUTHORITY:

22. Shri Jigneshkumar Bhatt, Advocate on behalf of M/s. Premji Kanji Masani Pvt. Ltd. ("noticee") appeared on 21.04.2025 before earlier adjudicating authority and submitted a written reply, wherein they submitted:

- That during the adjudication proceeding, it is alleged that the action of the Noticee was nothing but a planned-out operation to export the goods which is regulated and not freely exportable, by pretending the ignorance about the issue.
- That in the present case, the sole liability on the Noticee is fixed due to the statement of exporter recorded on 30.06.2020 under which the exporter has stated that HS code for the export product i.e. 25132090 is suggested by the Customs House Broker.
- That the Noticee in his statement dated 08.07.2020, clearly denied that they had suggested to the HS code 25132090. Hence, the statement of exporter is contradictory statement.
- That in his statement dated 30.06.2020, the exporter has also stated about the similar export consignment dispute at NAVA SHEVA which confirms that the export was not only exporting the goods from Ahmedabad also exporting the goods from NAVA SHEVA port, which means that the exporter is acting on their own to claim the HS code 25132090 through different CHA.
- That after issuance of SCN, the exporter himself contended before the Adjudicating Authority, during personal hearing as well as by way of submitting a defense reply of SCN through email dated 01.08.2022 that they have rightly classified their export consignments as "Abrasive" under HS code 25132090, which confirms that the exporter is not acted on the advice of the Noticee. However, the said fact can be verified from the records of the

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adjudication proceeding as well as the fact narrated at Para 20.1 and Para 21-26 of Order-In-Original dated 05.08.2022.

- That it is also alleged that Noticee placed blind trust on the exporter and presented the shipping bills alongwith goods before the Customs without ensuring their bonafides and veracity of the goods in all respect. It is also erred to hold that Noticee also failed to comply with the obligations case upon them under the Customs Act, 1962 and Rules and Regulations framed under it. As per Regulation 11 of Customs Brokers Licensing Regulations 2013, being a customs house agent, the Noticee is obliged for following action in this case:

“Exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo ...”

“Verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.”

- That in the present case, upon receipt of the commercial invoice and packing list, the Noticee has exercise the due diligence to ascertain the correctness of the information and found that the goods mentioned in the Invoice are “Abrasive” and classified under CTH 25132090. However, the Noticee also cross check the classification and found that when the goods are not mentioned as “Natural Abrasive” it falls under CTH 25132090. However, verbally the employee of the CHA also confirmed about the product from the exporter through Freight Forwarder, who confirms that the goods were procured from the Rajasthan and was not “natural abrasive” hence, classifiable under CTH 25132090. However, it is also confirmed and claimed by the exporter though its statement dated 30.06.2020 and through written reply of SCN through E-mail dated 01.08.2022 filed before the Adjudicating Authority. Hence, when the product is confirmed as unnatural abrasive, there was no element of doubt about the classification of the product.
- That in the present case, the Noticee has taken KYC documents upon receipts of the Invoices and verified the details of the company which is genuine company and department has noting found wrong about the company details.
- Hence, the Noticee has discharged their liability/obligation in terms of regulation No.11 of Customs Brokers Licensing Regulations 2013. Hence, no penalty should be warranted against the Noticee.
- That it is also important to note that the Noticee is not dealing directly to the exporter and all the documentation and confirmation came through their freight forwarder, M/s. Mahadev Shipping. However, the freight forwarder M/s. Mahadev Shipping is never questioned by the investigating authority about the said export consignments. The statement of export

which is relying upon to cast the allegation on the Noticee is also contradictory statement and there is no further confirmation has been taken by the exporter after denial of the Noticee, which confirms that the case is made solely on the basis of statement of the exporter. However, except confirmatory statement of exporter nothing has been found against the Noticee which proves that the Noticee is assisted the exporters to miss classify the goods under CTH 25132090 instead of CTH 20132030.

