



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

दूरभाष : (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-32/ICD-KHD/O&A/HQ/2021-22
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-32/ICD-KHD/O&A/HQ/2021-22 dated 10.09.2021
C	मूल आदेश संख्या/ Order-In-Original No.	:	06/ADC/SRV/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	17.04.2025
E	जारी करनेकी तारीख/ Date of Issue	:	17.04.2025
F	द्वारापारित/ Passed By	:	SHREE RAM VISHNOI, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	SHRI HARSHAD PADIA, BRANCH MANAGER OF M/S RIGHTSHIP AGENCY AND PARTNER OF M/S HADILOGISTICS, 309, HIRASHA SQUARE, ABOVE CROMA SHOW ROOM, NEAR BHADAJ CIRCLE, S. P. RING ROAD, AHMEDABAD -380060. SHRI SANTOSH PRASAD, EMPLOYEE OF M/S HADI LOGISTICS, 309, HIRASHA SQUARE, ABOVE CROMA SHOW ROOM, NEAR BHADAJ CIRCLE, S. P. RING ROAD, AHMEDABAD -380060.
(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, हुड़को 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. Laxmi Enterprise, Branch Ser#0, Khargate, Lathiya No Delo, Near Vardhman Bank, Bhavnagar-364 001 (hereinafter referred to as “the exporter”), holding

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I.E.C. No. **ACAPO8969Q** and G.S.T. No. 24ACAPO8969Q1ZO have filed Five (05) Free Shipping Bills along with Tax Invoices, Packing List at I.C.D. Khodiyar (Customs Station), for export of "Electric and Electronic Equipment (New Air Purifier for Power plant & Factory)" to M/s. NOB-KEN AGENCY LTD., 54, GROUND FLOOR, BRONU CRESCENT, APAPA-TIN CAN ISLAND, LAGOS-NIGERIA, NIGERIA, by classifying the same under Customs Tariff Heading No. 85118000, through their Customs House Agent (C.H.A.) M/s. Right Ship Agency, 9, Sukhsagar Complex, Usmanpura, Ahmedabad (hereinafter referred to as 'the CHA').

2. The exporter has declared their cargo for export under Free Shipping Bills without availing Drawback or M.E.I.S. incentives; however was claiming refund of I.G.S.T. on these goods. The details of Shipping Bills and other relevant documents are tabulated in Table-1 below:-

Table-1

Shipping Bill No & date	Description of goods	Unit s / Box es	Net / Gross weight in Kgs.	Invoice Value	F.O.B. value	Amount of I.G.S.T. Paid
9364621 / 15.03.2021	Electric and Electronic Equipment (New Air Purifier for Power plant & Factory)	01	15.500 / 23.500	Rs. 8,66,400/- (U.S.D. 12,000)	Rs. 8,55,570/- (U.S.D. 11,850)	Rs. 2,42,592/-
9364590 / 15.03.2021		01	15.500 / 23.500	Rs. 8,66,400/- (U.S.D. 12,000)	Rs. 8,55,570/- (U.S.D. 11,850)	Rs. 2,42,592/-
9364595 / 15.03.2021		01	15.500 / 23.500	Rs. 8,66,400/- (U.S.D. 12,000)	Rs. 8,55,570/- (USD 11,850)	Rs. 2,42,592/-
9365426 / 15.03.2021		01	15.500 / 23.500	Rs. 8,66,400/- (U.S.D. 12,000)	Rs. 8,55,570/- (U.S.D. 11,850)	Rs. 2,42,592/-
9364458 / 15.03.2021		01	15.500 / 23.500	Rs. 8,66,400/- (U.S.D. 12,000)	Rs. 8,55,570/- (U.S.D. 11,850)	Rs. 2,42,592/-
Total		05		Rs. 43,32,000/- (U.S.D. 60,000)	Rs. 42,77,850/- (U.S.D. 59,250)	Rs. 12,12,960/-

3. During the course of examination of goods mentioned in the Table above, it appeared that the goods meant to be exported were highly overvalued therefore, services of Empaneled Government Valuer, Shri Bhaskar G. Bhatt, B. G. Bhatt & Co. (herein after referred to as "the Valuer") were availed for valuation of the above said goods / cargos. The Valuer, vide report dated 23.03.2021, submitted that the item under export is HEPA type air filter suitable for controlling emission of the surroundings either for inlet or outlet as per the location of installation. Further, in the above report, it has been mentioned that the export of similar item took place from Sahar Air Cargo, A.C.C. (Site ID: INBOM4), vide Shipping Bill No. 9514545 Dt. 10.11.2020 to Lithuania, in which the F.O.B. declared was U.S. \$ 1655 per Unit. The valuation, arrived at in the above report, is summarized in table-2 below:

Table-2

S. N.	Shipping Bill No & date	F.O.B. Value declared by the importer (U.S.D.)	Value certified by the valuer (U.S.D.)	Remarks
1	9364621 / 15.03.2021	\$ 11,850	\$ 1,655	Import / Export data is explored and C.N.F. value is given by the empanelled Govt. Valuer.
2	9364590 / 15.03.2021	\$ 11,850	\$ 1,655	
3	9364595 / 15.03.2021	\$ 11,850	\$ 1,655	
4	9365426 / 15.03.2021	\$ 11,850	\$ 1,655	
5	9364458 / 15.03.2021	\$ 11,850	\$ 1,655	
Total		\$ 59,250	\$ 8,275	

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4. In view of the above, it appeared that the goods meant for export is overvalued with an intention to avail Refund of I.G.S.T. at higher side. Thus, the above facts were communicated to the said exporter and clarification was sought for but was not responded by the said exporter. Therefore, the above mentioned five wooden boxes, containing cargo meant for export, were placed under seizure under the provisions of Section 110 read with Section 113 (i) of the Customs Act, 1962; vide Panchnama dt. 27.03.2021, under reasonable belief that the goods were liable to confiscation under the provisions of the Customs Act, 1962. The seized goods / cargo was handed over to the Warehouse-in-charge Shri Jagdishchandra Vegda, Executive Commercial, C.O.N.C.O.R., I.C.D. Khodiyar for safe custody, vide Suparatnama dt. 27.03.2021.

5. The exporter had purchased the said goods from M/s. H. M. Enterprise, Plot No. 283, Akshar Park Society, Kumbharwada, Bhavnagar; having G.S.T. No. 24 CFWPK 4342 G 1ZB. The said exporter has submitted corresponding purchase invoices issued by M/s. H. M. Enterprise, Bhavnagar; detailed in table-3 below:

Table-3

S. N.	Shipping Bill No. & date	Corresponding Purchase Invoice No.	Dt. of Purchase Invoice	Value as per Purchase Invoice (including G.S.T. @ 28%)
1	9364621 / 15.03.2021	TI /12	01.03.2021	Rs. 9,10,464/-
2	9364590 / 15.03.2021	TI /14	01.03.2021	Rs. 9,10,464/-
3	9364595 / 15.03.2021	TI /15	01.03.2021	Rs. 9,10,464/-
4	9365426 / 15.03.2021	TI /13	01.03.2021	Rs. 9,10,464/-
5	9364458 / 15.03.2021	TI /16	01.03.2021	Rs. 9,10,464/-
			Total	Rs. 45,52,320/-

6. In the course of further investigation, Summons were issued to the said exporter as well as to his supplier i.e. M/s. H. M. Enterprise, Bhavnagar through registered post for recording their Statements. These Summons were returned undelivered by Postal Department. Hence, theses Summons were also served through the said C.H.A. to both of them. However, neither the proprietor of the said exporter nor anyone from M/s. H. M. Enterprise, Bhavnagar, appeared to get their Statements recorded. Further, no communication was received from their side in this regard. Therefore, verification of the premises of the exporter as well as his supplier was caused through the jurisdictional Customs Division, Bhavnagar. The Customs Division, Bhavnagar, vide their letter No. VIII/48-01/PI Misc/21-22 dt. 27.04.21, has reported that no such firms are existing at the registered addresses. Thus, it appeared that these firms are existing only on paper, which have no physical existence and are in operation only to defraud the public exchequer. It appeared that M/s. H. M. Enterprise, Bhavnagar has issued bogus invoices to the said exporter and the said exporter has availed this bogus I.T.C. on the basis of these invoices and overvalued the goods to be exported, with an intention to claim I.G.S.T. refund on higher side.

