



**प्रधान आयुक्त का कार्यालय, सीमा शुल्क,अहमदाबाद**

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

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**PREAMBLE**

A	फाइलसंख्या/ File No.	: VIII/10-204/ICD-Khod/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: F.No. VIII/10-204/ICD-Khod/O&A/HQ/2023-24 dated 21.02.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 31/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 14.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 14.05.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: M/s. S. R. Enterprise, L-12, Payal Flats, Judges Bunglow Road, Nr. Mansi Circle, Vastrapur, Ahmedabad, Gujarat-3800015
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क )अपील(, ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच )५.00) रुपये पे न्यायलय 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 साथकेवल पांच )५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ %अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

## **BRIEF FACTS OF THE CASE:**

M/s. S. R. Enterprise, L-12, Payal Flats, Judges Bungalow Road, Nr. Mansi Circle, Vastrapur, Ahmedabad, Gujarat-3800015 holding IEC ASAPR5553R and GSTIN No. 24ASAPR5553R1Z4 (herein after referred as 'the said exporter') has filed one Shipping Bill bearing No. 4702187 dated 17.10.2023 at I.C.D Khodiyar (Customs Station), for export of 10 Nos. of 'Mattei C450 Rotary Vanecompressor with cooler assembly including axial fan' to M/s. Sohar Industrial Maintenance Establishment, Bahrain, by classifying the same under CTH 84148090, through their Customs Broker M/s. Yashvi Shipping (CHA No. AKCPD4360JCH001).

**2.** As per RMS instructions received from system, the goods covered under Shipping Bill no. 4702187 dated 17.10.2023 were examined by the officers of Customs, ICD Khodiyar. The goods were packed in 10 Nos. of wooden pallets which were placed at the Customs Bonded Warehouse of ICD Khodiyar for further export. During the course of examination of goods, it was noticed that one of the wooden pallets was containing bricks instead of the machine. Another one wooden pallet was having machine in it. The goods appeared to be mis-declared. The examination of all goods was done in the presence of independent panchas under panchnama proceedings dated 31.10.2023. All wooden pallets were closed from all side and invoices were pasted on each of the pallets. Marking of the same was not done on any of the pallets. Two of the pallets were opened from top wherein it was seen that one wooden pallet was containing machine and another was containing bricks. Thereafter, all wooden pallets were opened for visual examination. Five of the wooden pallets were having bricks, One wooden pallet was having wooden pattas & stones, Three wooden pallets were having machines and remaining one pallet was having Three control panels & Three oil cases (approx. Twenty ltr.) as accessories of machines. Thus, the goods were mis-declared by the exporter. The exporter had declared to export 10 Nos. of 'Mattei C450 rotary Vanecompressor with cooler assembly including axial fan' vide the said Shipping Bill. However, on examination, only three machines were placed in the wooden pallets that were to be exported. Remaining six pallets were having bricks, wooden pattas and stones as stated above. Remaining one pallet was containing three control panels & three oil cases. As the goods appeared to be mis-declared, the wooden pallets were opened from three sides for further examination and clarity which confirmed the presence of bricks, wooden patta and stones in six of the wooden pallets.

**2.1.** Shri Nikunjibhai Rameshbhai Dalal, working in forwarder company M/s. Asian Worldwide Services Pvt. Ltd was present during examination of goods informed that his company was involved in the shipment of consignment. He also informed that he was related to the exporter and assigned the Customs clearance work to Customs Broker M/s. Yashvi Shipping. Shri Nikunjibhai Rameshbhai Dalal also examined all of ten wooden pallets and goods contained in it. He agreed that the goods had been mis-declared by the exporter. Shri Shaileshkumar Dhansukhbhai Rathod, Proprietor of M/s. S.R. Enterprise who was also present during panchnama proceedings informed that he had filed Shipping Bill No. 4702187 dated 17.10.2023 through its Customs Broker M/s.

Yashvi Shipping for export of 10 Nos. of 'Mattei C450 rotary Vanecompressor with cooler assembly including axial fan' having FOB value Rs. 2,70,36,863.05/-.

**2.2.** Shri Shaileshkumar Dhanukhbhai Rathod stated that his registered office is at Block A 605, Titanium Business Park, Nr. Makarba Railway Crossing, Ahmedabad-380051. He along with the representatives of Customs broker and forwarder also examined the goods covered under SB No. 4702187 dated 17.10.2023 and hence, conformed that 05 of the wooden pallets were having bricks, 01 wooden pallet was having wooden pattas & stones, 03 wooden pallets was having machines and remaining one pallet was having 03 control panels & 03 oil cases (approx. 20 ltr.) as accessories of machines. On being asked regarding mis-declaration of goods, Shri Shaileshkumar informed that he was aware of the fact that the goods had been mis declared in the said Shipping Bill. He placed bricks, wooden pattas and stones in the wooden pallet instead of machineries in order to export the same in guise of declared goods. He confessed that there was mis-declaration of the goods. On being asked, he informed that the goods were packed at Bhavnagar wherein he had allotted for job work of the same to his paid staff. The goods viz. bricks, stones, wooden pattas, machineries were placed in wooden pallets in his presence. On being asked regarding any documents or annexures on which job work/packing of the same were done at Bhavnagar, he could not produce such documents and stated that the same was done on the basis of a verbal agreement.

**2.3.** As the goods covered under the said Shipping Bill were mis-declared by the exporter. The goods were liable to be confiscated under Section 113 of the Customs Act, 1962. The valuation of the machines contained in 03 boxes were yet to be ascertained. In view of this, the goods covered under Shipping Bill No. 4702187 dated 17.10.2023 were detained under the provisions of the Customs Act for further investigation.

**3.** Whereas, the Empaneled Chartered Engineer Shri Atanu Kundu (CE No. M-150528-3) also examined the goods covered under Shipping Bill No. 4702187 dated 17.10.2023 for ascertaining its value. He vide report Ref. No. AK/17/SRE/EXP/2023-24 dated 02.11.2023 stated that only three boxes were each having one compressor and another wooden box was having three small control panel and three 20 L Mattei Rotor Oil cans in red colour. The remaining 06 wooden boxes were filled with broken wooden broken logs (pattas), bricks and stones of uneven shapes.

**3.1.** Further, it was observed that vane hub of the compressor was embossed with name of the manufacturer 'mattei' and rotor/motor part of the said compressor embossed with name of manufacturer 'ABB'. Whereas there was no cooler assembly including axial fan, as described at sr. no. 00053 in the invoice cum packing list dated 16.10.2023, available in any of the 10 boxes of the consignments under S.B. 4702187 dated 17.10.2023. Therefore, the said consignment attempted to be export does not match/ mis declared according to document submitted.

**3.2.** Further, when one of the compressors is taken into consideration for valuation purpose, the value declared in tax invoice for each set was found to be Rs. 29,74,054.94/- and for valuation purpose, it can be divided into two parts i.e. ABB

motor and Mattei Vane hub. As per available records, the total valuation comes as under:-

1. ABB motor (120 HP 1500RPM Foot cum flange Motor cost in Ahmedabad)= Rs. 3,40,000/- (inclusive GST)
2. Mattei Rotary Vane Compressor Hub including control panel & 20 L Rotor oil = Rs. 8,00,000/- (inclusive GST)

Total Rs. 11,40,000/- + Profit margin 30% comes to Rs. 3,42,000/-.

The present market value for each set was found to be Rs. 14,82,000/- and the total value of 03 sets comes to Rs. 44,46,000/-. The other 06 wooden boxes do not have any commercial value. The Chartered Engineer submitted that the value declared by the exporter is irrational. The export consignment is mis-declared from the export documents.

4. Whereas, after inventorisation of the goods, goods were found to be as below:-

<u>Pallet</u>	<u>Description of goods placed in pallet</u>	<u>Sr. No. of weighment slip</u>	<u>Gross weight in kg</u>	<u>Commercial Value as per C.E Certificate (in Rs.)</u>
Pallet 01	01 Compressor Machine	105927	1410	14,82,000/-
Pallet 02	Wooden Patta/stones	105926	1290	0
Pallet 03	03 Control panels & 03 oil drums	105934	250	Included with machineries as mentioned in pallets 01,05 & 08
Pallet 04	Bricks	105928	1370	0
Pallet 05	01 Compressor Machine	105935	1330	14,82,000/-
Pallet 06	Bricks	105929	1320	0
Pallet 07	Bricks	105932	1560	0
Pallet 08	01 Compressor Machine	105931	1440	14,82,000/-
Pallet 09	Bricks	105930	1340	0
Pallet 10	Bricks	105933	1400	0
<b>Total</b>			<b>12710</b>	<b>44,46,000/-</b>

4.1. The said goods covered under Shipping Bill No. 4702187 dated 17.10.2023 declaring to export 10 Nos. of 'Mattei C450 rotary Vanecompressor with cooler assembly including axial fan' having FOB value Rs. 2,70,36,863.05/- found mis-declared to be as only 03 Nos of 'Mattei C450 rotary Vanecompressor' and bricks, stone & wooden pattas, as stated above, having present market value of Rs. 44,46,000/- (Forty Four Lakhs Forty Six Thousand only) as ascertained by Chartered Engineer. Hence there was reason to believe that the goods were liable for confiscation under Section 113(e) & 113(i) of the Customs Act, 1962. In view of this, the goods covered under Shipping Bill No. 4702187 dated 17.10.2023 was seized vide Seizure Memo dated 04.11.2023 under Section 110 of the Customs Act, 1962 as there was reason to believe that the goods were liable for confiscation under Section 113 of the Customs Act, 1962.

**5. Investigation conducted from Proprietor, Customs Broker and other persons involved:-**

**5.1.** The proprietor of M/s. S.R. Enterprise was summoned and statement dated 01.11.2023 of Shri Shaileshkumar Dhansukhbhai Rathod, S/o Shri Dhansukhbhai Rathod, Block A 605, Titanium Business Park, Nr. Makarba Railway Crossing, Ahmedabad-380051 was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that-

- he is the proprietor of the said firm; that he looks after the work related to sales, service, and all other activities of the said firm; and overall in-charge of the said firm.
- the Shipping Bill No. 4702187 dated 17.10.2023 had been filed by his proprietorship firm M/s. S.R. Enterprise (IEC-ASAPR5553R) by his Customs Broker M/s. Yashvi Shipping; that the said Shipping Bill was filed for export of 10 Nos. of Mattei C-450 rotary vanecompressor & Combi Cooler assembly including axial fan having total FOB Value Rs. 2,70,36,863.05/-.
- he was shown panchnama dated 31.10.2023 drawn at the premises of warehouse No. 36, ICD Khodiyar and he agreed with the contents of the said panchnama.
- he had mis-declared the goods in Shipping Bill No. 4702187 dated 17.10.2023; that he had declared goods as 10 pieces of 'Mattei C-450 rotary vane compressor & Combi Cooler assembly including axial fan' in the said Shipping Bill read with invoice no. 53/16.10.2023 for export of the same to the buyer located at Kingdom of Bahrain. However, instead of the said machineries, he had stuffed bricks, wooden pattas, stones in 06 of the wooden pallets; that all wooden pallets were closed from all sides; that as per export documents, 10 wooden pallets containing 10 Nos. of Mattei C450 rotary vane compressor machineries were placed for export in such a way that each pallet was having one machineries. However, only 03 machineries were there for export in three pallets, accessories in one pallet and in remaining 06 pallets, bricks, stones and wooden pattas were placed for export in guise of the machineries. Out of the said six pallets, bricks were placed in five of the pallets; that he confessed that he had mis-declared goods in the said Shipping Bill.
- the buyer of the said goods M/s. Sohar industrial Maintenance Establishment, Building No. 295, East Riffa -935, Kingdom of Bahrain placed order for 10 pieces of 'Mattei C-450 rotary vane compressor & Combi Cooler assembly including axial fan' vide PO No. SIME/COMP/100051 dated 14.07.2022 (copy enclosed) wherein as per terms of payment, the buyer was subjected to do 50 % payment in advance, 40 % of the payment when copy of BL is submitted and remaining 10 % of payment after successful installation of first compressor. Accordingly, he had received payment of Rs. 1,23,76,691/- in advance from the buyer in his BOB bank account. As per PO, he was supposed to supply 10 pieces of the said compressor. However, due to financial crunch, he could not manufacture 10 pieces of the said compressors. Then he conspired to show fake export of the said goods by mis-declaring the same in the Shipping Bill. Had it been cleared from the Customs and B/L copy would have been received to him, he would have sent

the scanned copy of B/L to the buyer and against the same, he would have received 40 % of the payment as per terms of payment. He had no plan in case a dispute occurs in future. His sole intention was to take the payment from the overseas buyer fraudently and GST refund from the CGST department.