- That it is also alleged that for not verifying the export documents presented to them by the middlemen (freight forwarder), their complicity cannot be ruled out and that why the Ld. Adjudicating authority hold that the Noticee are liable for penal action. The CHA is not being capable to test each and every consignment, by its physical or chemical property, so that to ascertain that the abrasive declared by the exporter were natural abrasive or not.
- That the CHA is only acted upon the document and till date department did not prove that the information came from the exporter i.e. HS code was different from the HS code filed in the Shipping Bill checklist.
- That till date it is not proven that the exporter has not confirmed the checklist and Shipping Bills filed by the CHA or disputed the HS code while filing of the relevant shipping bills.
- However, till date it is not ruled out by the department also that the sample of export consignment is confirmed as Natural garnet. In the test report it is only mentioned that the "sample under report has characteristics of garnet". However, by CRCL it is not clarified that the said product is natural garnet or else which is classifiable under CTH 25132090 or not. However, there is no confirmation on the HS code by any authority till date.
- It is important to note that the exporter himself contended before the adjudicating authority that they are in the export business from last 20 years and product is rightly classified by them. The exporter is also please not guilty for the charges made in the impugned SCN. However, the said statement is also reiterated by the Adjudicating Authority in the impugned Order-In-Original at para 24 to 26.
- Hence, when the exporter is strongly contending that he has classified the goods, the involvement of the CHA is ruled out.
- That during the adjudication, the department has also relied upon following judgments to impose penalty:
 - Kunal Travel (Cargo) Vs Commissioner of C. & C. E. 2017 (354) ELT 46(ALL) which is upheld by the Appex Court in
 - Ankit Mehta Vs C. C. E., Indore 2018 (362) ELT 320 (Tri.Delhi)
- In this regard, the Noticee stated that in both the referred cases, the CHA has knowledge about the rice which is hidden between the consignment which were restricted/prohibited and *mens rea* proved against the CHA but in the present case, the Noticee had not knowledge about the product whether it was characteristic of garnet or natural abrasive, it was only found after test report conducted. However, after the test report also the export

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claimed that the product is not the natural abrasive which is not classifiable under CTH 25132030 as claimed by the department, which ruled out the fact that the in the present case the CHA/Noticee has not knowledge about the product that the same is natural abrasive or garnet or classifiable under CTH 25132030. Hence, the present case law relied by the department is not referable in the present case. In support of their view the Noticee relying upon the following judgment:

In the matter of M/s M. S. Exim Services Vs. C. C. Ludhiana reported in [2021 (337) ELT 615(Tri.-Chan)] the Hon'ble Tribunal has set-aside the penalty against the CHA imposed under Section 114AA of Customs Act, 1962 stating that the case law relied upon the revenue in the matter of M/s Kunal Travel (Cargo) Vs Commissioner of C. & C. E. 2017 (354) ELT 46(ALL) are not relevant to the facts of this case as in those case, it is in the knowledge of CHA regarding the description of goods before filing the shipping bills.

- That in the present penalty is proposed on the noticee under Section 114AA of Customs Act 1962, which is legally not sustainable in the eye of Customs law itself in view of the following grounds:
 - a. That there is no action against the Noticee has been proposed under the Customs Brokers Licensing Regulations 2013 which is the proper code for the proceeding against a CHA which is issued under Sub-Section (2) of Section 46 of Customs Act, 1962.
 - b. That Board has provided Customs Brokers Licensing Regulations 2013 for the purpose of carrying out the business as Customs Broker under which the obligation of the CHA has already been fixed at Regulation No.11 and for the penalty to failure of the said regulation has been provided under Regulation No.18 of Customs Brokers Licensing Regulations 2013.
 - c. That under Sub-Regulation (b) of Regulation 18 of Customs Brokers Licensing Regulations 2013, the Commissioner of Customs has only the power to impose penalty against the CHA when he found any CHA to failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else, which is also not exceeding Fifty Thousand Rupees.
- Hence, when no proceeding initiated against Noticee under Customs Brokers Licensing Regulations 2013 for failure of its obligation under Regulation 11 of Customs Brokers Licensing Regulations 2013, no penalty under Section 114AA of Customs Act, 1962 can be imposed.
- That the Noticee in the present case already informed to the department while investigation of the case by giving their statement recorded that they have KYC document and shipping bills was filed on the basis of Export document received from the export through his freight forwarder. Hence, the Noticee has check the antecedents of the exporter. Hence, penalty is not

imposable on the Noticee. The Noticee relying upon a judgment passed by CESTAT, Chennai in the matter of M/S. COCHIN AIR CARGO CLEARING HOUSE, M/S. E. KOCHURANI AND M/S. V.A. MARY DAS VERSUS COMMISSIONER OF CUSTOMS (PREVENTIVE), TIRUCHIRAPPALLI reported [2023(9) TMI 1198(CESTAT Chennai)] under which it is held by the CESTAT that when the Noticee has obtained authorization from exporter and all KYC documents. The IEC, PAN details, GST registration etc. have been obtained. In such circumstances, it cannot be said that the Noticee has not acted diligently.

