
	<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</p> <p>CUSTOMS HOUSE, MUNDRA, KUTCH- GUJARAT -370421</p> <p>PHONE : 02838-271426/271428</p> <p>FAX :02838-271425</p> <p>E-mail: adj-mundra@gov.in</p>	 <p>आज़ादी का अमृत महोत्सव</p>
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A	FILE NO./फ़ाइल संख्या	GEN/ADJ/ADC/945/2025-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO./आदेश संख्या	MCH/ADC/AKM/616/2025-26
C	PASSED BY/जारीकर्ता	Amit Kumar Mishra, ADDITIONAL COMMISSIONER, Customs House, Mundra.
D	DATE OF ORDER/आदेश की तारीख	06.02.2026
E	DATE OF ISSUE/जारी करने की तिथि	06.02.2026
F	SCN No. & Date/कारण बताओ नोटिस क्रमांक	10/2025-26/ADC/MK/ADJ/MCH
G	NOTICEE/ PARTY/ EXPORTER नोटिसकर्ता/पार्टी/ निर्यातक	<p>1. M/s. Kapil Enterprises, Wazirpur Industrial Area, Basement Floor, Rajender Jaina Tower, RJT 37 Plot No. 18, New Delhi, North West Delhi, Delhi – 110052.</p> <p>2. M/s. Shree Radhakrishna Shipping Pvt. Ltd., 1st Floor, Office No. 2, Savla Chambers, Plot No. 455, Sector 1/A, Gandhidham – 370201.</p>
H	DIN/दस्तावेज़ पहचान संख्या	20260271MO000000ED74

1. यह आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
2. This Order - in - Original is granted to the concerned free of charge.
3. 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-
4. 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:

“सीमाशुल्कआयुक्त) अपील,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

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

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

6. 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-1870के 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.

7. 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.

8. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982और 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.

9. 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 FACTS OF THE CASE

M/s. Kapil Enterprises, having IEC No. HHRPM2305F [GSTN No. 07HHHRPM2305F1Z9, Legal Name- Kapil Mathur] (hereinafter referred to as 'the Exporter' for sake of brevity), Wazirpur Industrial Area, Basement Floor, Rajender Jaina Tower, RJT 37 Plot No. 18, New Delhi, North West Delhi, Delhi – 110052, had filed three (03) Shipping Bills i.e. 4887142/18.10.2022, 4887146/18.10.2022 and 4887195/18.10.2022 for export of "Ready-Made Garments" declaring their goods under CTH-62114300 and 62042300. The Country of destination is declared as Pakistan.

1.1 An NCTC alert dated 19.10.2022 was received to the effect that Shipping Bills bearing nos. 4887142, 4887146 and 4887195 all dated 18.10.2022 filed by M/s Kapil Enterprises, are of high value export incentives for a risky commodity and risky country and NCTC intimated that the supply chain of the exporter appears to be fake/manipulated as inward supply chain is not proper. The exporter is claiming high value export incentives. Further, NCTC also intimated that there is high probability of mis-declaration, mis-classification and over-valuation with a view to availing high undue export incentives, as well as undue ITC refund.

The details of the Shipping Bill are as under:

Table-A

Sr. No.	Shipping Bill No.	Shipping Bill Date	FOB Value (in Rs.)	Drawback Amount (in Rs.)	ROSCTL Amount (in Rs.)
1.	4887142	18.10.2022	74,01,263/-	2,73,847/-	2,81,248/-
2.	4887146	18.10.2022	66,96,159/-	2,40,850/-	2,54,455/-
3.	4887195	18.10.2022	65,44,144/-	2,34,133/-	2,48,677/-
TOTAL			2,06,41,566/-	7,48,830/-	7,84,380/-

2. Investigation:

2.1 During the course of investigation, it was found that LEO has already been issued in respect of Shipping Bills bearing nos. 4887142, 4887146 and 4887195 all dated 18.10.2022. As the goods had already been exported before receiving NCTC alert, the examination could not be carried out to rule out the mis-declaration, mis-classification and over-valuation etc. alleged in NCTC alert. However, acting on the above information, letter dated 07.11.2022 was issued to the Deputy Commissioner, Drawback Section, Customs House, Mundra to hold export incentives of the exporter in respect of Shipping Bills bearing nos. 4887142, 4887146 and 4887195 all dated 18.10.2022.

2.2 Whereas, jurisdictional GST authority, i.e. the Additional Commissioner, Delhi SGST was requested to verify inward supply of the Exporter as well as existence of the Exporter by this office. The GSTO, Ward-66, Dept. of Trade & Taxes, Govt. of NCT of Delhi, vide their e-mail dated 03.10.2024 forwarded field visit report dated 03.10.2024, wherein, it has been stated that the firm did not exist at the registered address and GSTIN has also been suspended w.e.f. 12.04.2023. As the exporter was found to be non-existent at the premises, summons dated 23.12.2024 was issued to the proprietor of the exporter Shri Kapil Mathur, for recording his statement in this regard, however, he neither appeared nor furnished any written reply.

2.3 Vide email dated 27.11.2022, NCTC informed that as per CGST Delhi West verification report, the L2 supplier of the exporter M/s. Kapil Enterprises (GSTN No. 07HHHRPM2305F1Z9) namely M/s. Mega Pari (GSTIN-07AJHPN4529K1ZV) and L3 supplier M/s. Dark Wings International (GSTIN-07CBBPN2839J1ZH) were found to be non-existent.