- he contacted the overseas buyer on LinkedIn and other social business platform. As he was authorized distributor of Mattei in India, he developed trust with the buyer, and hence convinced him to pay 50% of the total payment in advance. He secured the contract after detailed negotiations.
- he had manufactured only 03 pieces of Mattei C-450 rotary vane compressors at his Bhavanagar Plant; that the components of the said machineries are main motor, C-450 Mattei element, Air filter housing, valves & assemblies. The components viz. main motor of ABB make was purchased locally from M/s. Shaildeep Enterprise, Veraval. Two C-450 Mattei elements were imported by him and one C-450 Mattei element was purchased locally in refurbished condition. Other compressed air accessories were purchased locally by him. These components were placed at his Bhavnagar Job work factory located at Vishvakarma Industrial Estate, Plot No. 10, nearby Shri Ram Industrial Estate, Bhavnagar. The said premises had been taken on rent by him. Out of the said components, he had manufactured only 03 compressor machines. The cost of these 03 machineries is approx. 50 Lakhs. He had not assembled cooler in the said machines. However it has been declared as Mattei C-450 rotary vane compressor & Combi Cooler assembly including axial fan'. These 03 compressor machines were placed in wooden pallets and closed from all sides. Further, in one of the wooden pallets, control panels and oils were placed. Further in remaining 06 pallets, he had stuffed bricks, stones and wooden pattas and covered all these pallets from all sides in order to disguise the contents within. All these bricks & stones were stacked in pallets in his presence at his Bhavnagar plant. Thereafter, these pallets were loaded in trucks for further delivery at ICD Khodiyar for export of the same. Weight of the pallets wherein bricks, stones and wooden pattas were placed and adjusted in such a way that it could resemble the weight of compressor machineries.
- he mis declared goods in Shipping Bill No. 4702187 dated 17.10.2023. By way of mis-declaring the items to be exported, he contravened the provisions of the Customs Act, 1962 and hence made the goods liable for confiscation under Section 113 of the Customs Act, 1962.
- he asked his Customs broker to file free Shipping Bill as there was possibility that it could get cleared through RMS without Customs check, as no export incentive was claimed by him. Later, he planned to get IGST refund from GST department as he had exported goods under LUT. He was planning to receive IGST refund @ 18% from the GST department once consignment is exported successfully. This way, he would have received approx. Rs. 50,00,000/- as IGST refund from the GST department after clearance of the said consignment.
- he did not knew M/s. Yashvi Shipping and that he came in contact to the said Customs Broker through one of his close associate namely Shri Rahul Prakash

Khapekar who worked with one of the forwarder company M/s. EMU Lines Pvt. Ltd. The said forwarder was taking care of his import consignment from Nhava Sheva. Later on, Shri Rahul Prakash Khapekar introduced him to another person namely Shri Nikunjibhai Rameshbhai Dalal who worked in another forwarder company namely M/s. Asian Worldwide Services Pvt. Ltd. Shri Rahulbhai informed him that export related work would be done by Shri Nikunjibhai. Thereafter, all communications regarding shipment were made through Shri Nikunjibhai. He had not met any of the representative of Customs Broker M/s. Yashvi Shipping. All documents including invoice, packing list, etc. were routed through Shri Nikunj Bhai only.

- he had received quotation of Rs. 2,65,764/-+ GST for the said consignment from Shri Nikunjibhai. Apart from this, he agreed to give Rs. 1,35,000/- to Shri Nikunjibhai as demanded by him for clearance of the goods. In this context, he had paid Rs. 95,000/- on 30/31.10.2023 to Shri Rahul bhai through UPI payment as per direction of Nikunjibhai. On being asked regarding the reasons of extra payment of Rs. 1,35,000/-, he stated that as the goods appeared to be overvalued in the present consignment, Shri Rahulbhai and Nikunj bhai informed that they would need Rs. 1,35,000/- extra to clear the consignment and for doing other formalities.
- the goods stuffed in wooden pallets were transported by the transporter provided by Shri Nikunjibhai. The name of transporter was Rakeshbhai and his mobile no. was 9099028650. All payments in respect of the transportation were arranged by Shri Nikunjibhai.

**5.2.** Shri Ravindrasinh P Solanki, G card Holder of Customs Broker M/s. Yashvi Shipping who was present during the examination of the goods was summoned and his statement dated 01.11.2023 was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that –

- he, as G pass holder and clearance agent, received the copy of documents i.e., Checklist of SB 4702187 dated 17.10.2023 along with invoices and packing list, copy of tax invoices i.e Purchase Invoices from forwarder Asian Worldwide Services India Pvt Ltd., who mailed the copy of these documents to his HQ office Gandhidham; that as Customs Broker his responsibility was to make docket for the subject consignment & to present the documents to Appraising Officer, after assessment to assist in the examination proceedings at custom bonded warehouse.
- On being asked regarding the mis-declaration of goods covered under Shipping Bill No. 4702187 dated 17.10.2023, he stated that as per his knowledge, he was handed over the documents on his official Mail Address by the forwarder and as Customs Broker, he was not aware about the actual contents present in the export cargo. Also, it was impossible for him as Customs broker to know about the consignment being exported, as the cargo was transported from Bhavnagar, (address mentioned on e-way bill). He came to know about the mis-declaration of consignment only during examination by Custom Officer and that as Customs



Broker he was not aware about the cargo, his knowledge was limited to documents only.

- he never met Shri Shailesh Kumar Rathod; that he relied on the export documents mailed by forwarder M/s Asian Worldwide Services India Pvt Ltd. to them and accordingly Shri Nikunj R Dalal contacted me on his personal mobile no on 21.10.2023 and provided him with Checklist; that it was the first time they were clearing export shipment of the above exporter.
- he was offered Rs 2500 + custodian handling charges to clear the particular consignment by forwarder; that this is the standard fees charged by clearing agents i.e Customs Broker to clear 40 feet container, agency charges along with Concor handling charges, as per Custodian CONCOR receipt; that he again re-stated his reply that he have never met exporter or any exporter representative.
- they have taken copy of PAN Card, Aadhar Card, & GSTIN copy (Form GST-REG-06) duly attested by exporter. However, the copy of same was forwarded to them by the forwarder mentioned above.
- he did not conduct physical verification of the exporter which was required to be done under Customs Broker Licensing Regulation, 2018, the export documents have been received by them through the forwarder; that they have never met the exporter or its representative; first time he met with exporter after booking of the case.

**5.3.** From the investigation so far conducted with the Customs Broker, it was revealed that Shri Nikunj R Dalal, employee of forwarder company M/s. Asian Worldwide Services India Pvt Ltd. was the person who supplied export documents to the Customs Broker for export of the said consignment. Accordingly, Shri Nikunjibhai Rameshbhai Dalal, Deputy Manager-Sales, M/s. Asian Worldwide Services India Private Limited, A-808, 8<sup>th</sup> Floor, Sun Westbank, Opposite City Gold Cinema, Ashram Road, Ahmedabad was summoned and his statement dated 01.11.2023 was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that-

- M/s. Asian Worldwide Services India Pvt Ltd was involved in the business as a Forwarder of import and export consignments and also, they were LCL consolidators of import and export consignments.
- On being asked regarding from where they received the consignment declared as Rotary Vanecompressor attempted to be exported vide SB No 4702187 dated 17.10.2023, he stated that he got the reference of the exporter from his cousin Shri Rahul Khapekar who was also working as forwarder with EMU lines as sale executive; that it was the first time he personally met the exporter.
- the documents such as invoice cum packing list for the subject export was provided by M/s. S R Enterprise on WhatsApp by no 9106699113 on 09.10.2023. Afterwards, he sought for KYC documents from the aforementioned WhatsApp No. The documents such as PAN card, IEC copy, GSTIN REG-06 copy, Aadhar Card copy, MSME certificate copy were sent on his personal mobile no 9909952210 on 09.10.2023.
- M/s Yashvi Shipping was their regular Customs Broker and they had conducted the business with them earlier too; that it was the reason to choose M/s. Yashvi



Shipping for clearance of the said consignment. On being asked regarding the knowledge of mis-declaration in the goods covered under Shipping Bill No. 4702187 dated 17.10.2023, he stated that he was aware of the issue through their Customs broker; that as forwarder his work was to generate business which is related to handling of documents, conversation with Shipping line, agent and Customs Broker. In no circumstance he physically checks the goods being packed for export. He solely relied on export documents to effect the export.

- he had charged Rs. 2,65,764/- + GST as per applicable rate for ex-factory to Bahrain port as per quotation given by him to exporter.