- They requested to drop the proceeding initiated against the noticee through impugned SCN dated VIII/10-100/ICD/O&A/HQ/2020-21 dated 13.08.2021.

22.1 Opportunities to be heard in person was accorded to the noticee, to which Shri Jigneshkumar Bhatt, Advocate on behalf of M/s. Premji Kanji Masani Pvt. Ltd. (“noticee”) submitted that they have already appeared in this matter on 21.04.2025 before earlier adjudicating authority and the case may be decided on the basis of written submission presented by them without no more personal hearing in the matter.

DISCUSSION & FINDINGS:

23. I have carefully gone through the facts of the case, defense submissions made by the noticees, Order-in-Appeal and evidence available on the records.

23.1 I find that the Commissioner of Customs (Appeals) vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-457-23-24 dated 23.02.2024, remanded the matter back to adjudicating authority for limited purpose for examining the roles of M/s. Premji Kanji Masani Pvt. Ltd. (“noticee”) in the matter and passing fresh adjudication order in light of the available facts, documents and submissions made by both the noticees.

23.2 I find that the Commissioner of Customs (Appeals), Ahmedabad stated at Para 5.1 that:

5.1 I find that the said exporter have not filed any appeals challenging the confiscation of goods and penalties imposed upon them. Hence, so far as confiscation of seized goods and imposition of penalties on the said exporter under Section – 114AA and 117 of Customs Act, 1962 are concerned, the orders of the Adjudicating Authority have attained finality. Therefore, I am not required to record any findings on the issue of confiscation of goods and penalties imposed upon them. As the confiscation of seized goods has attained finality, the penalties can be imposed upon the present Appellant considering the role played by the Appellant in the present case. Hence, the issue to be decided in the present appeal is whether penalty imposed upon the Appellant in the impugned order under Section 114 AA of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

I find that M/s. Dev International has not filed any appeal against the original adjudication order and hence the matter in respect of M/s. Dev International has attained finality i.e. to the extent of confiscation of goods under Section 113(d) and

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Section 113 (i) of the Customs Act, 1962 and penalties upon M/s. Dev International under Section 114AA and 117 of the Customs Act, 1962, the original adjudication order no. 20/ADC/VM/O&A/202-23 dated 05.08.2022 has attained finality. However, the Commissioner of Customs (Appeals), Ahmedabad stated at para 5.7 in the said OIA stated that:

5.7 It is observed from the findings of the adjudicating authority on the issue, that 'for not verifying the export documents presented to them by the middleman, their complicity cannot be ruled out', lacks conviction rather shows presumption. It is observed that no discussion has been made to prove the knowledge or intent of the Appellant that they had facilitated the mis-declaration of the export goods, by way of corroborating through any evidences and bringing in any material on record to conclude that such mis-declaration of the export goods has occurred with the knowledge of the Appellant. It is the contention of the Appellant that despite of their dis-agreement with the deposition of the said exporter, the adjudicating authority has relied upon the statement of the said exporter to cast allegation on the Appellant, without any further confirmation or cross examination from the said exporter. It is further contended that the case has been made solely on the basis of the statement of the said exporter and except the confirmatory statement of the said exporter, nothing has been found against them. It is observed in this regard that the Appellant had not filed any defence reply to the Show Cause Notice.

The Appellant had appeared before the adjudicating authority during personal hearing and denied any intention of abetting export of restricted goods. He also stated that he would make a written submission, which appears not to have been made as no such details are recorded in the impugned order. Hence, in my considered view the Appellant needs to be given an opportunity to present his case before the adjudicating authority, in the interest of justice. Therefore, it would be in the interest of justice to remand the matter to the adjudicating authority to pass fresh order, giving cogent reasons determining liability of the Appellant, through corroborative evidences, after considering the above observations and submissions of the Appellant.

I find that the Commissioner of Customs (Appeals), Ahmedabad has remanded the matter for pass the order after consideration of submissions of the noticee M/s. Premji Kanji Masani Pvt. Ltd. in respect of penalty under Section 114AA. I also find that the present SCN does not demand any duty and hence penalty under Section 114A of the Customs Act, 1962 cannot be imposed on the noticee M/s. Premji Kanji Masani Pvt. Ltd.

