

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOM HOUSE, MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No. 02838-271029/423 FAX No. 02838-271425 Email : adj-mundra@gov.in, <i>adjmundra@gmail.com</i>
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A	फा. सं./FILE NO.	F. No. GEN/ADJ/ADC/406/2024-Adjn
B	मूल आदेश संख्या/ ORDER-IN-ORIGINAL NO.	MCH/ADC/MK/314/2024-25
C	द्वारा पारित किया गया / PASSED BY	मुकेश कुमारी अपर आयुक्त, सीमा शुल्क सीमा शुल्क भवन, मुन्द्रा
D	आदेश की तिथि DATE OF ORDER	24.02.2025
E	जारी करने की तिथि DATE OF ISSUE	24.02.2025
F	कारण बताओ नोटिस संख्या & तिथि SCN NUMBER & DATE	CUS/ASS/MISC/173/2024-EA-O/o Pr Commr-Cus-Mundra dt. 15.02.2024
G	निर्यातक / नोटिस प्राप्तकर्ता ExPORTER / NOTICEE	M/s Murali Traders
H	डिन संख्या /DIN NUMBER	20250271MO0000717586

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

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

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

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

सीमाशुल्क आयुक्त) अपील,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR
BHUVAN ROAD,

NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

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

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

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

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

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

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

BRIEF FACT OF THE CASE:-

1 Received NCTC alert that M/s. Murali Traders (IEC- GPTPM5995G) [GSTIN-24GPTPM5995G1ZZ] (hereinafter referred to as ‘the Exporter’), Shop No.29-X Gruham Empire, Sayan Road, Amroli Road, Kosad Road, Surat, Gujarat-394107 that export goods “Various type of Ready-Made Garments” had been overvalued, Shipping Bills was filed through their CB M/s Vandan Forwarders Pvt. Ltd. (AAACP2102MCH001) declaring their goods under various CTH of Ready Made Garments. The country of destination is declared

as Tanzania and the port of discharge is Zanzibar.

2. The details of the Shipping Bill are as under:

Shipping Bill No. & Date	Description of Goods	Gross Weight (in Kgs)	FOB Value (in Rs.)	Drawback Amount (in Rs.)	RODTEP Amount (in Rs.)	ROSCTL Amount (in Rs.)
4799320 dated 13.10.2022	Ready Made Garments	2919	7096243.13	187764	16320	314257
4800555 dated 13.10.2022	Ready Made Garments	1843	6551961.98	171276	0	316107
4799300 dated 13.10.2022	Ready Made Garments	2005	6602672.25	147555	0	295684
4799577 dated 13.10.2022	Ready Made Garments	2300	6569143.82	180475	0	314010
4799522 dated 13.10.2022	Ready Made Garments	1809	6664630.48	179118	0	320345
4799993 dated 13.10.2022	Ready Made Garments	1982	6772943.60	185193	0	324589
4799985 dated 13.10.2022	Ready Made Garments	1860	6834658.12	190580	0	326680
4799987 dated 13.10.2022	Ready Made Garments	1697	6745900.22	175393	0	325827
4799938 dated 13.10.2022	Ready Made Garments	1525	6983729.58	180545	0	339832
4799962 dated 13.10.2022	Ready Made Garments	760	3498043.18	85276	0	172590
Total			64319927	1683175	16320	304992

3. Issue in Brief:

3.1 Based upon the NCTC alert, the consignment was put up on hold and the goods brought for Export under the above mentioned Shipping Bills were examined on 31.10.2022 in presence of H card holder of Customs Broker Shri Kanti Joshi vide Examination Report dated 31.10.2022 (RUD-1) at M/s Ashutosh CFS, Mundra Port, Mundra. The goods were lying in Warehouse of the CFS, it is observed that the goods were packed in white coloured bales/bags. The number of bales were counted and found correct, and then random bales were selected and opened from each Shipping Bills and examined. Examination has been done and goods found as declared in Shipping Bills.

3.2 Whereas, the cargo appears to be overvalued to avail the export incentives by the

exporter, therefore, opinion of empanelled Chartered Engineer was sought. Chartered Engineer submitted his reports/opinion certificate ABJ: INSP:CE:23-24:74, Ref: ABJ:INSP:CE:23-24:75, Ref: ABJ:INSP: CE: 23-24:76, Ref:ABJ:INSP:CE: 23-24:71, Ref:ABJ:INSP: CE:23- 24:72,Ref:ABJ:INSP:CE:23-24:73, Ref:ABJ:INSP:CE:23-24:78, Ref:ABJ:INSP: CE: 23-24:70, Ref:ABJ:INSP:CE:23-24:76A, Ref:ABJ:INSP:CE:23-24:77 all dated 21.11.2022 (RUD-2) and re-determined the value of the goods as Rs.4,50,32,182/- instead of Rs.6,43,19,927/- as declared by the exporter. The details of the same are as under: -