**5.4.** During the course of investigation conducted from Shri Nikunjibhai Rameshbhai Dalal, it is revealed that the export order of the said consignment has been brought to him by Shri Rahul Khapekar who was working as forwarder with EMU lines as sale executive. Therefore, in order to get evidences, Shri Rahul Khapekar, residing at M-63, Orchid White field, Makaraba, Ahmedabad was summoned and his statement dated 01.11.2023 was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that-

- he knew M/s. S R Enterprise; that M/s. S R Enterprise is a proprietorship firm and proprietor of the same is Shri Shaileshkumar Dhansukhbhai Rathod; that M/s. S R Enterprise was his client and he had worked as forwarder in four Import Consignment (Imported from China, Turkey and Italy) at Nhava Sheva Port of M/s. S R Enterprise; that he knew Shri Shalileshkumar Dhansukhbhai Rathod since last one year.
- he had received amount of Rs. 95,000/- from Shri Shaileshkumar Dhansukhbhai Rathod (Proprietor of M/s S R Enterprise) in respect of Export Consignment covered under Shipping Bill No.4702187 dated 17.10.2023 for export of 10 Nos. of 'Mattei C450 rotary Venecompressor with cooler assembly including axial fan'; that he had never worked as forwarder in respect of any export consignment of M/s. S.R. Enterprise.
- On being asked regarding the reason to receive Rs. 95,000/- from Shri Shailehkumar Rathod in respect of the said consignment, he stated that he had worked as forwarder for Import consignment of M/s S R Enterprise. The payment of one import consignment (imported from China) was pending from M/s S R Enterprise. The payment was pending for more than three months. Exporter (proprietor Shri Shaileshkumar Rathod of M/s S R Enterprise) approached him for his one export consignment (to be exported to Bahrain) and asked him to suggest Customs Broker for the said export. Since he only dealt with Import related forwarding work, he suggested him the name of one forwarder Shri Nikunjibhai Rameshbhai Dalal who used to work at M/s. Asian Worldwide Services India Pvt. Ltd. and gave him the mobile no. of the said person. Shri Nikunjibhai is also his cousin so he talked to Shri Nikunjibhai and also gave him the mobile number of the exporter. After filing of SB No. 4702187 dated 17.10.2023 by the said Customs Broker, he got a call from Shri Nikunjibhai who stated that the export items are to be transported through truck from Bhavnagar to ICD Khodiyar and the truck is on hold for two days at Bhavnagar despite the

fact that the export items were ready for export. Shri Nikunj bhai told him that most of the items to be exported under Shipping Bill No. 4702187 were imported items. He also informed him that there was a huge difference between assessable value of imported items and FOB value of goods exported and informed him that Rs. 1,35,000/- had been demanded by the exporter for the clearance of the said consignment having FOB value Rs. 2.70 crores. Accordingly, Shri Shaileshbhai, Proprietor of M/s. S.R. Enterprise transferred Rs. 95,000/- in his bank account dated 31.10.2023. Out of this Rs. 95,000/-, he transferred Rs. 65,000/- to the bank account of Shri Nikunj bhai (forwarder) and also deposited Rs. 20,000/- in the bank account of Shri Nikunj bhai. Accordingly, out of Rs. 95,000/-, he transferred Rs. 85,000/- to Shri Nikunj bhai and kept Rs. 10,000/- with himself. He also submitted the copies of payment particulars thereof.

**5.5.** The transporter involved in transporting the goods from Bhavnagar plant to ICD Khodiyar was also investigated and statement dated 02.11.2023 of Shri Rakeshbhai Patel, Proprietor of Jyot Cargo Carriers located at B-1, Parth Apartment Near Janakpuri Society, Subhash Bridge, Ahmedabad 380027 was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that-

- he did not know the exporter; the transported related work was assigned by forwarder M/s AWS (Asian Worldwide Services), Shri Nikunj Bhai who was employee of AWS. As usual, he arranged for truck and driver and asked him to receive cargo from Bhavnagar. He also submitted that exporter mobile number was provided to him by Shri Nikunj Bhai on 19.10.2023. Apart from that Nikunj Bhai also provide him with details of factory address from where they had to pick cargo for transportation to ICD. Forwarder Nikunj provided documents such as dimension and general description of the cargo.
- on being asked regarding the timelines of events, he stated that he enquired about the events from driver Arvind bhai (Mobile No 7226887918). As per driver, he reached the exporter factory on 20.10.2023 around 5 PM. However, the exporter told his driver that goods were not ready to be packed immediately. The exporter kept declining to loading by making excuses on next day also i.e 21.10.2023. Once they told that the Hydra (machine used to load and unload cargo) was not ready, the other time they said that the packing needs to be changed as there was some problem with packing. Finally, on 22.10.2023, exporter called his driver and informed him that they would load the cargo today i.e on Sunday. One thing his driver told him that they kept the driver outside factory premises by making excuses while the cargo was being packed and loaded on truck. Driver started the truck on 23.10.2023 i.e Monday 4AM and reached ICD Khodiyar around 9 AM covering approx. 200 km in 5 hours.
- He used to arrange the truck from the market. As usual the driver works for the truck owner, I just contact the owners i.e mainly he arrange for transport services and work as broker for some clients. However in his line of business, they keep in touch with truck owners, drivers, other businesses. He also submitted RC copy of the truck, Lorry Receipt (LR) & Driver License Xerox copies to department voluntarily.

- the Freight was fixed for the Rs 27000/- with Shri Nikunj Bhai. However, when the truck loading was delayed by two days then he was assured by Nikunj that he would pay Rs 5000/- as detention charges (Rs. 2500/- per day). Till date the payment has not been realized. Normally the company AWS (Forwarder) take 30-35 days for arranging payment after he raises bill on office software i.e Tally.

**5.6.** During the course of further investigation, the Customs Broker M/s. Yashvi Shipping was summoned. In response, Shri Ravindrasinh P Solanki , Authorised person cum G card Holder of M/s. Yashvi Shipping, Surya Heights, Plot No. 211, DC-2, Gandhidham, Kutch, Gujarat tendered his statement dated 02.12.2023 on behalf of M/s. Yashvi Shipping under Section 108 of the Customs Act, 1962 wherein he interalia stated that-

- he looked after the work related to Customs Clearance of goods related to all cargos of Ahmedabad port i.e. Khodiyar, Sachana, Air Cargo, etc.; that he was overall in-charge for all these ports on behalf of M/s. Yashvi Shipping.
- he had been shown panchnama dated 31.10.2023 drawn at Warehouse No. 36 of ICD Khodiyar and agreed with the contents mentioned therein.
- On being asked regrading sticking of invoices over each of the pallets without having any label or marking, he stated that as soon as the goods were gate-in inside ICD Khodiyar, he noticed that labelling, marking or identification marks were not done over any of the pallets of the goods covered under Shipping Bill No. 4702187 dated 17.10.2023; that he was not able to identify the goods. Therefore, he contacted the forwarder Shri Nikunjhai regarding the same and informed him about the non-identification of cargo. Shri Nikunjhai then instructed his person Shri Mevada Dixit D., who was working as his employee at ICD Khodiyar to paste the invoice over each of the pallets. As Shri Nikunjhai was working as LCL consoler also, he has employed 2-3 persons at ICD Khodiyar to look after day to day activities. His employees pasted the same over the goods; that neither the have taken permission from Customs nor Shri Nikunj bhai taken permission from the Customs for re-labelling the same. He was aware that the pasting over the pallets were done contravening the provisions of the Customs.
- On being asked regarding KYC of the exporter, he stated that they had received copies of Adhar Card, PAN card and GSTIN of exporter only from the forwarder; they never met the exporter or any of his representative; they had not verified the antecedent or whereabouts of the exporter; that he is aware that it was their responsibility to verify the correctness of Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of client and functioning of client at the declared address by using reliable, independent, authentic documents, data or information, but they failed to do so. They had not taken any proper authorization from the exporter to clear their shipment. This is in clear violation to obligation under regulations 10(a) and 10(n) of Customs Broker Licensing Regulations, 2018.

**5.7.** During the course of further investigation, statement of Shri ShaileshKumar Dhansukhbhai Rathod, Proprietor of M/s. S.R. Enterprise, was recorded under Section 108 of the Customs Act, 1962 on 02.11.2023, wherein he interalia stated that-

- he agreed with the contents of his earlier statement dated 01.11.2023 recorded under Section 108 of the Customs Act, 1962; that he also agreed with the contents of panchnama dated 01.11.2023 drawn at his office premises A605, Titanium Business Park, Nr. Makarba Railway Crossing, Ahmedabad-380051.
- By way of mis-declaration of goods meant for and export, he planned to get Rs. 1.10 crore from the foreign buyer and Rs. 50.0 Lakhs from GST department as refund of IGST in lieu of export.
- On being asked about reasons for not getting complete 50 % payment in advance as per terms & condition, he stated that he was in contact with Shri Thiru sir who used to live in Bahrin; that he instructed him to take payment of Rs. 1.23 crore only presently and remaining payment would be set off later on.
- he as per instructions of Nikunjibhai presented overvalued cost sheet to get the consignment cleared without having any doubt.
- He removed the sticker of Mattei brand and after assembling its parts, he pasted his own stickers to make the goods appear as if they were 'Made in India'. He was the main person behind all modus of mis-declaration of goods.

**6. Search conducted at the other premises:-**

**6.1.** As per Shipping Bill and invoices, it was noticed that the registered address of the exporter was M/s. S.R. Enterprise, L-12, Payal Flats, Judges Bunglow Road, Near Mansi Circle, Vastrapur, Ahmedabad. In order to gather more evidences, the search was organized at the same premises. However, upon reaching the said premises it was revealed that the said premises was a residential flat which was closed as mentioned in Visit Note dated 31.10.2023 drawn by the Superintendent(in-situ), Customs, Ahmedabad. Therefore, search of the said premises could not be executed.

**6.2.** Later on as the proprietor of M/s. S.R. Enterprise informed in his statement dated 01.11.2023 that his office was working at address Block A 605, Titanium Business Park, Nr. Makarba Railway Crossing, Ahmedabad-380051. A search operation of the said premises was conducted under panchnama dated 01.11.2023 wherein a file bearing page no. 01 to 158 comprising of copies of bills of entries was seized.

**7. Statutory Provisions:-**

**7.1. Section 50- Entry of goods for exportation. -**

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

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

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

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

**7.2. SECTION 113. Confiscation of goods attempted to be improperly exported, etc. -**

The following export goods shall be liable to confiscation:-

*113 (ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;*

*113 (ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;*

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

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

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

(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;

(i) 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.

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

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

**7.5. Customs Valuation (Determination of Value of Export Goods) Rules, 2007**

***Rule 4. Determination of export value by comparison.* -**

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

- (i) difference in the dates of exportation,
- (ii) difference in commercial levels and quantity levels,
- (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- (iv) difference in domestic freight and insurance charges depending on the place of exportation.

***Rule 6. Residual method.* -**

(1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods

***Rule 8. Rejection of declared value.* -**

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

**8.** In the present case, the exporter M/s. S. R. Enterprise, L-12, Payal Flats, Judges Bungalow Road, Nr. Mansi Circle, Vastrapur, Ahmedabad, Gujarat-380015 holding IEC ASAPR5553R filed one Shipping Bill bearing No. 4702187 dated 17.10.2023 at I.C.D Khodiyar (Customs Station), export of '10 Nos. of Mattei C450 Rotary Vanecompressor with cooler assembly including axial fan' to M/s. Sohar Industrial Maintenance

Establishment, Bahrain. The said goods were classified under CTH 84148090, through their Customs Broker M/s. Yashvi Shipping. The shipping bill was filed under Section 50 of the Customs Act, 1962 to export '10 Nos. of Mattei C450 Rotary Vanecompressor with cooler assembly including axial fan' declaring FOB value Rs. 2,70,36,863.05/-.