7. As a part of investigation, Statement of Sh. Padia Harshad Dalsukhbhai, Branch Manager of M/s. Right Ship Agency (C.H.A.) was recorded on 16.07.2021, wherein he, inter alia, stated that:-

- He is working with the said C.H.A. since 2014;

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- M/s. Laxmi Enterprise, Bhavnagar has never contacted him directly for export of their consignment; he got this client through his employee Sh. Santosh Prasad; he got the documents in hard copy from his employee Sh. Santosh Prasad for filing the Shipping Bills of the said exporter;
- that he is already aware of the provisions of the Customs House Agent Licensing Regulations and assured that they have followed the regulations to the best of their knowledge;
- he has no contact with the said exporter or its Proprietor Sh. Ram Nagjibhai Odedra; all Summons related to the said exporter and M/s. H. M. Enterprise, Bhavnagar have been served through Whatsapp messenger of his employee Sh. Santosh Prasad to Whatsapp messenger of the proprietor of the said exporter;
- no fees was agreed for this export consignment; the said exporter had contacted through his employee Sh. Santosh Prasad; no correspondence was done by him directly with the said exporter; he do not know the said exporter personally and have never met them personally;
- on being receipt of the query regarding assessment value from the Department, he informed the same to the said exporter and accordingly they have supplied copy of purchase order, E-way bill;
- he perused the Chartered Engineer's Certificate dated 23.03.2021 in this regard; he was not aware of the goods being overvalued and exported; the documents filed by him in Customs Department on the basis of the documents such as Invoice-cum-packing list and G.S.T. Invoice, photocopy of Aadhar Card, P.A.N. card, copy of G.S.T. registration, I.E.C. and Purchase Invoices received from their employee Sh. Santosh Prasad;
- they have not done anything to verify antecedent; they have not verified address and antecedents of the exporter.

8. Further, Statement of Sh. Santosh Prasad, Employee of M/s. Hadi Logistics (Forwarder of the said C.H.A.) was recorded on 06.08.2021, wherein he, inter alia, stated that:-

- he is employee of M/s. Hadi Logistics, which is one of the forwarders of the said C.H.A.; he is handling the documentation work with C.O.N.C.O.R. and the said C.H.A.; he is working with Hadi Logistics since 2015;
- he came in contact with the said exporter and furnished the letter of Authorization given by the said exporter to their company in matters related to Import-Export from I.C.D. Khodiyar, Ahmedabad and more particularly for filling of Shipping Bill Nos. 9364621, 9364590, 9364595, 9365426 and 9364458, all dated 15.03.2021; Sh. Ram Nagjibhai Odedra, proprietor of the said exporter had contacted him directly for export of their consignment from I.C.D. Khodiyar; he got one set of documents in hard copy from Sh. Ram Nagjibhai Odedra and afterwards, one set of documents received in soft copy for filing of Shipping Bills through the said C.H.A.; copy of the authority letter was also given by him;
- he has no contact with the said exporter or its Proprietor; he never met him earlier for any matter; this is the very first consignment he has got for clearance; all Summons related to the said exporter and M/s. H. M. Enterprise, Bhavnagar

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have been served through his Whatsapp messenger to Sh. Ram Nagjibhai Odedra on his Whatsapp messenger;

- there was no agreed fees for clearance of this export consignment; it is decided that they will pay in-between after clearance of the consignment;
- all necessary documents i.e., G.S.T. registration copy, invoice, tax invoice, packing list, Authority letter, copy of Aadhar card and P.A.N. card, purchase invoice, I.E.C. copy, A.D. code letter of Bank of Baroda, have been given by Sh. Ram Nagjibhai Odedra, the proprietor of M/s. Laxmi Enterprise; to him in hard copy; they have also sent one set of these documents through E-mail to M/s. Hadi Logistics;
- he do not know the exporter personally and never met before; he was not aware of the goods being overvalued and exported;
- he has not done anything to verify antecedents of the said exporter nor its proprietor Sh. Ram Nagjibhai Odedra; he has not physically verified the address of the premises as Bhavnagar is far away from Ahmedabad.

9. In this connection, provisions of Section 95 of the Finance Act, 2021, through which Sec 113(ja) has been inserted in the Customs Act, 1962, are relevant. In the present case, it appeared that the said exporter has over valued the goods to be exported and filed Shipping Bills for the same with an intention to claim refund of I.G.S.T. on higher side. Further, the exporter has also claimed benefit under RoDTEP scheme in the Shipping Bills, on inflated value of goods to be exported. It appeared that the act of the said exporter has resulted into a wrongful claim as defined under Section 113(ja) of the Customs Act, 1962. As a result, it appeared that the goods being exported are liable for confiscation under Section 113(ja) of the Customs Act, 1962 and thus, also rendered the said exporter liable for penal action under Section 114(iii) of the Customs Act, 1962.

10. It appeared that as per the Valuer's report, the value of the goods in question is U.S. \$ 8,275/-, whereas the exporter has declared the value to be U.S. \$ 59,250/-. The contemporary export data of similar goods exported from A.C.C., Sahar, Mumbai also conclusively proves that the exporter has deliberately overvalued the impugned goods intended for export and declared a highly inflated value in the above referred Shipping Bills. Thus, it appeared that the said exporter consciously evolved this whole racket of exporting the overvalued goods and attempting to get illegal refund of Integrated Goods & Service Tax of Rs. 12,12,960/-. This act of omission on the part of the said exporter has rendered the goods to be exported liable for confiscation under Section 113(i) and 113 (ja) of the Customs Act, 1962 and thus, also rendered the said exporter liable for penalty under Section 114(iii) of the Customs Act, 1962. Further, the said exporter has made false declaration in respect of valuation of the goods meant for export and declared a highly inflated value in the Shipping Bills with intent to claim benefit of I.G.S.T. refund at higher side and have thus also rendered themselves liable for penal action under Section 114AA of the Customs Act, 1962.

11. It appeared from the investigation that to export the overvalued goods with an intention to avail bogus refund of Integrated Goods & Services Tax (I.G.S.T.), they have divided their shipment into five parts and filed five Shipping Bills to camouflage it from

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the sight of Customs. Further, it is a fact on record that despite being summoned, they had avoided being part of the investigation. Thus, it appeared that they had malafide motives. In view of above, it appeared that M/s. Laxmi Enterprise, Bhavnagar have rendered themselves liable for penal action under Section 114 and Section 114AA of the Customs Act, 1962. Sh. Ram Nagjibhai Odedra, Proprietor of the said exporter firm, did not appear for deposing his Statement. Sh. Padia Harshad Dalsukhbhai, Branch Manager of C.H.A. M/s. Right Ship Agency, has submitted in their Statement Dt. 16.07.2021 that they have communicated all Summons through Whatsapp messenger / E-mail to the said exporter M/s. Laxmi Enterprise, Bhavnagar and M/s. H. M. Enterprise, Bhavnagar but they were not responding to the Department. From the above discussion, it appeared that the exporter has made false declaration by overvaluing the goods intended for export and declared a highly inflated value in the Shipping Bills with an intention to claim benefit of higher amount of I.G.S.T.. Thus, it appeared that they were consciously involved in this whole racket of exporting the overvalued goods and attempting to get illegal refund of Integrated Goods & Service Tax of Rs. 12,12,960/- . In view of the above, the goods, seized vide Panchnama dated 27.03.2021, is liable for confiscation under Section 113(i) of the Customs Act, 1962, and such an act on the part of the Sh. Ram Nagjibhai Odedra, Proprietor also rendered himself liable for penal action under Section 114(iii) of the Customs Act, 1962 and Section 114AA of the Customs Act, 1962.

12. From the discussion in foregoing paras, it appeared that Sh. Padia Harshad Dalsukhbhai of M/s. Right Ship Agency, has attempted to abet an act which render goods, intended for export, liable for confiscation under Section 113 of the Cusotms Act, 1962. For such an act, he has rendered himself liable for penal action under the provisions of the Customs Act, 1962.

13. From the discussion in foregoing paras, it appeared that Sh. Santosh Prasad of M/s. Hadi Logistics, has attempted to abet an act which render goods intended for export, liable for confiscation under Section 113 of the Customs Act, 1962. For such an act, he has rendered himself liable for penal action under the provisions of the Customs Act, 1962.

14. Thereafter, as per Section 124 of the Customs Act, 1962, vide show cause notice issued under F. No. VIII/10-32/ICD-KHD/O&A/HQ/2021-22 dated 10.09.2021, 1) M/s. Laxmi Enterprise, Bhavnagar-364 001, 2) Sh. Harshad Padia, Branch Manager, M/s. Rightship Agency and 3) Sh. Santosh Prasad, employee of M/s. Hadi Logistics, Ahmedabad; were called upon to show cause to the Additional Commissioner of Customs, Ahmedabad, as to why:

- (a) The value declared by the exporter in the Shipping Bills to the tune of Rs. 43,32,000/- should not be rejected in terms of the provisions of Section 14 of the Customs Act, 1962 read with the provisions of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007;
- (b) The value worked out by the Government approved Chartered Engineers, amounting to U.S. \$ 8,275/- should not be accepted for the purpose of

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the valuation of the goods intended for export, in terms of the provisions of Section 14 of the Customs Act, 1962 read with the provisions of Rule 4 and Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007;

- (c) Goods intended for export, having declared F.O.B. value of Rs. 43,32,000/- and involving illegal refund of Integrated Goods & Services Tax amounting to Rs. 12,12,960/-, should not be held liable for confiscation under Section 113(i) and Section 113(ja) of the Customs Act, 1962;
- (d) Penalty under Section 114(iii) of the Customs Act, 1962 should not be imposed on M/s. Laxmi Enterprise;
- (e) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on M/s. Laxmi Enterprise;
- (f) Penalty under Section 114(iii) of the Customs Act, 1962 should not be imposed upon Shri Ram Nagjibhai Odedra, proprietor of M/s. Laxmi Enterprise;
- (g) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon Shri Ram Nagjibhai Odedra, proprietor of M/s. Laxmi Enterprise;
- (h) Penalty under Section 114(iii) and 114AA of the Customs Act, 1962 should not be imposed on Sh. Harshad Padia, Branch Manager, M/s. Rightship Agency as well as Partner of M/s. Hadi Logistics, Ahmedabad;
- (i) Penalty under Section 114(iii) and 114AA of the Customs Act, 1962 should not be imposed on Sh. Santosh Prasad, employee of M/s. Hadi Logistics, Ahmedabad.