Sr. No.	Shipping Bill No. & Date	Invoice No.	Total FOB value of the goods declared by the exporter (in USD)	Total FOB value of the goods assessed by CE (in USD)	Total FOB value of the goods declared by the exporter (in Rs.)	Total FOB value of the goods assessed by CE (in Rs.) [1 USD=80.71INR]
1	4799320 dated 13.10.2022	MT/03/22-23	87933.62	61407	7096243.13	4955544.90
2	4800555 dated 13.10.2022	MT/04/22-23	81189.12	57043.20	6551961.98	4603386.24
3	4799300 dated 13.10.2022	MT/05/22-23	81817.50	57368.75	6602672.25	4629658.12
4	4799577 dated 13.10.2022	MT/07/22-23	81402.03	56788.20	6569143.82	4582807.74
5	4799993 dated 13.10.2022	MT/08/22-23	83927.43	58751.55	6772943.60	4741250.08
6	4799985 dated 13.10.2022	MT/09/22-23	84692.17	59426.55	6834658.12	4795722.58
7	4799522 dated 13.10.2022	MT/06/22-23	82585.26	57653.40	6664630.48	4652629.38
8	4799987 dated 13.10.2022	MT/10/22-23	83592.32	58540.80	6745900.22	4724242.56
9	4799938 dated 13.10.2022	MT/11/22-23	86539.40	60824.30	6983729.58	4908521.01
10	4799962 dated 13.10.2022	MT/12/22-23	43346.26	30215.85	3498043.18	2438419.09
Total			797025.11	557929.6	64319926.36	45032181.7

3.3 Whereas, the exporter has mis-declared the goods in terms of value of goods, therefore the same were liable for confiscation under Section 113(i) & 113(ja) of the Customs Act, 1962. Accordingly, the said goods were seized vide seizure memo dated 22.11.2022 (RUD-3) and Export Section, Customs House, Mundra was requested to withhold all export incentives.

3.4 The exporter has requested for provisional release of the goods and furnished Bond for Rs.6,43,19,926/- alongwith Bank Guarantee No.1570- bg0002-22 dated 07.12.2022 for Rs.2,00,000/- (Rupees Two Lakh Only) after acceptance of the Bond and Bank Guarantee the goods were released on provisional basis (RUD-4).

3.5 Whereas, in order to verify genuineness of the Exporter as well as the supply chain of the Exporter Jurisdictional GST authorities were requested on dated 21.11.2022. However, NCTC vide e-mail dated 27.12.2022 (RUD-5) has submitted that exporter M/s. Murali Traders (GSTIN-24GPTPM5995G1ZZ) was found to be non-existent as per verification report from CGST, Surat Commissionerate.

3.6 During the course of investigation, summons was issued to the exporter to produce the export related documents and tendering statement on dated 06.02.2023, 12.12.2023 and 19.12.2023 (RUD-6), however, the exporter had neither produced relevant documents nor appeared for statement, summons was issued to CB M/s Vandan Forwarder Pvt. Ltd., Mundra to produce the export related documents and KYC documents on dated 27.04.2023, M/s Vandan Forwarder Pvt. Ltd., Mundra had submitted copy of Shipping Bills and KYC documents, later on summons were issued to the CB M/s Vandan Forwarder Pvt. Ltd., Mundra on dated 04.11.2023, 28.12.2023, 03.01.2024 & 11.01.2024 (RUD-7) for furnishing whereabouts of exporter, communication related to the shipment of exporter and other details and statement. However, the CB firm has neither produced relevant documents nor appeared for statement.

3.7 Whereas, it appears that the CB firm M/s Vandan Forwarder Pvt. Ltd., Mundra has failed to identify his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information as the exporter were found to non-existent at the declared address as per verification report from CGST, Surat Commissionerate. In addition to this, the CB firm M/s Vandan Forwarder Pvt. Ltd., Mundra has failed to co-operate with the Customs Authorities and not produced documents.

4. Re-valuation of the Goods:

4.1. In view of the foregoing paras, it is evident that the Exporter is non-existent and it appears that the value declared by the Exporter was not proper/actual value and liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of export goods) Rules, 2007. Further, it also appears that in terms of Rule 3 (3) of the said rules, the value has to be re-determined by proceeding sequentially under Rule 4 to 6. In the instant case, the value of export goods could not be determined in terms of Rule 4, as the goods under export could not be compared with similar goods in the absence of exact description of the goods in terms of design, sizes etc. The value of the goods under export could not be determined, considering the cost of production, profit margin

etc. as per Rule 5 of the Rules Customs Valuation (Determination of export goods) Rules, 2007, as the exporter is non-existent. Thus, the value of impugned goods merit to be re-determined under residual method i.e. Rule 6 of the said Rules by conducting market inquiry to ascertain the fair value.