23.3 In view of above, the issue to be decided before me is whether Penalty under the provisions of Section 114AA of the Customs Act, 1962 is imposable upon the noticee M/s. Premji Kanji Masani Pvt. Ltd.

23.3.1 I find that M/s. Dev International had filed Five (05) Shipping Bills as mentioned in Table-1 by declaring the export goods as 'Abrasive' classifiable under CTH No. 25132090 through their CHA M/s. Premji Kanji Masani Pvt. Ltd. I find that during examination of the goods, the instructions were given to the Examining Officer to draw the representative samples for testing and sent to the CRCL Vadodara. The Test Reports

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stated that "*The sample is in the form of pinkish red coarse powder. It is composed of Silicates of Iron, Aluminum, Magnesium & Calcium. On the basis of physic-chemical constants and XRD examination, it is concluded that the sample u/r has characteristics of Garnet. Sealed remnant returned herewith*". I find that due to mis-declaration of description as well as classification of the goods, the Show Cause Notice proposed confiscation of the export goods and imposition of penalty on exporter and the CHA under Section 114A and 114AA of the Customs Act, 1962.

23.3.2 I find that M/s. Dev International has not filed any appeal against the original adjudication order and the Commissioner of Customs (Appeals), Ahmedabad has stated that **the OIO No. 20/ADC/VM/O&A/2022-23 dated 05.08.2022 has attained finality in respect of confiscation of goods under Section 113(d) and Section 113 (i) of the Customs Act, 1962 and penalties upon M/s. Dev International under Section 114AA and 117 of the Customs Act, 1962.**

23.3.3 I find that the noticee has contended that *the department has not ruled out the export goods not being Natural Garnet* and in the test report it is only mentioned that "*the sample under report has characteristics of garnet*". In this connection, I find from the statement dated 30.06.2020 of Shri Sandeep Sodani, Director of M/s. Dev International, that the export goods is obtained from the construction sand and known as natural abrasive/garnet in common parlance. From the statement of Shri Sodani, I hold that the goods meant to export were **Natural Garnet** and classifiable under **CTH 25132030** and reject the contention of the noticee. The relevant excerpts are as under:-

On being asked I state that I also trade in to minerals like talc, mica apart from abrasive. on being specifically asked whether abrasives are obtained directly from the manufacturer or from the traders, I state that abrasives are mainly obtained from traders based in Bhilwara and Ajmer District of Rajasthan. I state that purchase invoices shall be produced by me by Saturday i.e. 04.07.2020. On being asked as to from where the traders in Rajasthan obtain abrasive, I state that I can not comment from where they obtain abrasive but it is noticed that practice in Rajasthan is that abrasive is obtained by using magnet from construction sand.

On being asked can abrasive be called natural garnet, I state that in common parlance it is called natural abrasive/garnet only and our foreign buyers also placed order by terming it natural abrasive.

On being asked I state that I agree that natural abrasive means garnet. On being asked as to why the goods were classified under 25132090, I state that it falls under abrasive and I was advised by Customs House Broker to do so. On being asked as to why the garnet was not classify it under 25132030 by declaring it has natural garnet inspite the fact that abrasive is called garnet, I state that I was advised by my Customs House Broker to classified under 25132090 as it falls under abrasive heading and also for the fact that the product is exported by us was not beach sand minerals, further I state that goods in question were procured from Rajasthan which does not have any beach sand hence, question of goods being beach sand minerals does not arise.

Booster
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23.3.4 I find that relevant portions of the statement dated 08.07.2020 recorded under Section 108 of the Customs Act, 1962 of Shri Tarun H Masani, Director of M/s. Premji Kanji Masani Pvt. Ltd are as under:-

On being shown statement of Shri Sandeep Sodani, Proprietor Of M/s. Dev International recorded on dated 30.06.2020 under Section 108 of the Customs Act, 1962, I put my dated signature in token of having read and understood it. On being asked as to who send the check list and receives check list approved by the exporter. I state that the task has been assigned to our documentation staff in our Ahmedabad based office, however, in this case the invoices had come through forwarder M/s. Mahadev Shipping and check list prepared by our office and approved by forwarder.

(2)

On being asked, I further state that I do not agree that we had advise the exporter M/s. Dev International to classify the product under CTH code No. 25132090 in and not as natural garnet hence, the check list was approved and shipping bill filed classifying the product under CTH code 25132090.