DEFENCE SUBMISSION & PERSONAL HEARING AT ORIGINAL ADJUDICATION

PHASE:

15. Vide letter dated 02.10.2021, Sh. Santosh Prasad, employee of M/s. Hadi Logistics, Ahmedabad; submitted that:-

- there is not a single allegation against him on the point that he had knowledge of the over-valuation done by the exporter and he had knowingly supported the exporter to declare higher price of the goods with an intention to get some undue benefit. The important facet of Section 114AA is that the person should have knowledge or should have intentionally done the act so as to be penalized under such Section. In the entire S.C.N., there is no evidence which the Department has relied upon to prove that he had knowledge of the over-valuation of the goods and such act was done intentionally by him.
- It is a settled legal position that a person can not be penalized merely based on assumptions and presumptions and since penalty is quasi criminal in nature, a person's intention and knowledge are very important points which are to be proved by the Department positively so as to impose even a token of penalty. In the present case, there is no evidence which has been furnished against him to prove that he had knowledge of the over valuation and he had intentionally done

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an act, abetted an act or omitted to do an act so as to penalize him under Section 114AA. The Department has not even proven beyond reasonable doubt that there was actually a deliberate act or omission on his part which rendered the goods liable for confiscation under Section 113. Any act or omission, which allegedly rendered the goods liable for confiscation, has been made by the exporter and not by him. The S.C.N. has nowhere shown that what act or omission he had committed so as to render the goods liable for confiscation. The allegation is not supported by any facts and the same is completely based on assumptions and presumptions.

- In order to show that a person has actually attempted to abet an act or to commit an act, positive evidence is to be shown that what motive would such person have to do an act or omission. However, in this case, other than mere allegation without any supported cogent evidence, nothing has been levelled against him and hence such allegation in itself being baseless, no penalty can be imposed on him under Section 114(iii) or 114AA of the Customs Act, 1962.
- He was completely unaware about the over valuation which was done by the exporter and he had recommended M/s. Rightship Agency to act as C.H.A. for the exporter, under a bona fide belief. He never had any connection with the exporter in the past and this was the first consignment which was brought by the exporter to him since they required services of a Custom House Agent, he had, under bona fide belief, recommended such work to M/s. Rightship Agency. He relied upon following judgments in support of his defense :-

- A. M/s. Standard Pencil P. Ltd. (1996 (86) ELT 245)
- B. M/s. Kamdeep Marketing P. Ltd. (2004 (165) ELT 206)
- C. M/s. T. S. Makkar (2014 (312) ELT 427)
- D. M/s. Hindustan Steel Ltd. (1978 ELT (J159))

15.1 Vide letter dated 02.10.2021, Sh. Harshad Padia, Branch Manager of M/s. Rightship Agency, Ahmedabad; submitted that:-

- the S.C.N. has alleged that he being the Branch Manager of M/s. Rightship Agency, have abetted the act of over valuation of the exported goods and that such over valuation has rendered the goods liable for confiscation under Section 113 of the Customs Act, 1962 and that for such reason, he is liable for penal action under the provisions of the Customs Act, 1962.
- Similar allegations have also been made on Sh. Santosh Prasad who is an employee of M/s. Hadi Logistics, Ahmedabad and who is also the person who had recommended M/s. Rightship Agency to provide C.H.A. services to the exporter. The S.C.N. has also taken note of the fact that Sh. Santosh Prasad of M/s. Hadi Logistics had provided reference of the exporter to M/s. Rightship and that he was also one of the partners in M/s. Hadi Logistics.
- there is not a single allegation against him on the point that he had knowledge of the over-valuation done by the exporter and he had knowingly supported the exporter to declare higher price of the goods with an intention to get some undue benefit. The important facet of Section 114AA is that the person should have knowledge or should have intentionally done the act so as to be penalized under

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such Section. In the entire S.C.N., there is no evidence which the Department has relied upon to prove that he had knowledge of the over-valuation of the goods and such act was done intentionally by him.

- It is a settled legal position that a person can not be penalized merely based on assumptions and presumptions and since penalty is quasi criminal in nature, a person's intention and knowledge are very important points which are to be proved by the Department positively so as to impose even a token of penalty. In the present case, there is no evidence which has been furnished against him to prove that he had knowledge of the over valuation and he had intentionally done an act, abetted an act or omitted to do an act so as to penalize him under Section 114AA. The Department has not even proven beyond reasonable doubt that there was actually a deliberate act or omission on his part which rendered the goods liable for confiscation under Section 113. Any act or omission, which allegedly rendered the goods liable for confiscation, has been made by the exporter and not by him. The S.C.N. has nowhere shown that what act or omission he had committed so as to render the goods liable for confiscation. The allegation is not supported by any facts and the same is completely based on assumptions and presumptions.
- In order to show that a person has actually attempted to abet an act or to commit an act, positive evidence is to be shown that what motive would such person have to do an act or omission. However, in this case, other than mere allegation without any supported cogent evidence, nothing has been levelled against him and hence such allegation in itself being baseless, no penalty can be imposed on him under Section 114(iii) or 114AA of the Customs Act, 1962.
- He had received a contract for acting as a C.H.A. for the exporter which was recommended to him by Sh. Santosh Prasad of M/s. Hadi Logistics. Sh. Santosh Prasad has also, in his Statement, stated that he gave such contract to him and even he was not aware about the antecedents or activities undertaken by the exporter. He also stated that he did not have any contract with the exporter and had never met him earlier for any matter and this was the first time he decided to work with the exporter. He relied upon following judgments in support of his defense :-
 - A. M/s. Standard Pencil P. Ltd. (1996 (86) ELT 245)
 - B. M/s. Kamdeep Marketing P. Ltd. (2004 (165) ELT 206)
 - C. M/s. T. S. Makkar (2014 (312) ELT 427)
 - D. M/s. Hindustan Steel Ltd. (1978 ELT (J159))

15.2 M/s. Laxmi Enterprise and his proprietor did not file / submit any defense written reply in the matter.

16. Opportunities to be heard were given to Shri. Harshad Padia, Br. Manager of M/s. Rightship Agency (C.H.A.), and Sh. Santosh Prasad, Employee of M/s. Hadi Logistics, which was attended on 31.08.2022, wherein they re-iterated their written submissions dated 02.10.2021 and requested to take lenient view in the matter.

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16.1 Opportunities to be heard were given thrice to M/s. Laxmi Enterprise on 16.08.2022, 22.08.2022 and 21.08.2022, however no one appeared on their behalf representing M/s. Laxmi Enterprise or Sh. Ram Nagjibhai Odedra. Hence, the matter was taken up for adjudication on ex-parte basis in respect of their role.

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

17. The adjudicating authority vide Order-in-Original (OIO) No. 25/ADC/VM/O&A/2022-23 dated 01.09.2022 passed the following order:-

- i. Rejected the value declared by the exporter in the Shipping Bills to the tune of Rs. 43,32,000/-, in terms of the provisions of Section 14 of the Customs Act, 1962 read with the provisions of Rule 8 of the Customs Valuation (Determination of Value of Export Goods), Rules, 2007;
- ii. fixed the value, worked out by the Govt. approved Chartered Engineer, to U.S. \$ 8,275/- (Rs. 5,97,455/-) for the purpose of the valuation of the goods intended for export, in terms of the provisions of Section 14 of the Customs Act, 1962 read with the provisions of Rule 4 and Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007;
- iii. confiscated goods attempted to be exported by M/s Laxmi Enterprise, Bhavnagar (as per Table-2 above), having a declared F.O.B. value of Rs. 43,32,000/-, under Section 113(i) and Section I 13(a) of the Customs Act, 1962 and allowed the exporter to redeem the same on payment of redemption fine of Rs. 13,00,000/- under Section 125 of the Customs Act, 1962.
- iv. Imposed a penalty of Rs. 4,00,000/- on M/s. Laxmi Enterprise, Bhavnagar, under Section 114(iii) of the Customs Act, 1944.
- v. Imposed a penalty of Rs. 4,00,000/- on M/s. Laxmi Enterprise, Bhavnagar, under Section 114AA of the Customs Act, 1944.
- vi. Imposed a penalty of Rs.4,00,000/- on Sh. Ram Nagjibhai Odedra, proprietor of M/s. Laxmi Enterprise, Bhavnagar, under Section 114(iii) of the Customs Act, 1962.
- vii. Imposed a penalty of Rs. 4,00,000/- on Sh. Ram Nagjibhai Odedra, proprietor of M/s. Laxmi Enterprise, Bhavnagar, under Section 114AA of the Customs Act, 1962.
- viii. Imposed a penalty of Rs. 2,00,000/- on Sh. Harshad Padia, M/s. Rightship Agency, Ahmedabad, under Section 114(iii) of the Customs Act, 1962.
- ix. Imposed a penalty of Rs. 2,00,000/- on Sh. Harshad Padia, M/s. Rightship Agency, Ahmedabad, under Section 114AA of the Customs Act, 1962.
- x. Imposed a penalty of Rs.2,00,000/- on Sh. Santosh Prasad, M/s. Hadi Logistics, Ahmedabad, under Section 114 of the Customs Act, 1962.
- xi. Imposed a penalty of Rs. 2,00,000/- on Sh. Santosh Prasad, M/s. Hadi Logistics, Ahmedabad, under Section 114AA of the Customs Act, 1962.