**9.** During the course of examination of the goods, it was noticed that the goods were packed in 10 wooden pallets which were placed at the Customs Bonded Warehouse of ICD Khodiyar. Among the said wooden pallets, it was noticed 05 of the wooden pallets were having bricks, 01 wooden pallet was having wooden pattas & stones, 03 wooden pallets were having machines and remaining one pallet was having 03 control panels & 03 oil case (approx. 20 ltr.) as accessories of machines. The goods were mis-declared by the exporter as the exporter had declared to export 10 Nos. of 'Mattei C450 rotary Vanecompressor with cooler assembly including axial fan' vide the said Shipping Bill. However, as aforementioned, on examination, only 03 machines were placed in the wooden pallets that were to be exported. The examination of goods were done in the presence of the proprietor of exporter's firm, representative of Customs Broker and independent panchas under panchnama dated 31.10.2023. On being asked regarding mis-declaration of goods, Shri Shaileshkumar Rathod, Proprietor of the exporter's firm stated that he was aware of the fact that the goods had been mis declared in the said Shipping Bill. He stated that he placed bricks, wooden patta and stones in the wooden pallet instead of machineries in order to export the same in guise of declared goods. He confessed that there was mis-declaration of goods. On being asked, he informed that the goods were packed at Bhavnagar wherein he had allotted for job work of the same to his paid staff. The goods viz. bricks, stones, wooden patta, machineries were placed in wooden pallets in presence of him.

**10.** The Empaneled Chartered Engineer Shri Atanu Kundu also examined the goods covered under Shipping Bill No. 4702187 dated 17.10.2023 for ascertaining its value. He vide report Ref. No. AK/17/SRE/EXP/2023-24 dated 02.11.2023 stated that only three boxed were each having one compressor and another wooden box was having three small control panel and three 20 L Mattei Rotor Oil can in red colour. The remaining 06 wooden boxes were filled with wooden broken logs, bricks and uneven shape of stones. Further, it was observed that vane hub of the compressor was embossed with name of the manufacturer 'mattei' and rotor/motor part of the said compressor embossed with name of manufacturer 'ABB'. Whereas there was no cooler assemble including axial fan available in any of the boxes among 10 boxes of the consignments. Therefore, the said consignment attempted to be export does not match/ mis declared according to document submitted.

**10.1.** As per his analysis and survey with present market value, the present market value for each set comes to Rs. 14,82,000/- and the total value of 03 sets comes to Rs. 44,46,000/-. The other 06 wooden boxes do not have any commercial value. The Chartered Engineer submitted that the value declared by the exporter is irrational.

**11.** Shri Shaileshkumar Dhansukhbhai Rathod, proprietor of the said firm in his statement dated 01.11.2023 confessed that he had mis-declared the goods in Shipping Bill No. 4702187 dated 17.10.2023. He had declared goods as ' 10 pieces of Mattei C-



450 rotary vane compressor & Combi Cooler assembly including axial fan' in the said Shipping Bill read with invoice no. 53/16.10.2023 for export of the same to the buyer located at Kingdom of Bahrain. However, instead of the said machineries, he had stuffed bricks, wooden pattas, stones in 06 out of 10 of the wooden pallets that were part of export consignment. He also stated that the buyer of the said goods M/s. Sohar industrial Maintenance Establishment, Kingdom of Bahrain placed order for 10 pieces of 'Mattei C-450 rotary vane compressor & Combi Cooler assembly including axial fan' wherein as per terms of payment, the buyer was obligated to make 50 % payment in advance, 40 % of the payment on submission of copy of Bill of Lading and remaining 10 % on payment after successful installation of first compressor. Accordingly, he had received payment of Rs. 1,23,76,691/- in advance from the buyer in his BOB bank account. As per PO, he was supposed to supply 10 pieces of the said compressor. However, due to financial crunch, he could not manufactured 10 pieces of the said compressors. Then he conspired to show fake export of the said goods by mis-declaring the same in the Shipping Bill. Had it been cleared from the Customs and Bill of Lading copy would have been received to him, he would have sent the scanned copy of Bill of Lading to the buyer and against the same, he would have received 40 % of the payment as per terms of payment. His sole intention was to take the payment from the overseas buyer fraudulently and to take GST refund from the CGST department. He had mis declared goods in Shipping Bill No. 4702187 dated 17.10.2023. By way of mis-declaring the items meant for export, he contravened the provisions of the Customs Act, 1962 and hence made the goods liable for confiscation under Section 113 of the Customs Act, 1962.

**11.1.** He did not know the Customs Broker M/s. Yashvi Shipping directly. He came in contact to the said Customs Broker through one of his close associate namely Shri Rahul Prakash Khapekhar who worked with one of the forwarder company M/s. EMU Lines Pvt. Ltd. The said forwarder was taking care of his import consignment from Nhava Sheva. Later on, he introduced him to another person namely Shri Nikunjibhai Rameshbhai Dalal who worked in another forwarder company namely M/s. Asian Worldwide Services Pvt. Ltd. Shri Rahulbhai informed him that export related work would be done by Shri Nikunjibhai. Thereafter, all communication regarding shipment was made through Shri Nikunjibhai. He had not met any of the representative of Customs Broker M/s. Yashvi Shipping. All communication of documents viz. invoice, packing list, etc. were routed through Shri Nikunj Bhai only. He received quotation of Rs. 2,65,764/- + GST for the said consignment from Shri Nikunjibhai. Apart from this, he agreed to give Rs. 1,35,000/- to Shri Nikunjibhai as demanded by him for clearance of the goods. In this context, he had paid Rs. 95,000/- on 30/31.10.2023 to Shri Rahul bhai through UPI payment as per direction of Nikunjibhai. On being asked regarding the reasons of extra payment of Rs. 1,35,000/-, he stated that as the goods appeared to be overvalued, Shri Rahulbhai and Nikunj bhai informed that they would need Rs. 1,35,000/- extra from other expenses to clear the consignment and to do other formalities.

**11.2.** Shri Ravindrasinh P Solanki, G card Holder of Customs Broker M/s. Yashvi Shipping in his statement dated 01.11.2023 and 02.12.2023 recorded under Section

108 of the Customs Act, 1962 stated that he was handed over the export documents on his official Mail Address by the forwarder and as Customs Broker, he was not aware about the actual contents present in the export cargo. He never met Shri Shailesh Kumar Rathore. He relied on the export documents mailed by forwarder M/s Asian Worldwide Services India Pvt Ltd. to them. They have not done physical verification of the exporter which was required to be done under Customs Broker Licensing Regulation, 2018. Labelling and marking of identification marks were not done over any of the pallets of the goods, therefore he contacted the forwarder Shri Nikunj bhai regarding the same and informed him about the non-identification of cargo. Shri Nikunj bhai then instructed his person Shri Mevada Dixit, who was working as his employee at ICD Khodiyar to paste the invoice over each of the pallets. Neither he, nor did Shri Nikunj bhai had taken permission from the Customs for re-labelling the same. They had received copies of Adhar Card, PAN card and GSTIN of exporter only from the forwarder. They had not verified the antecedent or whereabouts of the exporter He was aware that it was their responsibility to verify the correctness of Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of client and functioning of client at the declared address by using reliable, independent, authentic documents, data or information. But they failed to do so. Even they had not taken any proper authorization from the exporter to clear their shipment. This is in clear non-fulfilment of obligation under regulations 10(a) and 10(n) of Customs Broker Licensing Regulations, 2018.

**11.3.** Shri Rahul Khapekar in his statement grossly admitted that he had received amount of Rs. 95,000/- from Shri Shaileshkumar Dhansukhbhai Rathod in respect of Export Consignment covered under Shipping Bill No.4702187 dated 17.10.2023 for export of 10 Nos. of 'Mattei C450 rotary Venecompressor with cooler assembly including axial fan'; that he had never worked as forwarder in respect of any export consignment of M/s. S.R. Enterprise. On being asked regarding the reason to receive Rs. 95,000/- from Shri Shaileshkumar Rathod in respect of the said consignment, he stated that Shri Nikunj bhai informed him that there was a huge difference between assessable value of imported items and FOB value of goods to be exported and also informed him that extra Rs. 1,35,000/- had been demanded from the exporter for the clearance of the said consignment having FOB value Rs. 2.70 crores. Accordingly, Shri Shaileshbhai, Proprietor of M/s. S.R. Enterprise transferred Rs. 95,000/- in his bank account on 31.10.2023. Out of this Rs. 95,000/-, he transferred Rs. 65,000/- to the bank account of Shri Nikunj bhai (forwarder) and also deposited Rs. 20,000/- in the bank account of Shri Nikunj bhai. Accordingly, out of Rs. 95,000/-, he transferred Rs. 85,000/- to Shri Nikunj bhai and kept Rs. 10,000/- with himself.

## **12. Contravention of Statutory Provisions:-**

**12.1.** The said exporter has filed Shipping Bill No. 4702187 dated 17.10.2023 at I.C.D Khodiyar (Customs Station), for export of '10 Nos. of Mattei C450 Rotary Vanecompressor with cooler assembly including axial fan' to M/s. Sohar Industrial Maintenance Establishment, Bahrain, by classifying the same under CTH 84148090, through their Customs Broker M/s. Yashvi Shipping. The shipping bill was filed under

Section 50 of the Customs Act, 1962 to export '10 Nos. of Mattei C450 Rotary Vanecompressor with cooler assembly including axial fan' declaring FOB value Rs. 2,70,36,863.05/-. However, during the course of examination of the goods by the proper officer of Customs as well as Chartered Engineer, it was noticed that only three boxes were having compressor and one another wooden box was having three small control panel and three 20 L Mattei Rotor Oil can in red colour. The remaining 06 wooden boxes were filled with wooden broken logs, bricks and uneven shape of stones. Further, it was also observed that vane hub of the compressor was embossed with name of the manufacturer 'mattei' and rotor/motor part of the said compressor embossed with name of manufacturer 'ABB'. Whereas there was no cooler assemble including axial fan available in any of the boxes among 10 boxes of the consignments. Therefore, the said consignment attempted for export did not match/ was mis declared according to document submitted. As per Chartered Engineer's analysis report, the present market value for each set comes to Rs. 14,82,000/- and the total value of 03 sets comes to Rs. 44,46,000/-. The other 06 wooden boxes do not have any commercial value. Hence, total value of the consignment would be only Rs. 44,46,000/- instead of Rs. 2,70,36,863.05/-, as declared in the Shipping Bill. As per Section 50 of the Customs Act, 1962, it was incumbent upon the said exporter to furnish the accurate and complete information in the Shipping Bill with support of authentic and valid document. The exporter was subjected to make and subscribe to a declaration as to the truth of its contents in the Shipping Bill. However, by way of mis-declaring the same, the said exporter violated the provisions of Section 50 of the Customs Act, 1962.

**12.2.** Whereas, as per examination of goods done by the officer of Customs, ICD Khodiyar read with valuer's report, the goods to be exported were found to be bricks in 05 wooden pallets, wooden pattas & stones in 01 wooden pallet and machineries & its accessories in 04 wooden pallets instead of total 10 Nos. of 'Mattei C450 rotary Vanecompressor with cooler assembly including axial fan'. The total market value of the goods derived to be Rs. 44,46,000/- by the Chartered Engineer in his valuation report instead of Rs. 2,70,36,863.05/-, as declared in the Shipping Bill. Shri Shaileshkumar Rathod, proprietor of M/s. S.R. Enterprise in his statement dated 01.11.2023 admitted that he had mis-declared goods in the Shipping Bill No. 4702187 dated 17.10.2023. He declared the same as '10 Nos. of Mattei C450 Rotary Vanecompressor with cooler assembly including axial fan' having FOB value Rs. 2,70,36,863.05/-, however stuffed bricks in 05 wooden pallets, wooden pattas & stones in 01 wooden pallet having no commercial value and machineries & its accessories in 04 wooden pallets having market value Rs. 44,46,000/- only. He was planned to get IGST refund from GST department as he had exported goods under LUT. He planned to receive IGST refund @ 18% from the GST department in this case once consignment is exported successfully. In this way, he would have received approx. Rs. 50,00,000/- as IGST refund from the GST department after clearance of the said consignment. By way of mis-declaring the goods, the said exporter has contravened the provisions of Section 113(e) and 113(i) of the Customs Act, 1962. Shri Shaileshkumar Rathod is also agreed with the contents of Valuation report issued by the government empaneled valuer in toto. Admittance of guilt on the part of the proprietor of the exporter and valuation report issued by the

government empaneled Chartered Engineer substantiate the misdeclaration and overvaluation of goods covered under Shipping Bill No. 4702187 dated 17.10.2023. In view of the above, it appeared that the exporter has made false declaration by mis-declaring and overvaluing the goods intended for export and declared a highly inflated value in the Shipping Bill. In view of the above, it appeared that the goods seized vide seizure Memo dated 04.11.2023, are liable for confiscation under Section 113(e) and 113(i) of the Customs Act, 1962.