23.3.5 I find from the above statement that the Noticee is not dealing directly to the exporter and all the documentation and confirmation came through their freight forwarder, M/s. Mahadev Shipping. I find that they prepared the checklist on the basis of the documents provided by the exporter and the same was approved through their freight forwarder M/s. Mahadev Shipping.

23.3.6 I find that the noticee has contended that Noticee has discharged their liability/obligation in terms of Regulation No. 11 of Customs Brokers Licensing Regulations 2013. I find that the said regulations has been replaced by Regulation 10 of Customs Brokers Licensing Regulations, 2018:-

Regulation 10. Obligations of Customs Broker: -

"A Customs Broker shall -

...

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

...

(n) verify correctness of Importer Exporter Code (IEC)number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

..."

23.3.7 I find that regulation 10(d) mentions that it is the obligation of Customs Broker to “**(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations**”, however I find that the noticee did not deal directly with the exporter and documents were received through the freight forwarder M/s. Mahadev Shipping. In such scenario, I find it impossible for the noticee to advise their client for compliance to the acts, rules and regulations. Thus, I hold that the noticee has not fulfilled his obligation as mentioned in Regulation 10(d).

23.3.8 I find that regulation 10(e) mentions that it is the obligation of Customs Broker to “**(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage**”. I find that the noticee had admitted in his statement that they did not advise the exporter regarding classification under CTH 25132090, however they did not do any due diligence for classification in respect of the said export goods which were described as ‘abrasive’ by the exporter. I find that some commodities in the same Chapter headings are regulated by the DGFT notification 26/2015-20 dated 21.08.2018 and vide above notification, export of Beach Sand Minerals which include a mineral called Garnet, has been regulated and export of the same is allowed through canalizing authority viz. Indian Rare Earths Limited (IREL) -now M/s IREL (India) Ltd. I find that the exporter has admitted in his statement that he is dealing in ‘Abrasives’ obtained from construction sand and is known as ‘natural abrasive/Garnet’. I find that the noticee M/s. Premji Kanji Masani Pvt. Ltd, being an expert for facilitating clearance of import and export goods, are duty bound to comply with the provisions of the Customs Act, 1962 and the Rules made thereunder, in the situation when they received the export documents from the exporter or M/s. Mahadev Shipping. I find that they can hardly claim that they are unaware of the nature of the goods as they should know about the restrictive nature of the commodities in the same Chapter Headings, being in trade for more than 50 years and should have cautioned the exporter on description whether ‘abrasive’ is naturally obtained or synthetic.

23.3.9 I find that the noticee has contended that “they have taken KYC documents upon receipts of the Invoices and verified the details of the company which is genuine company and department has noting found wrong about the company details”. I also find that there is nothing contrary on antecedents of the exporter, however I find that the noticee just relied on the information and copies of documents given to them and did not make efforts to verify the details as they have stated that they got checklist approved through their Shipping Agent M/s. Mahadev Shipping.

23.3.10 I find that the Commissioner of Customs (Appeals), Ahmedabad has remanded the matter for re-examining the Penal provision invoked against M/s. Premji Kanji Masani Pvt. Ltd under Section 114AA of the Customs Act, 1962 in light of corroborative evidences.

Section 114AA of the Customs Act, 1962:

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

23.3.11 I find that the noticee may not have been the beneficiary with the goods meant for export and alleged fraud except they have not advised the importer to comply with the Customs Act and Rules made thereunder and failed to exercise due diligence to ascertain the correctness of information with reference to work related to clearance of cargo, and thereby also violated the provisions of Rule 10 of the Customs Brokers Licence Regulations, 2018. I find that the CHA have failed to take all the necessary measures at the time of filing of the Shipping Bills and it led to the mis-declaration in the shipping bills. I find that it cannot be discarded as sheer negligence on part of the CHA as they had not verified the export documents presented to them. I rely on the judgment in the case of **OCEANIC ENTERPRISES INDIA PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS, CHENNAI REPORTED AS 2023 (5) CENTAX 113 (TRI.-MAD)** wherein it was held that:

“...