18. Being aggrieved by the above said order, Shri. Harshad Padia, Br. Manager of M/s. Rightship Agency ("noticee no. 1"), and Sh. Santosh Prasad, Employee of M/s. Hadi Logistics ("noticee no. 2") 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-005 & 006-24-25 dated 15.04.2024, remanded the matter back to adjudicating authority for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee.

18.1 M/s. Laxmi Enterprise and Sh. Ram Nagjibhai Odedra did not prefer to appeal against the OIO.

SUBMISSION AND PERSONAL HEARING BEFORE THE DENOVO ADJUDICATION AUTHORITY:

19. The noticee no. 1 and noticee no. 2 submitted a written reply on 02.04.2025 wherein they submitted that:

- M/s. Laxmi Enterprise, Bhavnagar, the Exporter has submitted various documents, including KYC documents for export of "Electric and Electronic Equipment, (New Air Purifier for Power Plant & Factory)" to the noticee no. 1 and noticee no. 2 on the basis of which the noticee has submitted and filed 05 Shipping Bills as mentioned in on 15.03.2021.
- At the time of examination of the goods it appeared that the goods meant for export were highly overvalued and Government-approved-valuer vide his report confirmed the fact and the department communicated the said facts to the exporter for clarification, however the same were not responded. The goods were seized and investigation was initiated wherein it was found that the goods meant for export were purchased from one M/s. H. M. Enterprise, Plot No. 283, Akshar Park Society, Kumbharwada, Bhavnagar having GST Registration No. 24CFWPK4342G1ZB. Accordingly, summons was issued to the exporter as well as to the supplier i.e. M/s. H. M. Enterprise, however were return back undelivered. On verification, it was found that no such firms existed on said addresses.
- Thereafter the department formed an opinion that the said firms are existing on papers only and have no physical existence and were in operation only to defraud the public exchequer. It was further concluded that H. M. Enterprise has issued only bogus Invoices to the said exporter on which the exporter has availed ITC on the basis of such invoices and overvalued the goods meant for export with intention to claim IGST on higher side.
- During the course of Investigation, the statement of the both noticees were recorded on 16.07.2021 and 06.08.2021 respectively.
- The SCN No. VIII/10-32/ICD-KHD/O&A/HQ/2021-22 dated 10.09.2021 under Section 124 of the CA, 1962 and both noticees were called upon to show cause as to why penalty under Section 114 (iii) and 114AA of the Customs Act, 1962 should not be imposed upon both of them.
- The noticees submitted their written submission on 02.10.2021 and attended PH on 31.08.2022.

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- The learned adjudicating authority while deciding proposed penalty under Section 114(iii) and Section 114AA of the Customs Act, 1962 against the noticee in his findings recorded at para 53.1 and 53.2 interalia in this regard referring to the depositions of the Noticee in his statement has concluded that, the Noticee being the representative of CHA has not exercised due diligence to ensure the bona-fide of the exporter which proves his sheer carelessness on his part; that he placed blind trust on Shri Santosh Prasad and presented the Shipping Bills along with goods before the Customs without ensuring the bona fide and veracity of the goods, in all respect,. Thus the Noticee rendered the export goods liable for confiscation and consequently liable for penalty under Section 114(iii) of the Customs Act, 1962. Further, it is recorded in para 53.2 that the noticee was in knowledge of the facts that the export goods covered under the shipping bills were overvalued as discussed herein above. Thus he knowingly involved in the conspiracy hatched by the exporter and facilitated the attempt for clearance of export goods, therefore declined to accept the case laws relied by the Noticee being no relevant and finally hold that for his acts omission and commission he rendered the export goods liable for confiscation under Section 113(i) & 113(ja) and consequently rendered himself liable for penal action under Section 114(iii) of the Customs Act, 1962. Further for not verifying the export documents presented to them by the mediator, his complicity in the said over valuation of the export goods to avail higher IGST refund cannot be ruled out and hold him liable to penalty under Section 114AA of the Customs. Accordingly the learned adjudicating authority has imposed penalty of Rs. 2,00,000/- each under section 114(iii) and 114AA was imposed upon the noticees in the impugned order.
- The said impugned order is issued without appreciating correct facts submitted by the noticees in their written submission and without referring the obligations prescribed for the Customs Broker in the CBLR, 2018 is therefore factually and legally incorrect, the noticees have no option but to appeal against the said OIO.
- Overvaluation doubt has been brought to the notice by the noticees and is not complicit in his work- The noticee submitted that the bona-fide intention of them shall be proved on the sole ground that information in relation to overvaluation of the goods which were to be exported has been passed on by them through the employee to the department. This fact has also been specifically recorded in the statements dated 16.07.2021. the department had not taken cognizance of the above said fact instead have evaluated the deposition of the Noticee in pick-n-choose manner to put the noticee in disadvantageous position and levy heavy penalties. They relied upon following case laws:-
 - 2017 (350) E.L.T. 492 (Bom.) COMMR' OF C. EX., MUMBAI-V Versus MAHINDRA & MAHINDRA LTD. (AUTO DIVN.)

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- 2007 (216) E.L.T. 710 (Tri. - Del) in the case of MARGRA INDUSTRIES LTD. Versus COMMISSIONER OF C. EX., NOIDA
 - 2007 (207) E.L.T. 3 (S.C.) B.J. AKKARA, COL.(RETD.) Versus GOVERNMENT OF INDIA
- The KYC documents of Exporter were online verified by CHA. the document which were collected by him as GST Registration Certificate, IEC Registration Certificate, copy of AADHAR Card, PAN Card & AD Code Letter of BOB of the exporter, were issued by respective government authorities and hence there is no reason to doubt the credentials of the exporter. As per Rule 10(n) of CBLR, 2018 required just online verification of the GSTIN on GSTN Portal and IEC verification on DGFT portal which the noticee through Shri Santosh Prasad had carried out and credentials were duly verified For verification of the KYC documents the Regulation 10(n) itself prescribes that genuineness of the KYC document without having any face-to-face verification and can be done with DGFT and GSTN portal and the same was done by the Noticee himself. Nobody can deny that these DGFT and GSTN portals are not the genuine source for verification of KYC documents.
- Further, the KYC documents collected by the Noticee are falls under the "Officially Valid Documents" as per RBI guide lines vide Circular No. RBI/2015-16/42 dated 01.07.2015 available on the web site of RBI. Additionally, the said guidelines also suggest with regard to non-face to face customers that "With the introduction of phone and electronic banking, increasingly accounts are being opened by banks for customers without the need for the customer to visit the bank branch. In the case of non-face-to-face customers, apart from applying the usual customer identification procedures, there must be specific and adequate procedures to mitigate the higher risk involved. Certification of all the documents presented should be insisted upon and, if necessary, additional documents may be called for. In such cases, banks may also require the first payment to be effected through the customer's account with another bank which, in turn, adheres to similar KYC standards. In the case of cross border customers. There is the additional difficulty of matching the customer with the documentation and the bank may have to rely on third party certification /introduction. In such cases. it must be ensured that the third party is a regulated and supervised entity and has adequate KYC systems in place". In the instant case the Noticee fails to understand that in a situation wherein third party are the DGFT and GSTN Portal which are regulated by the Government of India itself. If one cannot rely on this portal than where and how to verify genuineness of the KYC documents. Hence the noticee has surely acted in accordance with the regulation and has bona-fide intentions and total absence of any complicity and hence the conclusion which is drawn based on assumption and presumption without any corroborative evidences doesn't hold water for imposing any type penalties on the Noticee.