**12.3.** By way of mis-declaring the goods, the exporter M/s. S.R. Enterprise omitted act which rendered the goods covered under Shipping Bill no. 4702187 dated 17.10.2023 liable for confiscation under Section 113 of the Customs Act, 1962, which rendered himself for penal action under Section 114(iii) of the Customs Act, 1962. Further, by way of presenting false and incorrect invoice, packing list and other export documents deliberately in order to export mis-declared goods, M/s. S.R. Enterprise has also rendered himself for penal action under Section 114AA of the Customs Act, 1962.

**12.4.** It further appeared that the Customs Broker M/s. Yashvi Shipping had filed Shipping Bill in the instant case had not verified the antecedent or whereabouts of the exporter. In spite of his awareness of their responsibility to verify the correctness of Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of client and functioning of client at the declared address by using reliable, independent, authentic documents, data or information, they failed to do so. Even they had not taken any proper authorization from the exporter to clear their shipment. This is in clear non-fulfilment of obligation 10(a) and 10(n) of Customs Broker Licensing Regulation, 2018. It appeared that by way of abetting an act, which rendered goods, attempted to export, liable for confiscation under Section 113 of the Customs Act, 1962, M/s. Yashvi Shipping has rendered himself for penal action under Section 114(iii) of the Customs Act, 1962. By way of doing violation of obligation 10(a) and 10(n) of Customs Broker Licensing Regulation, 2018, M/s. Yashvi Shipping has also rendered themselves for penal action under Customs Broker Licensing Regulation, 2018.

**12.5.** It also appeared that Shri Nikunjbhai Rameshbhai Dalal and Shri Rahul Khapekar in spite of knowing the fact that the goods were overvalued which were attempted to be exported by M/s. S.R. Enterprise abetted him in illegal clearing the goods against the receipt of extra Rs. 95,000/- out of agreed Rs. 1,35,000/- from the exporter. Out of Rs. 95,000/-, Shri Nikunjbhai Dalal had Rs. 85,000/- and Shri Rahul Kapekar had Rs. 10,000/- with himself. Both of them also incited Shri Shaileshkumar Rathod to produce exaggerated cost sheet to get customs clearance of goods. By way of their such act, Shri Nikunjbhai Rameshbhai Dalal and Shri Rahul Khapekar rendered themselves for penal action under Section 117 of the Customs Act, 1962 individually.

**12.6.** As per valuation report issued by the empaneled Chartered Engineer, it appeared that the said exporter has grossly inflated the FOB value of the goods which are liable to be rejected in terms of 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. The new market value of Rs. 44,46,000/- as ascertained by the

valuer is liable to be accepted in terms of Rule 6 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

**SHOW CAUSE NOTICE:**

**13.** Accordingly, a Show Cause Notice dated 21.02.2024 was issued to M/s. S. R. Enterprise, L-12, Payal Flats, Judges Bungalow Road, Nr. Mansi Circle, Vastapur, Ahmedabad, Gujarat-3800015 holding IEC ASAPR5553R, wherein they were called upon to Show Cause to the Additional Commissioner of Customs, Ahmedabad, having his office at Customs House, Navrangpura, Ahmedabad, within 30 days from the date of receipt of this Show Cause Notice, as to why:-

- (i) Goods intended for export vide Shipping Bill No. 4702187 dated 17.10.2023 having declared FOB value Rs. 2,70,36,863.05/- and market value of Rs. 44,46,000/-, should not be held liable for confiscation under Section 113(c) and 113(i) of the Customs Act, 1962.
- (ii) the value declared by the exporter in the Shipping Bill No. 4702187 dated 17.10.2023 to the tune of Rs. 2,70,36,863.05/- should not be rejected in terms of 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;
- (iii) the value worked out by the Government Empaneled Chartered Engineer amounting to Rs. 44,46,000/- in respect of Shipping Bill No. 4702187 dated 17.10.2023, should not be accepted for the purpose of the valuation of goods intended for export, in terms of the provisions of Section 14 of the Customs Act, 1962 read with provisions of Rule 4 and Rule 6 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007;
- (iv) Penalty should not be imposed on M/s. S.R. Enterprise under Section 114(iii) and 114AA of the Customs Act, 1962.

**Also,**

a) M/s. Yashvi Shipping, Surya Heights, Plot No. 211, DC-2, Gandhidham, Kutch, Gujarat, was called upon to Show Cause to the Additional Commissioner of Customs, Ahmedabad, having his office at Customs House, Navrangpura, Ahmedabad, within 30 days from the date of receipt of this Show Cause Notice, as to why penalty under Section 114(iii) of the Customs Act, 1962 should not be imposed on them.

b) Shri Nikunjbhai Rameshbhai Dalal, Deputy Manager-Sales, M/s. Asian Worldwide Services India Private Limited, A-808, 8<sup>th</sup> Floor, Sun Westbank, Opposite City Gold Cinema, Ashram Road, Ahmedabad, was called upon to Show Cause to the Additional Commissioner of Customs, Ahmedabad, having his office at Customs House, Navrangpura, Ahmedabad, within 30 days from the date of receipt of this Show Cause Notice, as to why penalty under Section 117 of the Customs Act, 1962 should not be imposed on him.

c) Now, therefore, Shri Rahul Khapekar, residing at M-63, Orchid White field, Makaraba, Ahmedabad, was called upon to Show Cause to the Additional Commissioner of Customs, Ahmedabad, having his office at Customs House, Navrangpura, Ahmedabad, within 30 days from the date of receipt of this Show Cause Notice, as to why penalty under Section 117 of the Customs Act, 1962 should not be imposed on him.

**SUBMISSION:**

14. In response to the Show Cause Notice dated 21.02.2023 following submission were made:

14.1. Submission dated 06.03.2024 by Shri Shaileshkumar Dhansukhbhai Rathod, Proprietor of M/s S.R. Enterprise -

- a) That he attempted to export the said consignment from ICD-Khodiyar as it was the place from which I had done some export in the past too, i.e. to Nepal, Bahrain etc.
- b) That he has always been in business of vane compressors and such machines and I also have dealership of Mattei in India.
- c) That he got an export order from a person named Shunmugan Thirunavukkarasu whose alias is Mr Thiru. His firm is Sohar Industrial Maintenance Establishment. He had earlier exported one consignment to them. At that instance the consignment was correct. Thus, he got a subsequent order. But, while he received the subsequent order of 10 vane compressors, he was facing a lot of financial constraint and personal problems. He was trying hard to fulfil my financial obligations. In fact, he was trying hard to even maintain a warehouse that he had at Bhavnagar.
- d) He was trying to export the consignment with 10 vanecompressors, however, due to his oversight due to some personal reasons, only 3 consignments out of 10 were packed for export. He had also kept some of the packages wrapped as he feared that the packing material at my godown could be stolen. He had no security there and his workers and he used to work only during the day time. These compressors are very costly. So, he had also put some decoy packed consignments at my warehouse.
- e) As he was under severe stress during the time due to some family and financial reasons, he could not focus well on the export consignment when they were being loaded for transportation. He could not even put labels. It is because of this reason that the package that was meant for export got changed with the decoy consignment having wooden pattas and stones. He had no intension to export the wooden pattas and stones. It was only when the consignment was stopped that he came to know that inadvertently, the workers at my warehouse has loaded the decoy boxes instead of compressors

and their accessories. He regret that. He was at the warehouse at that time, however, he had received an important phone call and thus, could not oversee the loading of the consignment at all time.

- f) That by the time he reached ICD- Khodiyar, his mind became blank and he could not understand what was happening. He already was under stress and not this additional stress forced me to blank out during the days while proceedings examination and statements were recorded. He could only understand the situation once the statements were recorded. He was under immense pressure from various parties, including the overseas buyer and his associates, to fulfill contractual obligations that he was unable to meet. This undue influence clouded his judgment and led him to make statements that he, now deeply regret. He also got scared of the Officers at Customs Department and that he could be arrested. Thus, he could not divulge this information with the Customs Officers during the recording of statements. He had no intention to willfully export stones and wood in guise of compressors or its accessories.
- g) He is an Engineering dropout. He still have difficulty in understanding financial aspects, refund and taxation parts of the business. Thus, he had hired an accountant at that time, who used to take care of my finances related to export. He was not involved in finances of the firm he was focused on marketing and developing contacts believing that by expanding my business, he would be anyways getting the money. He was only concerned with buying and selling of the goods. He know that GST is levied on goods sold in India. But, he did not knew that IGST is refunded on export. His accountant used to just tell me that if you follow certain procedures you would get this much benefit from government. He did not know whether the benefit would include refund of IGST or not. He came to know that IGST refund amount of Rs. 50 Lakhs would be credited into my account only after Show Cause Notice was served to me. Thus, he would like to present that he did not had any intention to do fraudulently avail IGST refund.
- h) After issuance of Show Cause Notice, he also came to know that the government approved valuer had valued the said consignment at a much reduced price. In this regard, he would like to state that the valuation/ calculation of goods arrived at by the government approved valuer seems to be incorrect. He do not understand the way valuation as arrived at by him, but he being part involved in the business of compressors, can tell for sure that the valuation arrived by him is not correct. There are many types and models of compressors available in the open market and there are many suppliers and manufacturers. He do not agree with the valuation done by the government approved valuer.



- i) He wish to state that in entire career, this is the first time he had committed a mistake. It was a mistake due to my oversight, and was not willful at all. He do accept that he should have been more careful and he regret what he did, inadvertently, but he request that minimum penalty may be imposed on me. He do not wish my business to die because of my silly mistake.
- j) He also wish to state that he was the only person involved in the mistaken attempted export of some of the mis-declared goods. He wish to state that other noticee to the Show Cause Notice had no idea about what was being exported.