11. The main argument put forward by the learned counsel for appellant is that the allegations would only be violation of CBLR, 2018 and that the Customs Broker cannot be held responsible under sec. 112(a) of the Customs Act, 1962. Though it may be true that the Customs Broker acts as per the instructions of the importer, in the present case, as the importer himself is not traceable and the address as well as GST registration reflected in the documents are found to be fake, the act of the Customs Broker in filing the Bill of Entry acquires deep introspection. The Customs Broker has a very important position and has to safeguard the interest of both the importer and the Customs. The Regulations ensure that the Customs Broker discharges his duties in such a way that he safeguards the interest of customs by not importing prohibited goods. The undeclared goods were found to be counterfeit products of major brand. It is unbelievable to assume that the Customs Broker had no knowledge that the address of the importer or his company's address and GST registration were fake. He ought to have verified all these before filing the Bill of Entry. Though there are duties stated in the CBLR, the said Regulation has to be read along with the provisions of Customs Act, 1962. The Regulation is intended to make the clearance of

export and import in a hassle-free manner for both importer/exporter and the customs. The trust embedded in the Customs Broker who has been issued a licence cannot be used in a negligent manner so as to permit undeclared/prohibited goods in large quantities.

12. *The Hon'ble jurisdictional High Court in the case of Shri Rama Thenna Thayalan (supra) observed as under:-*

"9. Further, it is contended that as a Customs House Agent, his role is limited and for the declaration and mis-declaration of the goods, he cannot be liable for any contravention of Section 50(2) of the Customs Act, 1962. When the goods was stuffed in the container, it was only Coco Peats and the container was sealed by the Central Excise Officers. Only on verifying the Cargo, the Customs Officer has allowed the export and made an endorsement in the Shipping Bill as Let Export. During the investigation, it was established that when Red Sander was substituted for Coco Peat, without appreciating the facts and law properly, the Additional Commissioner had imposed penalty of Rs. 10,00,000/-, which was interfered by the Commissioner of Customs and reduced to Rs. 3,00,000/. Whereas, on further appeal by the Department, the same has to be enhanced to Rs. 5,00,000/-, which is nothing but non-application of mind and improper application of the provisions of law.

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19. From the records and the own admission of the appellant, it is clear that the appellant had not discharged these obligations, which cast on him. It is a case where under the guise of Coco Peats, prohibited goods namely, Red Sanders weighing 10.760 MTs. has been transported. The DRI based on the intelligence gathered, had rescued the goods and found the Cargo was transported based on the Annexure - A containing the signature of the appellant Customs House Agent. Customs House Agent is governed by the Regulations framed by the Government in exercise of the powers conferred under the Customs Act, 1962. Therefore, misdeclaration of goods and attempt to export such goods is punishable under section 114 of the Customs Act. A Customs House Agent, who is a party to the mis-declaration, is liable to pay penalty not exceeding three times of the value of the goods mis-declared. The first respondent Tribunal is empowered to enhance the penalty imposed, if the penalty imposed is not adequate. Further, the provisions under the Regulations to punish the Customs House Agent for violation and contravention of the Regulations is in addition to the penal provisions prescribed under the parent act, namely, the Customs Act. It is incorrect to say that the Customs House Agent is liable only under the Regulations for

any violation and contravention. The licence issued to the Customs House Agent under conditions not to commit any grave offence. If action under the Regulations not sufficient for the grave offence, the Customs House Agent is liable also to be proceeded under the Customs Act. There is no legal impediment to proceed against the Customs House Agent under the Customs Act besides action under the Regulations."

13. *from the discussions made above, I am of the view that there are no grounds to set aside the penalty imposed under sec. 112(a) of the Customs Act, 1962 on the appellant."*

[Emphasis supplied]

23.3.12 I find in the view of the above that the Customs Broker are liable to penalty for omissions and commissions in declaration of the export goods and they have used the false and incorrect material for filing shipping bills on behalf of the exporter. I find that the export goods were found to be 'restricted' after test results and the noticee has deliberately withheld from disclosing to the Department, the true classification and description. Hence, for the said act of contravention on their part, the noticee is liable for penalty under Section 114AA of the Customs Act, 1962. I further rely on the following case laws:-

- *KUNAL TRAVEL (CARGO) VS. COMMISSIONER OF C&CE 2017 (354) ELT 46 (ALL.).*
- *ANKIT MEHTA VS. CCE, INDORE 2018 (362) ELT 320 (TRI. DEL.).*