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- Neither the Customs Act, 1962 nor CBLR, 2018 stipulates questioning the value of goods meant for export by the Customs Broker to the exporter.
- The learned adjudicating authority has erred in not referring the provisions of the Customs Act, 1962 read with CBLR, 2018 wherein the role of the Customs Brokers are confined and not extended to advisory for valuation. Under the customs Act, the role of the customs Broker is for entry or exit of the goods for which he has to advise their client which the Noticee has done as per the Regulation 10(d) of CBLR, 2018. In the instant case it is not the noncompliance from exporter which could be bring to the notice of the prescribed authority. Thereby the customs Broker have discharged his obligation stipulated in Regulation 10(d) above. Conclusion of the learned adjudicating authority with regard to role of the noticee in the over invoicing of export goods is purely based on assumption, presumption and surmise based. Therefore the imposition of huge penalty on the Noticee for his bona-fide act while performing his duty in accordance with the Customs Act, 1962 and CBLR, 2018 is not justified. The Customs Broker has to collect the documents and then they will have to submit Shipping Bills in the case of Export and Bills of Entry in the case of Import on behalf of the Exporter or Importer as the case may be. It does not absolve the exporter or Importer from their responsibilities as stipulated in Customs Act, 1962. They referred Circular No. 39/2011-Cus. Dt. 02.09.2011 titled as "Self-assessment of Customs duty by importer or exporter under the Customs Act" issued from F. No. 450/20/2007- Cus. IV. The responsibility of Exporter/importer cannot be equated with that of Customs Brokers. Neither the Customs Broker can be construed as exporter. Therefore, holding Customs Broker responsible for the over valuation of the goods is completely negated by the noticee.
- The findings recorded is factually and legally not correct as the same are based on assumption, presumption and surmises only. the noticee intend to invite attention to the deposition as recorded in the impugned order it is nowhere mentioned that the Noticee was having knowledge about the over invoicing in the goods meant for export.
- Further for KYC of the exporter, Shri Ram Nagjibhai Odedra, proprietor of M/s. Laxmi Enterprise, himself has provide documents viz. GST registration copy, invoice, Tax invoice, Packing list, Authority letter, copy of Aadhar card, PAN card, purchase invoice, IEC copy, AD code letter of Bank of Baroda to Santosh Prasad, an employee of M/s. Hadi Logistic where the noticee is also a partner. Therefore, the credential of the exporter were verified by the Santosh Prasad on DGFT website, GSTN portal and Verification of pan Number. Even today the same are showing their status with regard to the existence of the firm. The registration status of M/s. Laxmi Enterprise shows suo moto cancellation with effect from 03.11.2020. The said status also shows it was authenticated with Aadhar card as well. The exact date of cancellation of registration is not available/visible, but the same appears to be cancelled with retrospect by the respective department.

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- The Transaction value declared in the documents submitted by the noticee is the subject matter between the exporter and its buyer at overseas. The said value cannot be questioned by the Customs Broker.
- No Role of Customs Broker in the overvaluation of the goods meant for export by the exporter. Charge of abatement in the offence committed by the exporter is not proved. The declaration of value of Export goods has to be determined by the Exporter himself and its correctness has to be verified by the authorized officers of Customs; the Customs Broker has no role to play in this regard. In fact the Noticee in his statement recorded on 6th August, 2021 has specifically while answering question 8 has deposed that "I had a doubt that the goods may be overvalued after seeing the goods when they came inside ICD Khodiyar and subsequent I informed to Inspector Rajan about the same through my employee Shri Santosh Prasad." In the absence of any evidence put-forth by the department that the Customs Broker was having knowledge or prior knowledge about the overvaluation of the goods made by the exporter it will be erroneous to allege and conclude by the learned adjudicating authority that Customs Broker is connived with the exporter in the overvaluation of the goods meant for export.
- No penalty is imposable upon the noticee under Section 114(iii) and Section 114AA of the customs Act 1962. the subject goods was meant for export is not covered as prohibited goods under Section 11 of the Customs Act,1962 or notification issued there under, nor it is not covered in schedule-II of the Customs Tariff Act, 1975, hence the same cannot be considered as dutiable goods. Further the value of the goods meant for the export has to be declared by the exporter and subject matter of the exporter and overseas buyer. There is no role of Customs Broker or the Noticee in this case to question the transaction value declared by the exporter in the documents supplied to him by the exporter. Based on the said documents the Noticee has correctly submitted the subject shipping bills as per the documents supplied by the exporter. Thereby the Noticee had not committed any omission which rendered the goods liable for confiscation. It is only on the basis of Investigation carried out by the department the overvaluation have been noticed and it is the duty of the proper officer of the Customs empowered under the customs Act, 1962. Hence the Noticee categorically contend that in the absence of any act or omission and any evidence put forth with regard to abatement of the Noticee in the alleged offence committed by the exporter, the penalty of Rs.2,00,000/- imposed on the Noticee under section 114(iii) is not correct and legal and therefore the Noticee request to set aside the said penalty. They relied upon the case of Somaiya Shipping Clearing Pvt. Ltd vs. Commissioner of C. Ex., Mumbai reported at 2006 (197) ELT 552 (Tri-Mumbai).
- The details of all the declaration in all the Shipping Bills were entirely based on the documents supplied by the exporter and were correctly declared by the Noticee. The department has not challenged any of the declaration based

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on the documents supplied by the exporter. The declaration of value was based on the invoices made available by the exporter. As contended in the preceding grounds it is elaborately contended by the Noticee that transaction value declared by the exporter cannot be questioned by the Customs Broker nor the act or regulation made there under provides so. Therefore the Noticee have not mis-declared or documents which are false or incorrect. The onus of correct declaration of transaction value is always on the exporter as stipulated in Section 14 of the Customs Act, 1962 and not on the Customs Broker i.e. the Noticee in this case. Investigation carried out by the department with the Noticee and Shri Santosh Prasad and Empaneled Valuer did nowhere suggest that the Noticee was having knowledge of the overvaluation of the export goods. The Noticee is not in any way concerned nor is the beneficiary with the goods meant for export and alleged fraud of overvaluation and consequential IGST refund benefit except its clearance for export formalities carried out by the Noticee as empowered to do so under the Section 146 of Customs Act, 1962 and licence issued under CBLR, 2018. Therefore the Noticee contend that penalty of Rs. 2,00,000/- imposed under section 114AA of the Customs Act, 1962. They relied upon the following cases:-

- Commissioner of Customs (Import) vs. Trinetra Impex Pvt. Ltd. reported as 2020 (372) E.L.T.332 (Del.)
- Kamal Sehgal vs Commissioner of Customs (Appeals) New Delhi, reported as 2020 (371) E.L.T. 742 (Tri. - Del.)
- The impugned order is issued which is Non-Speaking Order - adjudicating authority failed to explain and provide evidence against the Noticee to prove *mens rea* to levy these heavy penalties. They relied upon the following cases:-
 - Amway India Enterprises Pvt. Ltd. Versus Commissioner of S.T., Delhi 2015 (39) S.T.R. 1006 (Tri.-Del.) in the CESTAT, Principal Bench, New Delhi
 - 2017 (351) E.L.T. 38 (Guj. HC), Padmavati Tubes Versus Commissioner of C. Ex. & S.T., Vapi
 - 2017 (349) E.L.T. 694 (Guj. HC) Cadila Pharmaceutical Ltd. Versus Commissioner of Central Excise
 - [2011] 30 STT 68 (Mum. – CESTAT) Ami Clearing and Forwarding (P.) Ltd. v. Assistant Commissioner of Service Tax, Mumbai
- The Noticee lastly also submits that as he has already recorded in statement stating that total remuneration would be Rs. 950/- per Shipping Bill and as a part of his duty on doubting he has already informed to the department from where entire case erupted and presently the material is also detained and Exchequers money is also saved, against this the Noticee fails to understand and justify that how come he even dare to be part of conspiracy as alleged and affirmed and invite the liability of huge penalty being invoked against him.

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- The Hon'ble Commissioner, Customs (Appeal) has vide Order in Appeal No. AHD-CUSTM-000-APP-005 & 006-24-25 dated 15.04.2024 while deciding the appeal of both the noticees has remanded the proceeding back to the original adjudicating authority observing at para 6.2 to 6.4 of OIA.

20. Personal Hearing in the matter was held on 02.04.2025 and the same was attended by Shri Pravin Dhandharia, CA and Shri Vijay N. Thakkar, Consultant on behalf of the noticee no. 1 and noticee no. 2. They submitted the written submission as mentioned in para above and contended that there is no role of Custom Broker in valuation of the goods by the exporter, never the less during the examination of goods, Shri Harshad Padia also informed about his doubt with regard to the valuation of the goods and informed the same to the examining officer before the examination of the goods through their employee Shri Santosh Prasad. They submitted that this fact is also recorded in the statements of the noticees and also submitted the copies of statements. They submitted that the Commissioner (Appeals) has taken this point in cognizance while remanding the matter. They request to drop the proceedings against both the noticees initiated vide the aforesaid SCN.

DISCUSSION & FINDINGS:

21. I have carefully gone through the facts of the case, defense submissions made by the noticees, oral submission made during Personal hearing, Order-in-Appeal and evidence available on the records.

21.1 I find that the Commissioner of Customs (Appeals) vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-005 & 006-24-25 dated 15.04.2024, remanded the matter back to adjudicating authority for limited purpose for examining the roles of Shri Harshad Padia ("noticee no. 1") and Shri Santosh Prasad ("noticee no. 2") in the matter and passing fresh adjudication order in light of the available facts, documents and submissions made by both the noticees.