4.2 The valuation of goods is determined under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 using reasonable means consistent with the principles and general provisions of these Rules and, opinion of the Chartered engineer was taken by way of market research. The Chartered Engineer had submitted the valuation vide valuation certificate Ref: ABJ:INSP:CE:23-24:74,Ref:ABJ:INSP:CE:23-24:75, Ref:ABJ:INSP: CE:23-24:76,Ref:ABJ:INSP:CE:23-24:71,Ref:ABJ:INSP:CE:23-24:72, Ref:ABJ:INSP:CE:23-24:73,Ref:ABJ:INSP:CE:23-24:78, Ref:ABJ:INSP: CE :23- 24:70,Ref:ABJ:INSP:CE:23-24:76A,Ref:ABJ:INSP:CE:23-24:77 all dated 21.11.2022 in respect of the subject goods.

4.3. Valuation of goods i.e. Ready Made Garments, as per the value suggested by the Chartered Engineer are as under:

Sr. No	Shipping Bill No. and Date	CE Report Ref. No. and Date	Details of Goods	Qty (Pcs)	Per unit Declared Value (in USD)	Declared FOB (in USD)	Per unit Re-determined Value (in USD)	Total FOB (in USD)
1	4799577 dated 13.10.2022	Ref: ABJ:INSP:CE:23-24:74 dated 21.11.2022	Girls frock of polyester	1521	10.89	16563.69	7.6	11,559.6
			Girls 2 pcs suit set of blended	3510	11.1	38961	7.75	27,202.5
			Girls 2 pcs frock with jacket of polyester	2130	10.99	23408.7	7.65	16,294.5
			Girls 3 pcs suit set of blended	222	11.12	2468.64	7.8	1731.6
			Total	7383		81402.03		56,788.20
2	4799993 dated 13.10.2022	Ref: ABJ:INSP:CE:23-24:75 dated 21.11.2022	Girls frock of polyester	3087	10.89	33617.43	7.65	23615.55
			Girls 2 pcs suit set of blended	4176	11.1	46353.6	7.75	32364
			Girls 2 pcs frock with jacket of polyester	360	10.99	3956.4	7.7	2772
			Total	7623		83927.43		58751.55
	4799985	Ref: ABJ:INSP:CE:23-	Girls frock of polyester	4885	10.89	53197.65	7.65	37370.25
			Girls 2 pcs suit	978	11.1	10855.8	7.75	

3	dated 13.10.2022	24:76 dated 21.11.2022	set of blended					7579.5
			Girls 3 pcs suit set of blended	1856	11.12	20638.72	7.8	14476.8
Total				7719		84692.17		59426.55
4	4800555 dated 13.10.2022	Ref: ABJ:INSP:CE:23- 24:71 dated 21.11.2022	Girls 2 pcs frock with jacket of polyester	324	10.99	3560.76	7.7	2494.8
			Girls 2 pcs suit set of blended	6970	11.1	77367	7.8	54366
			Girls frock of polyester	24	10.89	261.36	7.6	182.4
			Total				7318	
5	4799300 dated 13.10.2022	Ref: ABJ:INSP:CE:23- 24:72 dated 21.11.2022	Womens long dress of cotton	3800	10.65	40470	7.5	28500
			Girls 2 pcs suit set of blended	3725	11.1	41347.5	7.75	28868.75
Total				7525		81817.5		57368.75
6	4799522 dated 13.10.2022	Ref: ABJ:INSP:CE:23- 24:73 dated 21.11.2022	Girls frock of polyester	2214	10.89	24110.46	7.6	16826.4
			Girls 2 pcs suit set of blended	5268	11.1	58474.8	7.75	40827
Total				7482		82585.26		57653.4
7	4799962 dated 13.10.2022	Ref: ABJ:INSP:CE:23- 24:78 dated 21.11.2022	Girls frock of polyester	589	10.89	6414.21	7.6	4476.4
			Girls 2 pcs suit set of blended	990	11.1	10989	7.75	7672.5
			Girls 2 pcs frock with jacket of polyester	630	10.99	6923.7	7.65	4819.5
			Girls jeans of cotton	217	10.85	2354.45	7.6	1649.2
			Girls leggings of cotton	328	10.75	3526	7.5	2460
			Girls pants of cotton	233	10.82	2521.06	7.55	1759.15
			Girls shorts of cotton	36	9.5	342	6.6	237.6
			Girls skirts of cotton	153	10.78	1649.34	7.5	1147.5
			Girls top of cotton	810	10.65	8626.5	7.4	5994
Total				3986		43346.26		30215.85
			Girls 2 pcs frock with					