**14.2.** Submission dated 29.02.2024 by Shri Nikunjibhai Rameshbhai Dalal, Deputy Manager (Sales), M/s Asian Worldwide Services India Pvt. Ltd-

- a) At the onset he presented that I had no hidden malafide interest in attempted export of mis-declared goods.
- b) That he work as Deputy Manager (Sales) for forwarder company i.e. M/s Asian Worldwide Services India Pvt. Ltd., Ahmedabad. As freight forwarder, neither his company nor he claim the ownership of the goods meant for export. His company only provide support service to the exporter. Their role was to book container and help with customs clearance.
- c) That he got the business in this instance (refer SB no. 4702187) from his cousin Shri Rahul Khapekar. Shri Khapekar, on his part he provided him the business based on his contacts.
- d) That as representative of the forwarder company, his job was to do the documentation process regarding sales. He was in no way involved with the export consignment. He was not expected to examine the goods.
- e) The allegation on him in the show cause notice that he pasted the new labels on the cargo is misplaced. He did not intended to mis-declare or hide anything from the customs authorities. He asked his colleague Shri Mevada Dixit to paste the labels because it was asked by the Customs broker. The labelling was done in a bonafide manner, as it was missing from the boxes. He did not wanted the cargo to be stopped due because of lack of labels. The allegation that he asked to re-label the consignment is completely false. He had asked to put label on the consignments where it was missing. This is not re-labeling and does not amount to any of the wilful contravention.
- f) As forwarder, his job was restricted to documentation. As a lot of business takes place at ICDs and ports there is always a high level of competition.

Forwarders, thus, usually rely on connections and market goodwill to provide services to the exporters and importers.

- g) In this instance, there was no negative report of the exporter i.e. no bad antecedent. All the documents that were provided by the exporter seemed proper, so there was no need to go an extra mile and lose business at this instance.
- h) His acts were bonafide and he did not intend to help anyone with any fraud.
- i) He also pointed that Shri Shaileshbhai Dhansukhbhai Rathod, has himself stated in his statement that none of the other persons knew about the original contents of the consignment except him. So, there is no possibility that I or anyone from my company could have aided or colluded with him.
- j) I would also like to refer to following case laws in my support-
  - a) In case of **Air Travel Enterprise India Limited- 2009 (239) ELT 275, the Appellate Tribunal, Chennai** has held that even when a CHA took up export documentation without verifying bona-fide of the parties and the person posing as exporter was not having any IEC assigned to him, but was using IEC of others, the CHA Could not be held guilty of abetment in fraudulent export and fraudulent claim for undue Drawback, unless there was any positive evidence showing that the CHA actually abetted attempt to export the goods illicitly.
  - b) In case of **Sai Shipping Services - 2009 (239) ELT 104, the Appellate Tribunal, Delhi** has held that when shipping bills were filed by a CHA on the basis of documents supplied by the exporter, the CHA could not be penalized for any over-valuation of the goods for fraudulently availing Drawback, unless there Was a positive evidence that the CHA was aware of fraudulent activities of the exporter.
  - c) In case of **Prime Forwarders - 2008 (222) ELT 137 the Appellate Tribunal, Ahmedabad** has held that a CHA acting on the basis of the documents given to him was not liable for any penal action under the Act, when there was no evidence to show that the CHA was aware of containers being stuffed with goods which were different from those declared in the documents.
- k) He further submitted that the proposal to impose personal penalty on him in this case is unjustified and unsustainable in facts as well as in law as the ingredients of Sections 117 of the Customs Act are not satisfied in the present case so far as these provisions are invoked against him in this case. The proposal to impose personal penalty on him in this case is unjustified and without any basis, because he is not the one who conspired with the exporter or did not do my job correctly.

- l) He finally, requested to provide him a personal hearing before passing the final order on this show cause notice and oblige.

**14.3 Submission dated 29.02.2024 by Shri Rahul Khapekar, Assistant Manager (Import-Sales), M/s EMU lines Pvt Ltd, Ahmedabad:**

- a) At the onset he presented that he had no hidden malafide interest in attempted export of mis-declared goods.
- b) I am working in EMU lines Pvt Ltd as Assistant Manager (Import-Sales), Ahmedabad. M/s EMU lines Pvt Ltd is a freight forwarder company. He is a field worker of the aforesaid company and hence have several contacts on ground.
- c) He had developed contacts with not just importers but also several exporters during my field work. One such exporter was M/s S.R. Enterprise, Ahmedabad.
- d) The proprietor of this firm is Shri Shaileshkumar Dhansukhbhai Rathod. He came in contact with him during his field operations.
- e) As a lot of business takes place at ICDs and ports there is always a high level of competition. Forwarders, thus, usually rely on connections and market goodwill to provide services to the exporters and importers. Shri Nikunjbhai Rameshbhai Dalal is his cousin and he looks after the business of M/s Asian Worldwide Services India Pvt. Ltd., Ahmedabad. He, thus try to provide him business opportunities whenever he can.
- f) As Shri Saileshkumar Dhansukhbhai Rathod was trying to export some machines, he contacted him to provide details of some forwarders. Thus, he gave contact of his cousin to Shri Shaileshkumar Dhansukhbhai Rathod, so that his cousin could get business.
- g) He did not knew the contents of the export consignment. He only came to know that goods were mis-declared when his cousin Shri Nikunjbhai contacted him over the phone and told him that the exporter was trying to export mis-declared goods and that the consignment has been seized.
- h) He was not at all involved in the export consignment. He only provided the details of the exporter to his cousin. He did not knew about the real intensions or motives of the exporter. He acted in a bonafide manner just to provide business to his cousin.
- i) In the Show Cause Notice it has been accused that he benefitted from the attempted export because he received Rs. 95,000/- from Shri Shaileshkumar. However, he wish to state that as he was in contact with Shri Shaileshkumar, he had paid him the amount and requested him to pay the same to his cousin Shri

Nikunjibhai Rameshbhai Dalal. He could only send Rs. 85,000/- to his cousin. Rest of the amount i.e. Rs. 10,000/- stayed with him, that he intended to transfer to him after some time and he had communicated the same to his cousin, to which he agreed. That's all the role he have in the entire episode.

- j) He was in no way involved with the export consignment and he was not expected to examine either the goods or the documents. He wish to present that neither my company nor I claim the ownership of the goods meant for export. His role in this instance was limited to providing business to my cousin.
- k) In this instance, there was no negative report of the exporter i.e. no bad antecedent. His acts were bonafide and he did not intend to help anyone with any fraud.
- l) He would also like to point that Shri Shaileshbhai Dhansukhbhai Rathod, has himself stated that none of the other persons knew about the original contents of the consignment except him. So, there is no possibility that he or anyone from his company could have aided or colluded with him.
- m) Based on the above premises, he submitted that the proposal to impose personal penalty on him in this case, is unjustified and unsustainable in facts as well as in law. He also submit that ingredients of Sections 117 of the Customs Act are not satisfied in the present case so far as these provisions are invoked against me in this case. The proposal to impose personal penalty on him in this case is even otherwise unjustified and without any basis. He is not the one who conspired with the exporter or did not do his job correctly.
- n) He finally, requested to provide him a personal hearing before passing the final order on this show cause notice and oblige.

**14.4 Submission dated 20.03.2024 by Shri Ravindrasinh P Solanki, G-card Holder (M/s Yashvi Shipping):**

- a) He presented that M/s. Yashvi Shipping, Surya Heights, Plot No. 211, DC-2, Gandhidham, Kutch, Gujarat is the Customs Broker in this case and has the Customs License issued by the Customs Department. The firm provides various services for entry and exit of the goods being imported as per Customs Act, 1962 and Customs Broker Licensing Rules, 2018.
- b) It has been accused in the para 12.4 of the Show Cause notice that M/s. Yashvi Shipping had filed Shipping Bill in the instant case and had not verified the antecedent or whereabouts of the exporter, inspite of them being aware of their responsibility to verify the correctness of Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of client and functioning of client at the declared address by using reliable, independent, authentic documents, data or information. Even they had not taken any proper

authorization from the exporter to clear their shipment. This is in clear non-fulfilment of obligation 10(a) and 10(n) of Customs Broker Licensing Regulation, 2018. It appears that by way of abetting an act, which rendered goods, attempted to export, liable for confiscation under Section 113 of the Customs Act, 1962, M/s. Yashvi Shipping has rendered himself for penal action under Section 114(iii) of the Customs Act, 1962. By way of doing violation of obligation 10(a) and 10(n) of Customs Broker Licensing Regulation, 2018, M/s. Yashvi Shipping has also rendered themselves for penal action under Customs Broker Licensing Regulation, 2018. Accordingly, in the para 14 of the said show cause notice, M/s. Yashvi Shipping have been asked to show cause as to why penalty should not be imposed upon me under section 114(iii) of the Customs Act, 1962.

- c) In the instant case on receipt of export documents and KYC of the Exporter i.e. M/s S.R. Enterprise, he filed documents viz. Shipping Bill for export of Vanecomprerssors to exporter i.e. M/s Sohar Industrial Maintenance Establishment, Bahrain.
- d) At the outset, he denied all the allegations, averment and proposed action as leveled against us on various grounds.
- e) He acted in a bonafide manner and based on the records provided by the Exporter. He did checked the antecedents of the exporter online notably on linkedin and other such portals. Nothing seemed amiss. Infact, the exporter came from a reference of Shri Nikunjbbhai Dalal, so we had trust that nothing could be wrong about the exporter. He collected all KYC documents from SR Enterprise through Shri Nikunjbbhai Dalal.
- f) Shri Shaileshkumar Dhansukhbhai Rathod, proprietor of M/s S.R. Enterprise (the exporter) has himself stated in his statement dated 01.11.2023 that he did not knew M/s. Yashvi Shipping and that he came in contact to the said Customs Broker through one of his close associate namely Shri Rahul Prakash Khapekhar who worked with one of the forwarder company M/s. EMU Lines Pvt. Ltd. The said forwarder was taking care of his import consignment from Nhava Sheva. Later on, Shri Rahul Prakash Khapekhar introduced him to another person namely Shri Nikunjbbhai Rameshbhai Dalal who worked in another forwarder company namely M/s. Asian Worldwide Services Pvt. Ltd. Shri Rahul informed him that export related work would be done by Shri Nikunjbbhai. Thereafter, all communications regarding shipment were made through Shri Nikunjbbhai.
- g) There seemed to be no discrepancy in the documents provided by the exporter. Thus, he had no reason to believe that the said consignment was mis-declared. In case of **Maruti Trnasports-2004(177) ELT 1051, the Appellate Tribunal, Chennai** has held that even in case of forged documents submitted for clearance of goods through CHA, no penal action could be taken against CHA if he was not

aware of the forgery at the time of filing of the documents and he came to know about the forgery subsequently.

h) Further case laws in this regard are as follows:-

- i) In case of **R.S. Travels -2007 (217) ELT 384 the Appellate Tribunal, Bangalore** has held that no penalty under Section 112(a) of the said Act could be imposed on a CHA who was accused of abatement and collusion to help importer in under-valuation of goods when, apart from statement of the accused importer, there was no other evidence to establish that the CHA colluded or abetted the under-valuation. In case of Success Engineering, the Appellate Tribunal, Ahmedabad has held that when there was no evidence showing knowledge or intention on the part of a CHA in mis-declaration of lower price and when there was no intention to violate Customs law on the part of a CHA, any failure or negligence in carrying out the CHA work would also not justify and penal action against the CHA.
  - ii) In case of **Air Travel Enterprise India Limited- 2009 (239) ELT 275, the Appellate Tribunal, Chennai** has held that even when documentation without verifying bona-fide of the parties and the person posing as exporter was not having any IEC assigned to him, but was using IEC of others, the CHA could not be held guilty of abetment in fraudulent export and fraudulent claim for undue Drawback, unless there was any positive evidence showing that the CHA actually abetted attempt to export the goods illicitly.
  - iii) In case of **Commissioner Vs. Moriks Shipping and Trading Pv.Ltd. - 2008 (227) ELT 577**, the Appellate Tribunal, Chennai has held that a CHA was not required to go into the authenticity of declarations made by the exporter in export documents and in absence of any evidence that the CHA abetted offence committed by the exporter, no penal action could be taken against him under the Customs Act.
- i) He did not had any malafide intent to do fraud or illegal export as M/s Yashvi Shipping, is in no way having any stake or say in the working of M/s S.R. Enterprise. He only had a business relation with M/s S. R. Enterprise that is limited in scope. He was only facilitating the export and had no intention to avail any drawback or IGST refund. The mis-declared goods were loaded for export by M/s S.R. Enterprise and not by M/s Yashvi Shipping. He did not receive any remuneration other than the usual fees we charge. There is thus, no mens rea involved on our part to commit the crime of attempting illegal export to avail any ineligible benefit.
- j) He thus requested to consider the principle flowing from the above referred decisions and case laws, while deciding the proposal for imposing penalty on them in the present case.