21.2 I find that the Commissioner of Customs (Appeals), Ahmedabad stated that:

6. As the exporter, i.e., M/s. Laxmi Enterprise, has not filed any appeal, the impugned order passed by the adjudicating authority, to the extent of confiscation of goods under Section 113 (i) and Section 113 (ja) of the Customs Act, 1962, and penalty imposed upon the exporter under Section 114 (iii) and 114AA of the Customs Act, 1962, has attained finality.

6.1 As the confiscation of seized goods has attained finality, the penalties can be imposed upon the present Appellant considering the role played by each appellant in the present case.

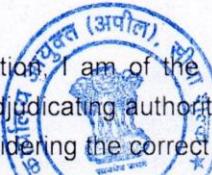
I find that M/s. Laxmi Enterprise has not filed any appeal against the original adjudication order and hence the matter in respect of M/s. Laxmi Enterprise and its proprietor Shri Ram Nagjibhai Odedra has attained finality i.e. to the extent of

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confiscation of goods under Section 113(i) and Section 113 (ja) of the Customs Act, 1962 and penalties upon M/s. Laxmi Enterprise and its proprietor Shri Ram Nagjibhai Odedra under Section 114 (iii) and 114AA of the Customs Act, 1962, the original adjudication order no. 25/ADC/VM/O&A/202-23 dated 01.09.2022 has attained finality. However, the Commissioner of Customs (Appeals), Ahmedabad stated at para 6.3 and 6.4 in the said OIA stated that:

6.3 I am of the considered view that if the appellants had doubted the value of the export goods and had informed the same to the concerned officer, in such a scenario none of the charges levelled upon them such as non exercise of due diligence, abetment, knowingly involved themselves in conspiracy etc. are legally sustainable. However, on perusal of the Show Cause Notice, it is observed that the above factual aspect is completely missing from the Show Cause Notice and the same proceeds on the grounds that during the course of examination of the goods, it appeared that the goods meant for export were highly overvalued. Further, on perusal of the defense replies filed by both the appellant before the adjudicating authority, it is observed that the contention based on the above factual aspect was not raised / contended before the adjudicating authority at the time of adjudication and the issue has been raised for the first time before the appellant authority.

6.4 In view of the above observation, I am of the considered view that the matter needs to be remanded back to the adjudicating authority to verify the facts of the case afresh and pass a speaking order considering the correct facts of the case.



21.3 In view of above, the issue to be decided before me is whether Penalty under the provisions of Section 114 and Section 114AA of the Customs Act, 1962 is imposable upon Shri Harshad Padia and Shri Santosh Prasad.

21.3.1 I find that M/s. Laxmi Enterprise filed Five (05) Free Shipping Bills (along with Tax Invoices, Packing List at I.C.D. Khodiyar for export of "Electric and Electronic Equipment (New Air Purifier for Power plant & Factory)" to M/s. NOB-KEN AGENCY LTD., NIGERIA, through CHA M/s. Right Ship Agency. I find that during examination of the goods, the said goods appeared overvalued and government approved valuer examined the goods and confirmed the overvaluation of the export goods in the said shipping bills. I find that the exporter did not respond on the above findings and an investigation was conducted which revealed that neither the exporter nor his supplier i.e. M/s. H. M. Enterprises, Bhavnagar existed on the said registered addresses. I find that these firms were existing on paper only and were in operation only to defraud the exchequer. The show cause notice was issued in the matter to the exporter as well as the CHA i.e. Shri Harshad Padia, branch manager of M/s. Right Ship Agency and partner in M/s. Hadi Logistics and Shri Santosh Prasad, employee of M/s. Hadi Logistics. I find that the exporter neither submitted any reply to the show cause notice, nor attended any of the personal hearing, while both the noticee no. 1 and noticee no. 2 submitted written submissions to the show cause notice as well as attended personal hearing. The adjudicating authority passed an order for confiscation of the export goods and imposition of penalty on exporter and its proprietor under Section 114 (iii) and 114AA of the Customs Act, 1962. He also imposed penalty on Shri Harshad Padia,

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branch manager of M/s. Right Ship Agency and partner in M/s. Hadi Logistics and Shri Santosh Prasad, employee of M/s. Hadi Logistics under Section 114 (iii) and 114AA.

21.3.2 I find that M/s. Laxmi Enterprise has not filed any appeal against the original adjudication order and the Commissioner of Customs (Appeals), Ahmedabad has stated that the OIO No. 25/ADC/VM/O&A/202-23 dated 01.09.2022 has attained finality in respect of confiscation of goods under Section 113(i) and Section 113 (ja) of the Customs Act, 1962 and penalties upon M/s. Laxmi Enterprise and its proprietor Shri Ram Nagjibhai Odedra under Section 114 (iii) and 114AA of the Customs Act, 1962. Thus, I hold that the goods were indeed overvalued for defrauding the exchequer in the present case.

21.3.3 I find that relevant portions of the statement dated 16.07.2021 recorded under Section 108 of the Customs Act, 1962 of Shri Harshad Padia, branch manager of M/s. Right Ship Agency and partner in M/s. Hadi Logistics are as under:-

Q.3 Please state how you came in contact with M/s. Laxmi Enterprise, Branch Ser# 0, Khargate, Lathiya No. Delo, Near Vardhman Bank ,Bhavnagar-364001 GST No. 24ACAO8969Q1ZO, IEC No. ACAPO8969Q and please furnish the letter of Authorisation given by M/s. Laxmi Enterprise, Bhavnagar to your firm in confirming your firm as their Custom House Agent in matters related to Import-Export from ICD Khodiyar, Ahmedabad.

A.3 I hereby state that M/s. Laxmi Enterprise, Bhavnagar have never contacted me directly for export of their consignment. I further state that I got this client M/s. Laxmi Enterprise, Bhavnagar through my employee Shri Santosh Prasad having mobile number 8490064688. I have got the documents in hard copy from him, for filing the shipping bill of M/s. Laxmi Enterprise, Bhavnagar.

Q.4 Please read Heading 13[Obligations of a Customs House agent] Point No. A(a), A(o) in Customs house Agent Licensing Regulations 2004 and offer your comments on the same.

A.4 I hereby state that on being asked I have read Heading 13[Obligations of a Customs House agent] Point No. A(a), A(o) in Customs house Agent Licensing Regulations 2004 which state "*(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs House Agent and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs*" and "*(o) 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*" respectively. I also put my signature as a token of having read the same. I further state that I am already aware of the said provisions of the Regulations and assure you that we have followed the regulations to the best of our knowledge.

Q.5 Please state whether they know M/s. Laxmi Enterprise or its Proprietor?

A.5 On being asked, I state that I have no contact with M/s. Laxmi Enterprise or its Proprietor Shri Ram Nagjibhai Odedra.

Q.6 This office has issued summons to the proprietor of M/s. Laxmi Enterprise and M/s. H.M Enterprise, Bhavnagar and given copies of the same to you through your employees Shri Santosh Prasad and Shri Krunal Patel to serve the same to the exporter. Please state whether the summons have been served or otherwise and how they got served to M/s. Laxmi Enterprise and M/s. H.M Enterprise, Bhavnagar? Pl. submit evidences in this regard.

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A.6 On being asked, I state that all summons related with M/s. Laxmi Enterprise and M/s. H.M Enterprise, Bhavnagar have been served through what's app of my employee Shri Santosh Prasad having mobile no.8490064688 to Shri Ram Nagjibhai Odedra, the proprietor of M/s Laxmi Enterprise, on his mobile no.9662695934. I will submit the print out of the what's app. communication held between my employee Shri Santosh Prasad and Shri Ram Nagjibhai Odedra, Proprietor of M/s. Laxmi Enterprise, Bhavnagar.

Q.7 Please present in support of your claim, the proof of correspondence vide Email/Messages/IM chats between your client M/s. Laxmi Enterprise, Bhavnagar and your firm M/s Right Ship Agency. Please also state the amount of fees agreed upon between your firm and M/s. Laxmi Enterprise, Bhavnagar and proof of receipt/advance of the same.

A.7 On being asked that we there was no agreed fees amount for this export consignment. I hereby present that the M/s Laxmi Enterprise contacted by my employee Shri Santosh Prasad. No correspondence made by me directly with M/s Laxmi Enterprise, Bhavnagar.

Q.8 Please state if you had any prior knowledge of the goods being exported at an overvalued by your client, and if so, why such information of a possible fraud was not shared with the Customs Department by your firm? Further, please peruse the Chartered Engineer's Certificate dated 23.03.2021 in this regard.