8	4799320 dated 13.10.2022	Ref: ABJ:INSP:CE:23- 24:70 dated 21.11.2022	jacket of polyester	1524	10.99	16748.76	7.65	11658.6
			Girls 2 pcs suit set of blended	2496	11.1	27705.6	7.75	19344
			Girls 3 pcs suit set of blended	565	11.12	6282.8	7.8	4407
			Girls frock of polyester	2484	10.89	27050.76	7.6	18878.4
			Ladies skirts of cotton	270	10.91	2945.7	7.7	2079
			Cotton fabrics GSM : 135	4800	1.5	7200	1.05	5040
Total				12139		87933.62		61407
9	4799987 dated 13.10.2022	Ref: ABJ:INSP:CE:23- 24:76A dated 21.11.2022	Girls 2 pcs suit set of blended	2616	11.1	29037.6	7.75	20274
			Girls 3 pcs suit set of blended	4906	11.12	54554.72	7.8	38266.8
Total				7522		83592.32		58540.8
10	4799938 dated 13.10.2022	Ref: ABJ:INSP:CE:23- 24:77 dated 21.11.2022	Boys pants of cotton	235	10.88	2556.8	7.7	1809.5
			Girls 2 pcs suit set of blended	7566	11.1	83982.6	7.8	59014.8
Total				7801		86539.4		60824.3
Grand Total				76498		797025.11		558019.8

5. RELEVANT LEGAL PROVISIONS:

CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007:

Rule 8. Rejection of declared value-

(2) (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.

Rule 3 Determination of the method of valuation–

(1) Subject to rule 8, the value of export goods shall be the transaction value.

(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule

(1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

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.

CUSTOMS ACT, 1962:

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

The following export goods shall be liable to confiscation: -

....

...

(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.

(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;

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,

.....

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.

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.

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

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

Custom Broker Licensing Regulations, 2018

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

...

10 (q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

6. SUMMARY OF INVESTIGATION:

6.1 In view of the foregoing paras, it appears that the Exporter has mis-declared the goods with intent to avail higher export incentive by overvaluing the impugned goods. The FOB value declared by the Exporter in the export documents was Rs.6,43,19,927/- (Rupees Six Crore Forty-Three Lakh Nineteen Thousand Nine Hundred and Twenty Seven only) whereas during the market enquiry valuation of the goods comes to Rs.4,50,32,182/- (Rupees Four Crore Fifty Lakh Thirty Two Thousand One Hundred and Eighty Two only). However, goods were seized and provisionally released. Since, the exporter himself was found non-existent, therefore, the goods are liable for confiscation under Section 113(i) & Section 113(ja) of the Customs Act, 1962.

6.2 From the foregoing enquiry, it appears that:

i. The value declared by the Exporter was not the proper/actual value and liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Export Goods) Rules, 2007.

ii. The exporter had overvalued the goods intentionally to claim excess amount of Drawback, RODTEP and ROSCTL. The value of the goods was found substantially lower than the declared value. The exporter had claimed drawback amounting to Rs.16,83,175/- (Rupees Sixteen Lakh Eighty Three Thousand One Hundred and Seventy Five only), RODTEP claimed amounting to Rs.16,320/- (Rupees Sixteen Thousand Three Hundred and Twenty only) & ROSCTL claimed amounting to Rs. 30,49,921/- (Rupees Thirty Lakh Forty Nine Thousand Nine Hundred and Twenty One only) by mis-declaring the FOB value of export goods at Rs.6,43,19,927/- (Rupees Six Crore Forty Three Lakh Nineteen Thousand Nine Hundred and Twenty Seven only) while the re-determined FOB value is Rs.4,50,32,182/- (Rupees Four Crore Fifty Lakh Thirty Two Thousand One Hundred and Eighty Two only).

7. In view of the above, it appears that the exporter has attempted to export the impugned goods to avail export incentives by overvaluing the goods so the goods were put on seizure and released provisionally, therefore, the goods covered under impugned Shipping Bills are liable for confiscation under Section 113 (i) & Section 113(ja) of the Customs Act, 1962. The exporter for their acts of omission and commission is also liable to pay penalty under Section 114 and Section 114AA of the Customs Act, 1962. It appears that the Custom Broker did not follow due diligence in respect of the said exporter and also failed to comply

with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018), thus, appears to be liable for penal action under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018.