- k) Finally, he requested to grant him an opportunity to be heard in person before the matter is adjudicated.

#### **PERSONAL HEARING:**

15. During the course of adjudication personal hearings were given to all the noticees. Personal hearing was given to Shri Shaileshkumar on 03.04.2024 and to Shri Nijunjbhai , Shri Rahul and Shri M/s Yashi Shipping (Shri Ravindrsinh) on 04.04.2024.

15.1. Shri Rahul Khapekar appeared for the personal hearing on 04.04.2024. He denied any wrong doing on his part as he would not have wrongfully gained any amount through mis-declaration of exports. He also stated that the amount he received in his bank account was fees amount. He never incited either Shri Nikunj or Shri Shaileshkumar to produce exaggerated costsheet to get customs clearance. He also reiterated points he made in his submission dated 29.02.2024.

15.2. Shri Nikunj R. Dalal appeared for personal hearing on 04.04.2024 and denied any wrong doing on his part and added that he had not incited Shri Shaileshkumar to produce exaggerated cost sheet to get customs clearance. He also reiterated points he made in his submission dated 29.02.2024.

15.3. Shri Ravindrasinh P. Solanki in response to personal hearing on 04.04.2024, presented himself on 08.04.2024 and iterated the points he made in his earlier submission 20.03.2024.

15.4. Shri Shaileshkumar D. Rathod in response to personal hearing on 03.04.2024, presented himself on 15.04.2024. He presented that he had no malafide intent to mis-declare or mis-classify goods meant for export. The entire incident happened due to a mistake. He also reiterated the submission dated 06.03.2024.

#### **DISCUSSION AND FINDINGS:**

16. I find that the matter before me is to decide whether :-

- (i) Goods intended for export vide Shipping Bill No. 4702187 dated 17.10.2023 having declared FOB value Rs. 2,70,36,863.05/- and market value of Rs. 44,46,000/-, should be held liable for confiscation under Section 113(e) and 113(i) of the Customs Act, 1962.
- (ii) the value declared by the exporter in the Shipping Bill No. 4702187 dated 17.10.2023 to the tune of Rs. 2,70,36,863.05/- should be rejected in terms of 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;
- (v) the value worked out by the Government Empaneled Chartered Engineer amounting to Rs. 44,46,000/- in respect of Shipping Bill No. 4702187 dated 17.10.2023, should be accepted for the purpose of the valuation of goods intended for export, in terms of the provisions of Section 14 of the



- Customs Act, 1962 read with provisions of Rule 4 and Rule 6 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007;
- (vi) Penalty should be imposed on M/s. S.R. Enterprise under Section 114(iii) and 114AA of the Customs Act, 1962.
  - (vii) M/s. Yashvi Shipping, Surya Heights, Plot No. 211, DC-2, Gandhidham, Kutch, Gujarat, is liable for penalty under Section 114(iii) of the Customs Act, 1962.
  - (viii) Shri Nikunjibhai Rameshbhai Dalal, Deputy Manager-Sales, M/s. Asian Worldwide Services India Private Limited, A-808, 8<sup>th</sup> Floor, Sun Westbank, Opposite City Gold Cinema, Ashram Road, Ahmedabad, is liable for penalty under Section 117 of the Customs Act, 1962.
  - (ix) Shri Rahul Khapekar, residing at M-63, Orchid White field, Makaraba, Ahmedabad, was called upon to Show Cause to the Additional Commissioner of Customs, Ahmedabad, having his office at Customs House, Navrangpura, Ahmedabad, is liable for penalty under Section 117 of the Customs Act, 1962.

17. Now, I proceed to consider each of the aforementioned points one by one.

**17.1. Whether goods intended for export vide Shipping Bill No. 4702187 dated 17.10.2023 having declared FOB value Rs. 2,70,36,863.05/- and market value of Rs. 44,46,000/-, should be held liable for confiscation under Section 113(e) and 113(i) of the Customs Act, 1962.**

**17.1.1.** I find that it is amply clear that as per declaration 10 Nos of vane compressors (in 10 boxes/ pallets) were to be exported under shipping bill no 4702187 dated 17.10.2024. However, during the course of examination, when the consignment was opened by the Customs Officers, only three vane compressors were found in three boxes/ pallets. The labels on the boxes/pallets on other 7 boxes did not match with the actual goods. While 6 pallets/boxes were having wooden pattas and/or stones in them, one another contained 03 No.s of oil cases as machines accessories.

**17.1.2.** I find that the Chartered Engineer examined the goods being exported under shipping bill no 4702187 dated 17.10.2023 and submitted a report no. AK/17/SRE/EXP/2023-24 dated 02.11.2023 wherein he found that that the actual present market value of the each set of actual vane compressors (including oil cases in one of the pallet/box) was in total Rs 44,46,000/-. This was much less in comparison to the FOB declared by the exporter i.e. Rs. 2,70,36,863.05/-.

**17.1.3.** I find that during the course of investigation, Shi Shaileshkumar D. Rathod was summoned and his statement was recorded on 01.11.2023, wherein he stated that it was he who had stuffed bricks, stones and wodden pallets in 6 of the pallets/boxes meant for export and that he had mis-declared the consignment and attempted to export it to take payment from overseas buyer fraudulently and IGST refund from GST department. He also stated that the value of the 03 Nos of Vane Compressors (Mattei

make) was around Rs. 50 Lakhs. I find that the value ascertained by the Chartered Engineer for the three vane compressors is Rs. 44.46 Lakhs which is around Rs. 50 Lakhs and hence, the statement of Shri Shaileshkumar corroborates with the findings of Chartered Engineer.

**17.1.4.** I also find that Shri Shaileshkumar in his submission dated 06.03.2024 has stated that wrong consignment were loaded by the workers at his godown at Bhavnagar. Even, if we consider that it was a case of genuine fault, it is amply clear that the value of actual goods being exported was not Rs. 2,70,36,863.05/- and the same has not been denied by the exporter with proper grounds.

**17.1.5.** I find that confiscation, of the goods intended for export, under section 113 (e) and 113(i) has been proposed in the Show Cause Notice. In this regard the provisions of the section are reproduced as under:-

***“113. Confiscation of goods attempted to be improperly exported, etc.***

*- The following export goods shall be liable to confiscation:-*

*(e)any [ \* \* \* ] [ The words " dutiable or prohibited" omitted by Act 32 of 2003, Section 116 (w.e.f. 14.5.2003).] goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;*

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

**17.1.6.** From the discussions in para supra it is clear that the goods were brought for examination at ICD-Khodiyar and was meant for export. A shipping bill bearing no. 4702187 dated 17.10.2023 was filed by the exporter in this regard. I find that the Goods intended for export were misdeclared and were concealed in a box/pallets and wrongly labeled. The sale intension was to do fraud with the overseas buyer and to avail undue IGST refund. The market value of actual goods in the export consignment was much less i.e. Rs. 44,46,000/-, (as ascertained by the Chartered Engineer). Thus, it is clear that the goods were being exported “improperly” and should be held liable for confiscation under Section 113(e) and 113(i) of the Customs Act, 1962.

**17.2.** the value declared by the exporter in the Shipping Bill No. 4702187 dated 17.10.2023 to the tune of Rs. 2,70,36,863.05/- should be rejected in terms of 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;

**17.2.1** I find that from the discussion in para supra it is clear that the value of actual consignment was much less than what was declared as FOB value by the exporter owing to mis-declaration on atleast 6 out of 10 consignments.

In this regard Section 14 of the Customs Act, 1962 (regarding valuation of goods) states that-

**“14. Valuation of goods.**

*(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the **value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.** Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf: Provided further that the rules made in this behalf may provide for,-*  
*(i) the circumstances in which the buyer and the seller shall be deemed to be related;*  
*(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*  
*(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section: Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.*

*(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.*  
*Explanation.-For the purposes of this section-(a) "rate of exchange" means the rate of exchange-*  
*(i) determined by the Board, or*  
*(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;*  
*(b) "foreign currency" and "Indian currency"*

have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).”

Also, Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 states that-

**“8. Rejection of declared value.-**

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.
- (ii) (ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.
- (iii) (iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include - (a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed. (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export. (c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.”

**17.3.1.** I hence find that the value declared by the exporter in the Shipping Bill No. 4702187 dated 17.10.2023 to the tune of Rs. 2,70,36,863.05/- is mis-declared and exaggerated. Hence, the declared value of goods should be rejected in terms of 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, as mentioned above.

- 17.3.2.** Whether the value worked out by the Government Empaneled Chartered Engineer amounting to Rs. 44,46,000/- in respect of Shipping Bill No. 4702187 dated 17.10.2023, should be accepted for the purpose of the valuation of goods intended for export, in terms of the provisions of Section 14 of the Customs Act, 1962 read with provisions of Rule 4 and Rule 6 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007;
- 17.3.3.** I find that the Government Empaneled Chartered Engineer vide his report ref. no. AK/17/SRE/EXP/2023-24 dated 02.11.2023 stated that only three boxes were each having one compressors and another one box had small control panels and 20 L cans of Mattei Rotor Oil, while other six boxes contained bricks, stones and wooden pattas.
- 17.3.4.** I find that the Empaneled Chartered Engineer had prepared a report based on his visual inspection of goods along with perusal of packing list and invoices of M/s S.R. Enterprise. I also find that photographic evidence are also submitted by the Empaneled Engineer in his report.
- 17.3.5.** I find that the total value arrived at by the Empaneled Engineer included division of the compressor into two principal parts i.e. ABB motor and mattei vane hub. The Empaneled Engineer also included value of the control panel and 20 Liters Rotor Oil cans found in a separate box. Finally, the empaneled Engineer has included a profit margin of 30% into his calculations and arrived at a final per unit complete vane compressor value of Rs. 14,82,000/-. Thus, a final market value of the three sets of vane compressors was arrived at Rs. 44,46,000/-.
- 17.3.6.** In this regard Rule 4 and Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 are as follows:-
- “Rule 4. Determination of export value by comparison.-** (1) *The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).* (2) *In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including- (i) difference in the dates of exportation, (ii) difference in commercial levels and quantity levels, (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared, (iv) difference in domestic freight and insurance charges depending on the place of exportation.*”
- “Rule 6. Residual method. -** (1) *Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.*”

**17.3.7.** The valuation was also considered by the empaneled Engineer based on specific embossed company names on the machine parts i.e. hub (mattei) , rotor / motors (ABB) and Rotor Oil ( mattei). It thus appears that due diligence was done by the empaneled Engineer to arrive at a specific value i.e. per unit complete vane compressor value of Rs. 14,82,000/-.