A.8 On being asked I state that I do not know the Client M/s. Laxmi Enterprise, Bhavnagar personally and have never met them. On being receipt of query regarding assessment value, our firm has informed the exporter and accordingly they have supplied copy of purchase order, E-way bill. Further, I have perused the Chartered Engineer's Certificate dated 23.03.2021 in this regard, I further state that I was not aware of the goods being overvalued and exported. I hereby state that I had a doubt that the goods may be overvalued after seeing the goods when they came inside ICD- Khodiyar and subsequent I informed to Inspector Shri Rajan above the same through my employee Shri Santosh Prasad. I further state that the documents filed by me in Customs Department on the basis of the documents such as Invoice cum packing list and GST Invoice, I have received it from my employee Shri Santosh Prasad.

The supporting documents viz. photocopy of Aadhar Card, PAN card, copy of GST registration, IEC. Purchase Invoice.

Q.9. What activities have been carried by you in order to verify antecedent correctness of Importer Exporter Code (IEC) Number, KYC details, Identity of the client and functioning of the client at the declared address in case of M/s Laxmi Enterprise, Bhavnagar?

A.9 We have not done anything to verify antecedent, we ask for GST Registration, Pan Card, IEC Copy of the exporter for this purpose which we had got from my employee Shri Santosh Prasad.

Q.10. When you were not in contact with the Proprietor and other persons managing the firm, how can you say that you have verified the antecedents properly?

A.10. We have simply asked for the documents GST Registration, PAN Card, IEC Copy of the exporter. We have not verified address and antecedents of the exporter.

21.3.4 I find that relevant portions of the statement dated 06.08.2021 recorded under Section 108 of the Customs Act, 1962 of Shri Santosh Prasad, employee of M/s. Hadi Logistics are as under:-

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A.2 On being asked, I hereby inform that I am working with Hadi Logistics since 2015.

Q.3 Please state how you came in contact with M/s. Laxmi Enterprise, Branch Ser# 0, Khargate, Lathiya No. Delo, Near Vardhman Bank ,Bhavnagar-364001 GST No. 24ACAPO8969Q1ZO, IEC No. ACAPO8969Q and please furnish the letter of Authorisation given by M/s. Laxmi Enterprise, Bhavnagar to your company in matters related to Import-Export from ICD Khodiyar, Ahmedabad and more particularly for filling of Shipping Bill No. 9364621, 9364590, 9364595, 9365426 and 9364458 all dated 15.03.2021.

A.3 I hereby state that Shri Ram Nagjibhai Odedra, proprietor of M/s. Laxmi Enterprise, Bhavnagar have contacted me directly for export of their consignment at the ICD-Khodiyar gate. I state that I have got one set of documents in hard copy from Shri Ram Nagjibhai Odedra, proprietor of M/s. Laxmi Enterprise, Bhavnagar. Afterwards, one set of documents received in soft copy from him (through their email id laxmienterprise147@gmail.com) on email Id hadilogistics.aimd@gmail.com, which pertains to M/s Hadi Logistics on dated 10.03.2021, for filing of the shipping bill No. 9364621, 9364590, 9364595, 9365426 and 9364458 all dated 15.03.2021 of M/s. Laxmi Enterprise, Bhavnagar through CHA M/s. Right Ship Agency. I will submit the communication proof in this regard. Further, regarding Authority letter, I have to say that there is an authorization letter in the name of CHA M/s Right Ship Agency, Branch Manager of which is also a partner in the forwarder M/s Hadi logistics. Copy of the authority letter is also being given by me along with this statement.

Q.4 Please state whether you know M/s. Laxmi Enterprise or its Proprietor?

A.4 On being asked, I state that I have no contact with M/s. Laxmi Enterprise or its Proprietor Shri Ram Nagjibhai Odedra. I have never met him earlier for any matter. This is the very first consignment I have got for clearance.

Q.5 It is found that you have served the summons to M/s. Laxmi Enterprise, Bhavnagar and M/s. H.M Enterprise, Bhavnagar. How you served them.

A.5 On being asked, I state that all summons related with M/s. Laxmi Enterprise and M/s. H.M Enterprise, Bhavnagar have been served through my whats app mobile no.8490064688 to Shri Ram Nagjibhai Odedra, the proprietor of M/s Laxmi Enterprise, Bhavnagar on his mobile no.9662695934. I will submit the print out of the whats app. communication held between me and Shri Ram Nagjibhai Odedra, Proprietor of M/s. Laxmi Enterprise, Bhavnagar.

Q.6 Please present in support of your claim, the proof of correspondence vide Email/Messages/IM chats between M/s. Laxmi Enterprise, Bhavnagar and your firm M/s Hadi Logistics. Please also state the amount of fees agreed upon between M/s. Hadi Logistics and M/s. Laxmi Enterprise, Bhavnagar and proof of receipt/advance of the same.

A.6 On being asked that there was no agreed fees amount for this export consignment. But I have asked for Rs. 950/- per shipping bill in this regard and he

is telling for giving Rs.800/- per shipping bill. But no finalization was done and we are in negotiation. And it is decided that they will pay in-between after clearance of the consignment. All necessary documents i.e, GST registration copy, invoice, tax invoice, packing list, Authority letter, copy of aadhar card and pan card, purchase invoice, IEC copy, AD code letter of Bank of Baroda, has been given by Shri Ram Nagjibhai Odedra, the proprietor of M/s Laxmi Enterprise to me in hard copy. He has also given his contact no. 9662695934. Afterwards, they have also sent one set of these documents in email of M/s. Hadi Logistics.

Q.7 Please state if you had any prior knowledge of the goods being exported at an overvalued by your client, and if so, why such information of a possible fraud was not shared with the Customs Department by your firm? Further, please peruse the Chartered Engineer's Certificate dated 23.03.2021 in this regard.

A.7 On being asked I state that I do not know the Client M/s. Laxmi Enterprise, Bhavnagar personally and never met before. Further, I have perused the Chartered Engineer's Certificate dated 23.03.2021 in this regard, I further state that I was not aware of the goods being overvalued and exported. I hereby state that after seeing the goods when they came inside ICD- Khodiyar, I had a doubt about the value of goods, therefore, I informed to Inspector Shri Rajan about it. Further I also informed my boss Shri Harshad D.Padia, Branch Manager of Right Ship Agency and Partner of M/s. Hadi Logistics, regarding it.

Q.8. What activities have been carried by you in order to verify antecedent correctness of Importer Exporter Code (IEC) Number, KYC details, Identity of the client and functioning of the client at the declared address in case of M/s Laxmi Enterprise, Bhavnagar?

A.8 We have not done anything to verify antecedents of the exporter M/s Laxmi Enterprise, Bhavnagar nor its proprietor Shri Ram Nagjibhai Odedra. On being asked I state that I have collected the KYC documents i.e., Aadhar Card, PAN, copy of GST registration, AD Code letter and copy of IEC. However I have not physically verified the address of the premises as Bhavnagar is far away from Ahmedabad.

The recording of the statement is concluded today at 13:30 hrs. During the recording of statement, no force, coercion and inducement was used. During the recording of the statement no religious sentiments were hurt and it was recorded in calm and serene manner.

21.3.5 I find from the above statements that Shri Ram Nagjibhai Odedra, Proprietor of M/s. Laxmi Enterprise contacted Shri Santosh Prasad at the ICD Khodiyar gate for clearance of their export cargo at ICD Khodiyar and gave one set of documents in physical copy including GST registration copy, invoice, tax invoice, packing list, Authority letter, copy of Aadhar card and pan card, purchase invoice, IEC copy, AD code letter of Bank of Baroda etc. I find that Shri Santosh Prasad being an employee of Shri Harshad Padia, partner in M/s. Hadi Logistics and branch manager in M/s. Right Ship Agency, referred this potential client to M/s. Right Ship Agency for clearance of export cargo and received an authorization as CHA from Shri Ram Nagjibhai Odedra, Proprietor of M/s. Laxmi Enterprise in favour of M/s. Right Ship Agency for export cargo clearance. I find that other set of documents was received by them on email from M/s. Laxmi Enterprise. I find that both categorically denied knowing Shri Ram Nagjibhai Odedra or M/s. Laxmi Enterprise before he approached them for export clearance.

21.3.6 I find from the statements that the CHA has not physically verified the KYC of the exporter, however they contended in their submissions that they have verified the KYC online through government websites such as DGFT, GSTN etc. In this connection, I refer to the Regulation 10 of the Customs Brokers Licensing Regulations, 2018:-

Regulation 10. Obligations of Customs Broker: -

“A Customs Broker shall -

- (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
- (b) transact business in the Customs Station either personally or through an authorized employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
- (c) not represent a client in any matter to which the Customs Broker, as a former employee of the Central Board of Indirect taxes and Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;*
- (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;*
- (f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;*
- (g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of cargo or baggage on behalf of the client;*
- (h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;*

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- (i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;
- (j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs or Commissioner of Customs, as the case maybe;
- (k) maintain up to date records such as bill of entry, shipping bill, transhipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemised manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe;
- (l) immediately report the loss of license granted to him to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;
- (m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;
- (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;**
- (o) inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days;
- (p) maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose; and
- (q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."