8.1. Now, therefore, M/s Murali Traders (IEC- GPTPM5995G) [Legal Name- Rupesh Sachin More GSTIN-24GPTPM5995G1ZZ], Shop No.29-X Gruham Empire, Sayan Road, Amroli Road, Kosad Road, Surat, Gujarat-394107 (the exporter) are hereby called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why:

(i) The FOB value of Rs.6,43,19,927/- (Rupees Six Crore Forty Three Lakh Nineteen Thousand Nine Hundred and Twenty Seven only) of the goods covered under impugned Shipping Bill bearing No. 4799320, 4800555, 4799300, 4799522, 4799577, 4799993, 4799985, 4799987, 4799938 & 4799962 all dated 13.10.2022 should not be rejected under Rule 8 of Customs Valuation (Determination of Export Goods) Rules, 2007 and re-determined as Rs. 4,50,32,182/- (Rupees Four Crore Fifty Lakh Thirty-Two Thousand One Hundred and Eighty Two only) under Rule 6 of Customs Valuation (Determination of Export Goods) Rules, 2007.

(ii) The goods covered under impugned Shipping Bills as mentioned at (i) above, should not be confiscated under Section 113 (i) and 113 (ja) of the Customs Act, 1962.

(iii) The drawback claims of Rs.16,83,175/- (Rupees Sixteen Lakh Eighty- Three Thousand One Hundred and Seventy-Five only) in respect of impugned Shipping Bills as mentioned at (i) above should not be rejected.

(iv) The RODTEP claim of Rs. 16,320/- (Rupees Sixteen Thousand Three Hundred and Twenty only) in respect of impugned Shipping Bill as mentioned at (i) above should not be rejected.

(v) The ROSCTL claim of Rs.30,49,921/- (Rupees Thirty Lakh Forty-Nine Thousand Nine Hundred and Twenty-One only) in respect of impugned Shipping Bills as mentioned at (i) above should not be rejected.

(vi) Penalty should not be imposed upon the exporter under the provisions of Sections 114 (iii) of the Customs Act, 1962.

(vii) Penalty should not be imposed upon the exporter under the provisions of Sections 114 AA of the Customs Act, 1962.

(viii) Bond executed by them at the time of export should not be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee amount of Rs.2,00,000/- should not be en-cashed for recovery of the Penalty leviable against the Exporter.

8.2. Now, therefore, M/s. Vandan Forwarders Pvt. Ltd., Mundra (the Customs Broker of Exporter) are called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why;

(i) Penalty should not be imposed upon the exporter under the provisions of Sections 117 of the Customs Act, 1962.

9 . The export assessment cell, Custom House Mundra, has vide their letter F.No. CUS/ASS/MISC/173/2024-EA-O/oPr.Commr- Cus- Mundra Dt.29.01.2025 Issued following corrigendum w.r.t. to the SCN No. CUS/ASS/MISC/173/2024-EA-O/o Pr Commr-Cus-Mundra dt. 15.02.2024, the same is reproduced as below:

In the said SCN dt. 15.02.2024, Paras 8.2(i) mentioned as-

“Penalty should not be imposed upon the exporter under the provisions of section 117 of the Customs Act, 1962.”

May be read as –

“Penalty should not be imposed upon the CB under the provisions of section 117 of the Customs Act, 1962.”

All other contents of the original Show Cause Notice will remain unchanged.

10. Personal Hearing

Following principle of natural justice, the exporter was given opportunity to represent himself on 10.07.2024, 27.11.2024, 09.01.2025 in response to which no one either from the exporter nor from the CHA attended the PH. The final PH was given on 22.01.2025 in response to which no one from the exporter attended the PH.

However, Shri Kantibhai Narayanbhai Joshi, the then H-card holder of the CHA firm M/s Vandan Forwarders Pvt. Ltd. attended the PH. Wherein he stated that he has surrendered his 'H' card after this case and stated his innocence in the case. He further requested for an early decision in this case on merit.

11. Discussion and Findings

I have carefully gone through the facts of the case, allegations made in the show cause notice dated 15.02.2024, following the principles of natural justice as per the provisions of the Customs Act / Rules.

I find that following main issues are involved in the SCN, which are required to be decided-

(i) Whether the FOB value of Rs.6,43,19,927/- (Rupees Six Crore Forty Three Lakh Nineteen Thousand Nine Hundred and Twenty Seven only) of the goods covered under impugned Shipping Bill bearing No. 4799320, 4800555, 4799300, 4799522, 4799577, 4799993, 4799985, 4799987, 4799938 & 4799962 all dated 13.10.2022 should be

rejected under Rule 8 of Customs Valuation (Determination of Export Goods) Rules, 2007 and re-determined as Rs. 4,50,32,182/- (Rupees Four Crore Fifty Lakh Thirty-Two Thousand One Hundred and Eighty Two only) under Rule 6 of Customs Valuation (Determination of Export Goods) Rules, 2007.