**17.3.8.** I find that in his submission dated 06.03.2024 Shri Shaileshkumar (proprietor of M/s S.R. Enterprise) has contested the valuation arrived at by the Government Empaneled Engineer. However, he has not given reasons for his non-acceptance of the valuation.

**17.3.9.** In view of discussions above and in para 17.2, I find that the value worked out by the Government Empaneled Chartered Engineer amounting to Rs. 44,46,000/- in respect of Shipping Bill No. 4702187 dated 17.10.2023, should be accepted for the purpose of the valuation of goods intended for export.

**17.4. Whether penalty should be imposed on M/s. S.R. Enterprise under Section 114(iii) and 114AA of the Customs Act, 1962.**

**17.4.1.** As discussed in para Supra, it is clear that during the examination of consignment meant for Export, instead of 10 vane compressors, only 3 vane compressors were found along with one box containing accessories like rotor oil and control panel. In rest of the boxes wooden pattas, stones and bricks were found. The total declared FOB value of the export consignment was Rs 2,70,36,863.05/- (for 10 Vane Compressors), however, based on report of empaneled Engineer it has come to fore that the cumulative value of only three vane compressors (instead of 10 declared by the exporter in their Shipping Bills, tax invoice and packing list) is Rs. 44,46,000/-.

**17.4.2.** I find that Shri Shaileshkumar in his submission dated 06.03.2024 stated that wrong consignment was loaded for export due to his oversight. I find that this contention is untenable as Shri Shaileshkumar has been unable to provide any details of whereabouts of the rest of the 07 Nos. vane compressors which are supposed to be at his godown at Bhavnagar. It therefore appears that the explanation given by the noticee is an afterthought without any merit.

**17.4.3.** I also find that Shri Shaileshkumar in his statement dated 01.11.2023 has stated that his intention was to take 40% payment of the mis-declared export consignment, fraudulently. He would have received 40% of Rs. 2,70,36,863.05/- (for 10 Vane Compressors) from his overseas buyer as well as to get undue IGST refund. He also added in his statement that due to some stress he could not focus well on the export consignment when it was being loaded for transportation at Bhavnagar and that due to same reason he could not put labels on the consignments. He added that he had no intention to mis-declare the exports. Later, in his submission dated 06.03.2024 Shri Shaileshkumar has stated that he had no intention to obtain IGST refund.

**17.4.4.** I find that during the course of investigation it has come to fore that Shri Shaileshkumar is not a first time exporter. GST regime has been implemented since July, 2017 (more than 8 years). Under the GST regime, exporters are eligible to IGST refund on GST paid by them during the course of purchases made by them. As a proprietor of the firm, Shri Shaileshkumar should have been aware of the IGST refund that he would get, especially since he had already exported items post implementation of GST regime. His claim that his CA takes care of the finances and he does not know about is too innocent to even consider. Ignorance of law is not an excuse, especially, when the amount of IGST refund he would have received was Rs. 50,00,000/-. I thus find no merit in this contention of the exporter.

**17.4.5.** In this regard provisions under section 114(iii) and Section 114AA of the Customs Act, 1962 are reproduced as under:

***“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)....*

*(ii).....*

*(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.]*

***“114AA. [ Penalty for use of false and incorrect material. [ Inserted by Act 29 of 2006, Section 27 (w.e.f. 13.7.2006).]***

*- 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.] [ Substituted by Act 10 of 2000, Section 85, for the first and second proviso (w.e.f. 12.5.2000).]”*

**17.4.6.** From discussions on paras supra and on perusal of the section 114(iii) and 114AA reproduced above it is found that M/s S R Enterprise had knowingly and wilfully tried to export incorrect goods. M/s S R Enterprise was fully aware of the actual contents of the consignment being exported. M/s SR Enterprise not only tried to do fraud with the overseas buyer but also tried to gain ineligible IGST refund. Their claim of being innocent is without merit and hence, they are liable to penalties under section 114(iii) and 114AA of the Customs Act, 1962.

**17.5. Whether M/s. Yashvi Shipping, Surya Heights, Plot No. 211, DC-2, Gandhidham, Kutch, Gujarat, is liable for penalty under Section 114(iii) of the Customs Act, 1962.**



**17.5.1.** I find that M/s Yashvi Shipping through G-Card Holder Shri Ravindrasinh P. Solanki, facilitated in the attempted export of incorrect goods. Shri Ravindrasinh was the one who got pasted incorrect labels on the consignment meant for export. This indicated proper connivance on part of M/s Yashvi Shipping in the entire scheme of things.

In this regard, I find that the provisions under section 114(iii) is as under –

***“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).....*

*(ii).....*

*(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.]*

**17.5.2.** From discussion above and on perusal of the section 114(iii) of the Customs Act, 1962, it is clear that through his actions M/s Yashvi Shipping, Gandhidham has rendered themselves liable for penalty under section 114(iii) of the Customs Act, 1962.

**17.5.3.** I also find that the case law cited by him in his submission is not squarely applicable in this instance.

**17.6. Whether Shri Nikunjbhai Rameshbhai Dalal, is liable for penalty under Section 117 of the Customs Act, 1962.**

**17.6.1.** I find that Shri Nikunjbhai was incharge of the documentation process and was forwarder in this case. He had received payment from Shri Shaileshkumar via Shri Rahul Kapekar and passed it to Shri Nikunjbhai. He is a facilitator in the entire scheme of things to the extend that he received the payment of Rs 85,000 for facilitating the entire scheme of things. It has been revealed during the course of investigation that he had actually demanded Rs. 1,35,000/- as his cut for facilitation of export in this case. This, is a huge amount for trade facilitation by a forwarder. The final deal was struck at Rs 95,000/- of which Rs. 85,000/- was his cut, which received through Shri Rahul Khapeka. I thus find that through his actions Shri Rahul Khapekar has made himself liable for penalty under section 117 of the customs Act, 1962, which is reproduced as under-

***“117. Penalties for contravention, etc., not expressly mentioned.***

*- Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply,*

*where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [Four lakh rupees]"*

I find that he has relied upon statement of Shri Shaileshkumar that he was not aware of the contents of the export, however, the higher amount he received indicates that he was a beneficiary in the entire scheme of things.

I also find that the case law cited by him in his submission is not squarely applicable in this instance.

**17.7. Whether Shri Rahul Khapekar, is liable for penalty under Section 117 of the Customs Act, 1962.**

**17.7.1.** I find that Shri Rahul Khapekar had received payments from Shri Shaileshkumar and passed it to Shri Nikunjhai. He is a facilitator in the entire scheme of things to the extent that he received the payment in his account and kept his cut of Rs. 10,000/-. I thus find that through his actions Shri Rahul Khapekar has made himself liable for penalty under section 117 of the customs Act, 1962, which is reproduced as under-

***"117. Penalties for contravention, etc., not expressly mentioned.***

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

**17.7.2.** I find that he has relied upon statement of Shri Shaileshkumar that he was not aware of the contents of the export, however, the amount he received indicates that he was a beneficiary in the entire scheme of things.

**18. In view of the discussion above, I pass the following order:-**

**ORDER**

- i) I reject the declared FOB value Rs. 2,70,36,863.05/- (by the exporter, i.e. M/s S. R. Enterprise) of Goods intended for export vide Shipping Bill No. 4702187 dated 17.10.2023 under 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) I accept the market value of the goods i.e. Rs. 44,46,000/-, in respect of Shipping Bill No. 4702187 dated 17.10.2023 as has been ascertained by the empaneled Charter Engineer, for the purpose of the valuation of goods intended for export, in terms of the provisions of Section 14 of the Customs Act, 1962 read with provisions of Rule 4 and Rule 6 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007;

- iii) I order to confiscate the improper goods that were intended for export vide Shipping Bill No. 4702187 dated 17.10.2023, under Section 113(e) and 113(i) of the Customs Act, 1962. However, I give an option to M/s S.R. Enterprise to redeem the confiscated goods on payment of **Rs. 10,00,000/- (Rupees Ten Lakhs Only)**, under the provisions of Section 125 (1) of the Customs Act, 1962;
- iv) I impose penalty of **Rs. 44,46,000/- (Rupees Fourty Four Lakhs Fourty Six Thousand Only)** on M/s S.R. Overseas under section Section 114(iii) of the Customs Act, 1962;
- v) I impose penalty of **Rs. 45,00,000/- (Rupees Fourty Five Lakhs Only)** on M/s S.R. Overseas under section 114AA of the Customs Act, 1962;
- vi) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakhs Only)** under Section 114(iii) of the Customs Act, 1962, on M/s. Yashvi Shipping, Surya Heights, Plot No. 211, DC-2, Gandhidham, Kutch, Gujarat for their role in facilitation for the intended export of improper goods;
- vii) I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** under Section 117 of the Customs Act, 1962 on Shri Nikunjibhai Rameshbhai Dalal, Deputy Manager-Sales, M/s. Asian Worldwide Services India Private Limited, for their role in facilitation for the intended export of improper goods;
- viii) I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** under Section 117 of the Customs Act, 1962 on Shri Rahul Khapekar for their role in facilitation for the intended export of improper goods.

The Show Cause Notice No. **VIII/10-204/ICD-Khod/O&A/HQ/2023-24** dated 21.02.2024 is disposed off in above terms.

*V. Malani*  
14/5/24

(Vishal Malani)  
Additional Commissioner

**DIN:** 20240571MN000000DB83

F. No. VIII/10-204/ICD-Khod/O&A/HQ/2023-24

Date: 14.05.2024

To,

1. M/s. S. R. Enterprise,  
L-12, Payal Flats, Judges Bungalow Road,  
Nr. Mansi Circle, Vastrapur,  
Ahmedabad, Gujarat-3800015

2. M/s. Yashvi Shipping, Surya Heights,  
Plot No. 211, DC-2,  
Gandhidham, Kutch, Gujarat

3. Shri Nikunjbhai Rameshbhai Dalal,  
Deputy Manager-Sales,  
M/s. Asian Worldwide Services India Private Limited,  
A-808, 8<sup>th</sup> Floor, Sun Westbank, Opposite City Gold Cinema,  
Ashram Road, Ahmedabad.

Now,

Shri Nikunjbhai Rameshbhai Dalal,  
F-306, 3<sup>rd</sup> Floor, Devnandan Park,  
Opp. Hari Om Villa Bungalow,  
New India Colony, Nikol, Ahmedabad

4. Shri Rahul Khapekar,  
residing at M-63, Orchid White field,  
Makaraba, Ahmedabad

**Copy to :-**

1. The Principal Commissioner, Customs Commissionerate, Ahmedabad, for information please.
2. The Assistant/ Deputy Commissioner, ICD-Khodiyar, Ahmedabad – 380 007
3. The Dy. Commissioner (Task Force), Customs Hq., A'bad
4. Superintendent (Systems), Customs, Ahmedabad for uploading on website
- ✓ 5. Guard File.