23.3.13 I find that the ratio of the case laws cited by the noticee, i.e. *M/s M. S. Exim Services (supra)*, and *M/S. COCHIN AIR CARGO CLEARING HOUSE (supra)* is not squarely applicable in the present case in light of judgment of the Hon'ble CESTAT, Mumbai in the case of ***SUSWASHIS CLEARING AND FORWARDING AGENCY VS. PRINCIPAL COMM.R. OF CUSTOMS (GENERAL), MUMBAI AS REPORTED AT 2024 (388) ELT 623 (TRI-MUMBAI)***

"13.1 Besides the above analysis and discussions of the specific violations of CBLR, 2018, as raised in the inquiry proceedings, it is also necessary to appreciate the role or the position of the CHA/CB and whether any of his actions in clearance of the goods, omission or commission had caused directly or indirectly any violations in respect of imported goods, in this case. Furthermore, in order to appreciate the importance of the role of Customs Broker/Custom House Agent and the timely action which could prevent the import/export frauds, we rely on the judgment of the Hon'ble Supreme Court in affirming the decision of the Co-ordinate Bench of this Tribunal in the case of Principal Commissioner of Customs v. K.M. Ganatra & Co. in Civil Appeal No. 2940 of 2008 reported in 2016 (332) E.L.T. 15 (S.C.). The relevant paragraph of the said judgment is extracted below:

"15. In this regard, Ms. Mohana, Learned Senior Counsel for the appellant, has placed reliance on the decision in Noble Agency v. Principal Commissioner of Customs, Mumbai 2002 (142) E.L.T. 84 (Tri. - Mumbai) wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed:-

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations....."

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed."

13.2 *Similarly, in the case of Sri Kamakshi Agency v. Commissioner of Customs, Madras - 2001 (129) E.L.T. 29, the High Court of Madras, had taken the following views. The extract of the relevant para is given below:*

"...the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as Custom House Agent, it is seen that while Custom House Agent should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an agent for carrying on certain illegal activities of any of the persons, who avail his services as Custom House Agent. In such circumstances, the person playing the role of Custom House Agent has got greater responsibility. The very prescription that one should be conversant with various procedures, including the offences under the Customs Act to act as a Custom House Agent would show that, while acting as Custom House Agent, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as a CHA by taking advantage of the access to the department. The grant of licence to a person to act as Custom House Agent is to some extent to assist the department with the various procedures such as scrutinising the various documents to be presented in the course of transaction of business for entry and exit of conveyance or the import or export of the goods. In such circumstances, great

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confidence is reposed in a Custom House Agent. Any misuse of such position by the Custom House Agent will have far reaching consequences in the transaction of business by the Custom House officials.”

14. *In view of the above discussions and on the basis of the judgment of the Hon’ble Supreme Court in the case of K.M. Ganatra (supra), we find that the appellants CB could have been proactive in fulfilling their obligation as Customs Broker for exercising due diligence, particularly when the import documents were obtained from the importers through an intermediary in ensuring that all documents relating to imports are genuine and that these are not fake or fabricated. As discussed in detail in Paragraphs 7.3 to 7.7 above, the mis-match in the general description of the goods given in the MAWB and invoices could have immediately alerted the appellants CB to inquire into the same with the importer about its correctness, before accepting the authorisation for handling the customs clearance work of such imported goods. However, they have failed to do such an action, which show that they did not scrutinize the documents presented to them by the importer before filing the Bills of Entry.”*

23.4 Now, I pass the following order:-

ORDER

(i) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only)** on M/S PREMJI KANJI MASANI PVT. LTD., under Section 114AA of the Customs Act, 1962.

24. The Show Cause Notice No. VIII/10-100/ICD/O&A/HQ/2020-21 dated 13.08.2021 is disposed of in terms of the para above.

(SHRAVAN RAM)
ADDITIONAL COMMISSIONER

DIN: 20250771MN0000818549

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Date: **02.07.2025**

To,

M/S PREMJI KANJI MASANI PVT. LTD.
1011, SAKAR-V, BEHIND NATRAJ CINEMA,
NEAR GANDHIDHAM RAILWAY CROSSING
OFF ASHRAM ROAD,
AHMEDABAD 380009

Copy for information and necessary action to -

1. The Principal Commissioner of Customs, Ahmedabad (attn. RRA Section)
2. The Deputy Commissioner, Customs, ICD Khodiyar, Gandhinagar.

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3. The Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate.
4. The Assistant Commissioner, Task Force, Customs Ahmedabad.
5. The Assistant Commissioner (Technical), Customs Ahmedabad.
6. Guard File