(ii) Whether the goods covered under impugned Shipping Bills as mentioned at (i) above, should be confiscated under Section 113 (i) and 113 (ja) of the Customs Act, 1962.

(iii) Whether the drawback claims of Rs.16,83,175/- (Rupees Sixteen Lakh Eighty- Three Thousand One Hundred and Seventy-Five only) in respect of impugned Shipping Bills as mentioned at (i) above should be rejected.

(iv) Whether the RODTEP claim of Rs.16, 320/- (Rupees Sixteen Thousand Three Hundred and Twenty only) in respect of impugned Shipping Bill as mentioned at (i) above should be rejected.

(v) Whether the ROSCTL claim of Rs.30,49,921/- (Rupees Thirty Lakh Forty-Nine Thousand Nine Hundred and Twenty-One only) in respect of impugned Shipping Bills as mentioned at (i) above should be rejected.

(vi) Whether penalty should be imposed upon the exporter under the provisions of Sections 114 (iii) of the Customs Act, 1962.

(vii) Whether penalty should be imposed upon the exporter under the provisions of Sections 114 AA of the Customs Act, 1962.

(viii) Whether bond executed by them at the time of export should be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee amount of Rs.2,00,000/- should not be en-cashed for recovery of the Penalty leviable against the Exporter.

(ix) Whether penalty should be imposed upon the CB under the provisions of Sections 117 of the Customs Act, 1962.

1 2 . M/s. Murali Traders (IEC- GPTPM5995G) [GSTIN-24GPTPM5995G1ZZ] (hereinafter referred to as 'the Exporter'), Shop No.29-X Gruham Empire, Sayan Road, Amroli Road, Kosad Road, Surat, Gujarat-394107 that export goods "Various type of Ready-Made Garments" had been overvalued, Shipping Bills was filed through their CB M/s Vandan Forwarders Pvt. Ltd. (AAACP2102MCH001) declaring their goods under various CTH of Ready Made Garments. The country of destination is declared as Tanzania and the port of discharge is Zanzibar. Based upon the NCTC alert, the consignment was put up on hold and the goods brought for Export under the above mentioned Shipping Bills were examined on 31.10.2022 in presence of H card holder of Customs Broker Shri Kanti Joshi vide Examination Report dated 31.10.2022 (RUD-1) at M/s Ashutosh CFS, Mundra Port, Mundra. The goods were lying in Warehouse of the CFS, it is observed that the goods were packed in white coloured bales/bags. The number of bales were counted and found

correct, and then random bales were selected and opened from each Shipping Bills and examined. Examination has been done and goods found as declared in Shipping Bills.

13. Valuation of the goods.

I find that the value declared by the Exporter was not proper/actual value and liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of export goods) Rules, 2007. Therefore, the same has been determined under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 using reasonable means consistent with the principles and general provisions of these Rules and, opinion of the Chartered engineer was taken by way of market research. The Chartered Engineer had submitted the valuation vide valuation certificate Ref: ABJ: INSP: CE:23-24:74, Ref: ABJ: INSP: CE:23-24:75, Ref:ABJ:INSP: CE:23-24:76, Ref:ABJ:INSP:CE:23-24:71, Ref:ABJ:INSP:CE:23-24:72, Ref:ABJ:INSP:CE:23-24:73, Ref:ABJ:INSP:CE:23-24:78, Ref:ABJ:INSP: CE :23- 24:70, Ref:ABJ:INSP:CE:23-24:76A, Ref:ABJ:INSP:CE:23-24:77 all dated 21.11.2022 in respect of the subject goods. Which has restricted the value of the goods to USD. 5,58,019.6/- (Rs. 4,50,32,182/-) against the declared value of USD 7,97,025.1/-(Rs. 6,43,19,927/-) The same is found to be correct and accepted for adjudication of the case.

14. Confiscation of the Goods.

14.1 The Section 113: Confiscation of goods attempted to be improperly exported, etc. –provides for following:

....
...

(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.

(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;

14.2 I find that the in view of the foregoing para no. 12 (not repeated here for the sake of brevity), it appears that the Exporter has mis- declared the goods with intent to avail higher export incentive by overvaluing the impugned goods. The FOB value declared by the Exporter in the export documents was Rs.6,43,19,927/- (Rupees Six Crore Forty Three Lakh Nineteen Thousand Nine Hundred and Twenty Seven only) whereas the same has been determined under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 using reasonable means consistent with the principles and general provisions of these Rules and, opinion of the Chartered engineer was taken by way of market research

and concluded to to be Rs.4,50,32,182/- (Rupees Four Crore Fifty Lakh Thirty Two Thousand One Hundred and Eighty Two only). In view of the above I find that since the exporter has misdeclared the goods in terms of value and also claimed for export benefits on the misdeclared value, I therefore, find the goods are liable for confiscation under Section 113(i) & Section 113(ja) of the Customs Act, 1962.