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21.3.7 I find that the noticees have referred the RBI guidelines vide Circular No. RBI/2015-16/42 dated 01.07.2015 available on the web site of RBI regarding KTC documents. I find that said guidelines have been issued in reference to the “*Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating Financing of Terrorism (CFT)/Obligation of banks and financial institutions under Prevention of Money Laundering Act, (PMLA), 2002*” and specific to the banking sector and not ‘*para mataria*’ with the Customs Acts and regulations therein.

21.3.8 I further find that regulation 10(n) has specifically mentions that it is the obligation of Customs Broker to “*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*”. I find that Shri Harshad Padia had admitted in answer to question no. 9 in his statement that they did nothing to verify the antecedents of the exporter. I also find that Shri Santosh Prasad admitted that he had collected the KYC documents, but did not physically verified the address of the exporter as it was far away in Bhavnagar. I further find reference in Circular No. 09/2010- Customs dated 08.04.2010 regarding KYC norms as under:

“(iv) Know Your Customs (KYC) norms for identification of clients by CHAs:

6. *In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the " Know Your Customer (KYC)" guidelines for CHAs so that they are not used intentionally or unintentionally by importers / exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the **CHAs to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information**. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/ customer is enclosed in the Annexure. It would also be obligatory for the client/ customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organizations such as company/ trusts etc., and any two of the listed documents in the annexure”*

Thus, I hold that the noticees have neither verified the antecedents nor verified physically verified the functioning of his client at the declared address, thus the Customs Broker obligations to verify the correctness of KYC including **functioning of his client at the declared address** were not fulfilled. Further I find that on verifying from GSTN, following details are shown:

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Search Result based on GSTIN/UIN : 24ACAPO8969Q1Z0

Legal Name of Business	Trade Name	Effective Date of registration																
Ram Nagjibhai odedra	Laxmi enterprise	03/11/2020																
Constitution of Business	GSTIN / UIN Status	Taxpayer Type 																
Proprietorship	Cancelled suo-moto (Effective from 03/11/2020)	Regular																
Administrative Office (JURISDICTION - STATE) State - Gujarat Division - Division - 9 Range - Range - 19 Unit - Ghatak 75 (Bhavnagar)	Other Office (JURISDICTION - CENTER) State - CBIC Zone - AHMEDABAD Commissionerate - BHAVNAGAR Division - DIVISION - BHAVNAGAR - I Range - BHAVNAGAR - 1	Principal Place of Business Khargate, Lathiya no delo, Near Vardhman bank, Bhavnagar, Bhavnagar, Bhavnagar, Gujarat, 364001																
Whether Aadhaar Authenticated? Yes (On 22/10/2020)	Whether e-KYC Verified? Not Applicable	Additional Trade Name View																
Nature Of Core Business Activity																		
Trader - Wholesaler/Distributor																		
Nature of Business Activities																		
1. Import	2. Retail Business	3. Wholesale Business																
Dealing In Goods and Services																		
<table border="1"> <thead> <tr> <th colspan="2">Goods</th> <th colspan="2">Services</th> </tr> <tr> <th>HSN</th> <th>Description</th> <th>HSN</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>48</td> <td>PAPER AND PAPERBOARD, ARTICLES OF PAPER PULP, OF PAPER OR OF PAPERBOARD</td> <td></td> <td></td> </tr> <tr> <td>3915</td> <td>WASTE, PARINGS AND SCRAP, OF PLASTICS</td> <td></td> <td></td> </tr> </tbody> </table>			Goods		Services		HSN	Description	HSN	Description	48	PAPER AND PAPERBOARD, ARTICLES OF PAPER PULP, OF PAPER OR OF PAPERBOARD			3915	WASTE, PARINGS AND SCRAP, OF PLASTICS		
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3915	WASTE, PARINGS AND SCRAP, OF PLASTICS																	

I find that in '**Nature of Business Activities**' – nowhere '**Exporter**' is mentioned. Also, I find that the subject goods of **CTH 85** were also not listed in '**Dealing in Goods and Services**' column. In view of the above, I hold that a proper verification through online platforms were also not conducted by the CHA and his employee.

21.3.9 I find that Shri Santosh Prasad met once personally to the exporter, and then talked to him on phone for related clearance work. Further I find that Shri Harshad Padia has neither met the exporter nor talked to them. In view of this, I hold that the CHA has not fulfilled the obligation 10(d) i.e. “*(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof...*”

21.3.10 I find that the Commissioner of Customs (Appeals), Ahmedabad has remanded the matter for re-examining the Penal provision invoked against Shri Harshad Padia and Shri Santosh Prasad under Section 114 and Section 114AA of the Customs Act, 1962 in light of corroborative evidences.

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

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty ^{1/2}[not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;

³ [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

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

⁴ [(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.]”

21.3.11 I find that Shri Harshad Padia stated in his statement that “*I had a doubt that the goods may be overvalued after seeing the goods when they came inside ICD Khodiyar and subsequent I informed to Inspector Rajan about the same through my employee Shri Santosh Prasad.*”. I find that if the noticee has doubted the value of the export goods and had informed the concerned officer, then the noticee has fulfilled his duty in obligation 10(d) i.e. “*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*”. The same fact has been highlighted by the Commissioner of Customs (Appeals), Ahmedabad in his OIA.

21.3.12 I find that the noticees had no knowledge regarding overvaluation of the export goods and the value declared in all the Shipping Bills were entirely based on the documents supplied by the exporter. However, I find that CHA has failed in his obligation to verify the antecedents of the exporter and further failed to physically verify the functioning of his client at the declared address, as such thus the GSTN portal reflects that ‘Exporter’ is nowhere mentioned in ‘**Nature of Business Activities**’ of M/s. Laxmi Enterprise. I also find that the subject export goods of **CTH 85** were also not listed in ‘**Dealing in Goods and Services**’ column. Due to failure on part of CHA to notice such details, I find that the CHA failed to verify the correctness of KYC.

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21.3.13 I also find that the CHA and its employee have failed to take all the necessary measures at the time of filing of the Shipping Bills, regarding advising their client for proper valuation of the export goods and has not exercised due diligence to ensure the bona-fide of the exporter which proves his sheer carelessness on his part. Further, Shri Harshad Padia also failed to ensure the proper conduct of their employee Shri Santosh Prasad as I find that Shri Santosh Prasad took the customs clearance work on behalf of the CHA M/s. Right Ship Agency and failed to exercise due diligence required to ensure the bonafide of the exporter. As held in foregoing paras, the value of the goods were found mis-declared, therefore, Shri Harshad Padia and Shri Santosh Prasad are culpable for the act of omission and commission made on their part in mis-declaration and undervaluation of the export goods, which are liable for confiscation, and hence has rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

21.3.14 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

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.”

21.3.14 I further find that Shri Harshad Padia and Santosh Prasad are not the beneficiary with the goods meant for export and alleged fraud of overvaluation and consequential IGST refund benefit 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 and its employee have failed to take all the necessary measures at the time of filing of the Shipping Bills and it led to the mis-declaration and overvaluation in the shipping bills. I find that it cannot be discarded as sheer negligence on part of the CHA and its employee as they had not verified the export documents presented to them, and I hold due to ‘use of false and incorrect material’ by them, that penal provisions under Section 114AA, are applicable to both Shri Harshad Padia and Santosh Prasad.

21.3.15 I also find that the ratio of case laws cited by the noticee in their submission are not squarely applicable in this case.

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ORDER

- (i) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on Shri Harshad Padia, M/s. Rightship Agency, Ahmedabad, under Section 114(iii) of the Customs Act, 1962.
- (ii) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on Shri Harshad Padia, M/s. Rightship Agency, Ahmedabad, under Section 114AA of the Customs Act, 1962.
- (iii) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on Shri Santosh Prasad, M/s. Hadi Logistics, Ahmedabad, under Section 114(iii) of the Customs Act, 1962.
- (iv) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on Shri Santosh Prasad, M/s. Hadi Logistics, Ahmedabad, under Section 114AA of the Customs Act, 1962.

23. The Show Cause Notice No. VIII/10-32/ICD-KHD/O&A/HQ/2021-22 dated 10.09.2021 is disposed of in terms of the para above.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

DIN: 20250471MN000000EBD7

F. No. VIII/10-32/ICD-KHD/O&A/HQ/2021-22

Date: **17.04.2025**

To,

SHRI HARSHAD PADIA,
BRANCH MANAGER OF M/S RIGHTSHIP AGENCY
AND PARTNER OF M/S HADILOGISTICS,
309, HIRASHA SQUARE, ABOVE CROMA SHOW ROOM,
NEAR BHADAJ CIRCLE, S. P. RING ROAD,
AHMEDABAD -380060.

SHRI SANTOSH PRASAD
EMPLOYEE OF M/S HADI LOGISTICS,
309, HIRASHA SQUARE, ABOVE CROMA SHOW
ROOM, NEAR BHADAJ CIRCLE, S. P. RING ROAD,
AHMEDABAD -380060.

F. No. VIII/10-32/ICD-KHD/O&A/HQ/2021-22
OIO No. 06/ADC/SRV/O&A/HQ/2025-26

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.
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. Guard File