14.3 I find that the goods have been held liable for confiscation under section 113 (i) and 113 (ja) of the Customs Act, 1962 as discussed at para 14.2 (Not repeated here for the sake of brevity). I am inclined to impose redemption fine on them although the same are not available for confiscation. In this regard, I rely upon the judgements, as enumerated below:

i. Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), held in para 23 of the judgment as below:

“The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.

ii. The above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.).

iii. Further, neither the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) nor the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd.

reported in 2020 (33) G.S.T.L. 513 (Guj.) has been challenged by any of the parties and are in operation.

15. Rejection of export benefits i.e. DBK, RODTEP, ROSCTL

15.1 The SCN has proposed for rejection of the drawback amount of Rs. 16,83,175/- (Rupees Sixteen Lakh Eighty- Three Thousand One Hundred and Seventy-Five only), The RODTEP amount of Rs. 16, 320/- (Rupees Sixteen Thousand Three Hundred and Twenty only) and the ROSCTL amount of Rs.30,49,921/- (Rupees Thirty Lakh Forty-Nine Thousand Nine Hundred and Twenty-One only).

15.2. In addition to the para no. 12 (not repeated here for the sake of brevity) I find that during the investigation the exporter neither appeared for the statement nor submitted any written statement in his defense. Further, the during verification of the genuineness of the Exporter as well as the supply chain of the Exporter Jurisdictional GST authorities) CGST, Surat Commissionerate has found the exporter M/s Murali Traders to be non-existent in their verification report. Therefore, I find that the M/s Murali Traders had evident mal-intentions in order to gain undue export benefits by means of misdeclaration of the goods in terms of value and once the goods were release on bond and BG the exporter vanished from the scenes and did not corporate at any stage of the investigation.

15.3. In view of the above, I find that the because of his mal-intentions to gain undue export benefits, non- cooperation with the investigation and non-existence report from the jurisdictional CGST Commissionerate, I find that the exporter's all the export benefits i.e. drawback amount of Rs. 16,83,175/- (Rupees Sixteen Lakh Eighty- Three Thousand One Hundred and Seventy-Five only), The RODTEP amount of Rs. 16, 320/- (Rupees Sixteen Thousand Three Hundred and Twenty only) and the ROSCTL amount of Rs.30,49,921/- (Rupees Thirty Lakh Forty-Nine Thousand Nine Hundred and Twenty-One only) are liable for rejection

16. Penalty under section 114(iii) of the Customs Act, 1962

16.1 The section 114, of the Customs act, 1962 provides for the following

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,

.....

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.

16.2 I find that the SCN has proposed penalty on the exporter, M/s Murali Traders under section 114(iii) of the Customs Act, 1962. From the foregoing paras no. 12 & 13.2 (Not repeated here for the sake of brevity) the goods were initially overvalued to Rs. 6,43,19,927/- which were revalued to Rs. 4,50,32,182/- by the charter Engineer. In view of the above, I find that the exporter has mis-declared the goods in terms of value therefore the exporter, M/s Murali Traders via his proprietor has rendered himself for penalty under section 114(iii) of the Customs Act, 1962.

17. Penalty under section 114AA of the Customs Act, 1962

17.1 The Section 114AA of the Customs Act, 1962 provides for following
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.

17.2 I find that the SCN has proposed penalty on the exporter, M/s Murali Traders under section 114AA of the Customs Act, 1962. From the foregoing paras no. 12 & 13.2 (Not repeated here for the sake of brevity) the goods were initially overvalued to take higher export benefits. It is evident from the investigation that the exporter has knowingly and intentionally made, signed declaration, statement or document which is false or incorrect. In view of the above, I find that the exporter has mis-declared the goods in terms of value therefore the exporter, M/s Murali traders through his proprietor is liable for penalty under section 114AA of the Customs Act, 1962.

18. Execution of Bond and encashment of the Bank Guarantee

I find that inspired by his malafide intentions, the exporter M/s Murali Traders vanished from the scenes once the goods were released provisionally on Bond and BG. The exporter never appeared for the statement not submitted his written submission in his defense. Therefore, I find that exporter is liable for enforcement of the bond in terms of Section 143(3) of the Customs Act, 1962 and encashment of the Bank Guarantee amount of Rs.2,00,000/- for recovery of the Penalty leviable against the Exporter.

19. Penalty on M/s Vandan Forwarders (Custom Broker)

19.1 The section 117 of the Customs Act, 1962 provides for the following:

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.

19.2 I find that M/s Vandan forwarders (Custom Broker) assisted the exporter M/s Murali Traders in the filing of the documents and other customs procedures. However, I find that when they were called for by the investigating agency for furnishing whereabouts of exporter, communication related to the shipment of exporter and other details and statement, the CB firm has neither produced relevant documents nor appeared for statement. Therefore it is evident that the CB firm M/s Vandan Forwarder Pvt. Ltd., Mundra has failed to identify his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information as the exporter were found to non-existent at the declared address as per verification report from CGST, Surat Commissionerate. In addition to this, the CB firm M/s Vandan Forwarder Pvt. Ltd., Mundra has failed to co-operate with the Customs Authorities and not produced the desired documents. It appears that the Custom Broker did not follow due diligence in respect of the said exporter and also failed to comply with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018), I find that M/s Vandan Forwarders (CB) is liable for penalty under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018.

20. ORDER

20.1 In view of the above discussion and findings I pass following order:

(i) I reject the FOB value of Rs. 6,43,19,927/- (Rupees Six Crore Forty Three Lakh Nineteen Thousand Nine Hundred and Twenty Seven only) of the goods covered under impugned Shipping Bill bearing No. 4799320, 4800555, 4799300, 4799522, 4799577, 4799993, 4799985, 4799987, 4799938 & 4799962 all dated 13.10.2022 under Rule 8 of Customs Valuation (Determination of Export Goods) Rules, 2007 and re- determine the same as Rs. 4,50,32,182/- (Rupees Four Crore Fifty Lakh Thirty-Two Thousand One Hundred and Eighty Two only) under Rule 6 of Customs Valuation (Determination of Export Goods) Rules, 2007.

(ii) I order for confiscation of the goods covered under impugned Shipping Bills as mentioned at (i) above, under Section 113 (i) and 113 (ja) of the Customs Act, 1962. However, I offer the same for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of Rs. 96,00,000/- (Rs. Ninety Six Lakhs Only). Further, as per the provisions of Section 125(3) of the Customs Act, 1962. if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.

(iii) I reject the drawback claims of Rs.16,83,175/- (Rupees Sixteen Lakh Eighty- Three Thousand One Hundred and Seventy-Five only) in respect of impugned Shipping Bills as mentioned at (i).

(iv) I reject the RODTEP claim of Rs.16, 320/- (Rupees Sixteen Thousand Three Hundred and Twenty only) in respect of impugned Shipping Bill as mentioned at (i).

(v) I reject the ROSCTL claim of Rs.30,49,921/- (Rupees Thirty Lakh Forty-Nine Thousand Nine Hundred and Twenty-One only) in respect of impugned Shipping Bills as mentioned at (i).

(vi) I impose penalty of Rs. 15,00,000/- (Rs. Fifteen Lakhs Only) upon the exporter under the provisions of Sections 114 (iii) of the Customs Act, 1962.

(vii) I impose penalty of Rs. 10,00,000/- (Rs. Ten Lakhs Only) upon the exporter under the provisions of Sections 114 AA of the Customs Act, 1962.

(viii) I order for enforcement of bond executed by them at the time of export in terms of Section 143(3) of the Customs Act,1962 and encashment of the Bank Guarantee amount of Rs.2,00,000/- for recovery of the Penalty leviable against the Exporter.

(ix) I impose penalty of Rs. 3,00,000/- (Rs. Three Lakhs Only) upon M/s Vandan Forwarders Pvt. Ltd., CB under the provisions of Section 117 of the Customs Act, 1962.

21. In terms of the above order the SCN No. CUS/ASS/MISC/173/2024-EA-O/o Pr Commr-Cus-Mundra dt. 15.02.2024 stands disposed of.

मुकेश कुमारी
अपर आयुक्त, अधिनिर्णयन,
सीमा शुल्क भवन, मुन्द्रा

सेवा में,

1. M/s. Murali Traders (IEC- GPTPM5995G) [Legal Name-Rupesh Sachin More GSTIN-24GPTPM5995G1ZZ], Shop No.29-X Gruham Empire, Sayan Road, Amroli Road, Kosad Road, Surat, Gujarat-394107. Email id:- muralitra0123@gmail.com

2. M/s. Vandan Forwarders Pvt. Ltd., M/08, Golden Arcade, Zero Point, Adani Port Road, Mundra-370421. Email id:- vandanforwarder214@gmail.com

प्रति,

1. The Deputy/Assistant Commissioner Export Assessment, Customs House, Mundra.
2. The Deputy/Assistant Commissioner (RRA), Customs House, Mundra.
3. The Deputy/Assistant Commissioner (TRC), Customs House, Mundra.
4. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra for uploading the same on the website of Customs House, Mundra.
5. The Deputy/Assistant Commissioner (CB section), Customs House, Mundra
6. Guard File.