2.4 During the course of investigation, summons was issued to the exporter to produce the export related documents, documents related to supply chain and tendering statement. Shri Vikas Goyal, Authorised Person of M/s. Kapil Enterprises appeared and his statement was recorded on 11.02.2023 wherein he inter-alia stated that:

- M/s Kapil Enterprises is a proprietorship firm and name of the proprietor is Shri Kapil Mathur;
- They had filed 03 Shipping Bills bearing nos. 4887142, 4887146 and 4887195 all dated 18.10.2022 for export of Readymade Garments and in past they did not file any shipping bill at Mundra Port;
- M/s. Kapil Enterprises was registered with GST vide GSTN No. 07HHHRPM2305F1Z9 and they file GST return regularly;
- Their buyer was M/s. Nawi Khalid Karwan Ltd., Afghanistan and the buyer came into contact through a relative of Shri Kapil Mathur who was based in Dubai. He also stated that he had never met their foreign buyer as they contact him telephonically;
- They did not send samples to the foreign buyer for current consignments. They sent photos of goods to the foreign buyer and he finalized the photos and on the basis of those photos, they procured goods as per the buyer requirements;
- They procured goods from their supplier M/s. Tak Traders (GSTIN-07AZPPT8242FQZU);
- They procured goods from suppliers on credit basis and when they received payment from their overseas buyer, the same would be made to their suppliers;
- They received payments from overseas buyer through bank transfer

and no advance payment had been received for the present consignments;

- On being asked to offer comments on the verification report received vide email dated 27.11.2022, wherein it was informed that L2 supplier of the exporter M/s. Kapil Enterprises (GSTN No. 07HHHRPM2305F1Z9) namely M/s. Mega Pari (GSTIN-07AJHPN4529K1ZV) and L3 supplier M/s. Dark Wings International (GSTIN-07CBBPN2839J1ZH) were found to be non-existent, he stated that they procured the goods only from their L1 supplier, i.e. M/s. Tak Traders.

2.5 In the instant case, M/s. Shree Radhakrishna Shipping Pvt. Ltd. (hereinafter referred to as “the CB” for sake of brevity) was the Customs Broker. As per the provisions of Regulation 10(n) of the Customs Brokers Licensing Regulations, 2018, customs broker is required to verify correctness of IEC, GSTIN, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. However, it appears that the CB failed to comply with the above regulation as the exporter is found to be non-existent as per the verification report received from the GST authorities. Further, the CB also failed to appear/furnish written reply in response to summonses issued. Accordingly, Custom Broker has rendered himself liable to penalty under Section 117 of the Customs Act, 1962.

2.6 During the course of investigation, summons dated 23.01.2024, 28.08.2024, 11.09.2024 and 23.12.2024 issued to the Customs Broker to produce the export related documents, other relevant documents and tendering statement. However, neither the exporter nor the Custom Broker provided any documents nor did they appear for tendering their statement.

2.7 The exporter was found to be non-existent at the address declared by him; it appears that the exporter has created firm for availing export incentives and IGST Refund. Further, L2 and L3 supplier were also found to be non-existent. In view of the same, 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 are liable for confiscation as per the provisions of Section 113(ja) of the Customs Act, 1962. However, the goods were exported and the same cannot be seized.

3. RELEVANT LEGAL PROVISIONS:

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;

(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;

(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.*

4. From the foregoing investigation, it appears that:

(i) The Exporter has exported the goods with intent to avail higher export incentives like drawback and ROSCTL. Further, the exporter was found to be non-existent and the goods were exported before NCTC alert. Accordingly, it appears that the exporter had made wrong declaration regarding their address in the Shipping Bill. Accordingly, the goods are liable for confiscation under Section 113(i), Section 113(ia) and Section 113(ja) of the Customs Act, 1962. However, the goods were exported and the same are not available for confiscation.

(ii) The exporter for their acts of omission and commission is also liable to pay penalty under Section 114 of the Customs Act, 1962.

(ii) The exporter had exported the goods intentionally to claim amount of Drawback of Rs.7,48,830/- (Rupees Seven Lakh Forty Eight Thousand Eight Hundred Thirty Only) and the same is liable for rejection under the Customs Act, 1962.

(iv) The exporter had exported the goods intentionally to claim amount of ROSCTL of Rs.7,84,380/- (Rupees Seven Lakh Eighty Four Thousand Three Hundred Eighty Only) and the same are liable for rejection under the Customs Act, 1962.

(v) Since the exporter has been found to be non-existent, therefore, the invoices, packing list and other documents submitted by the exporter appear to be false. Thus, the exporter for their acts appears to be liable to pay penalty under section 114AA.

5.1 Accordingly, Show Cause Notice 10/2025-26/ADC/MK/ADJ/MCH dated 15.04.2025 was issued to M/s. Kapil Enterprises (IEC No. HHHRPM2305F) wherein they were called upon to show cause to the Additional Commissioner of Customs, Mundra, as to why:

(i) The goods covered under impugned Shipping Bill bearing nos. 4887142, 4887146 and 4887195 all dated 18.10.2022, should not be held liable for confiscation under Section 113(i), Section 113(ia) and Section 113(ja) of the Customs Act, 1962;

(ii) The drawback claim of Rs.7,48,830/- (Rupees Seven Lakh Forty Eight Thousand Eight Hundred Thirty Only) in respect of impugned Shipping Bills as mentioned at (i) above should not be rejected;

(iii) The ROSCTL claim of Rs.7,84,380/- (Rupees Seven Lakh Eighty Four Thousand Three Hundred Eighty Only) in respect of impugned Shipping Bills as mentioned at (i) above should not be rejected;

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

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

5.2 Show Cause Notice No. 10/2025-26/ADC/MK/ADJ/MCH dated 15.04.2025 was issued to M/s. Shree Radhakrishna Shipping Pvt. Ltd. wherein they were called upon to the Additional Commissioner of Customs, Mundra as to why Penalty should not be imposed under the provisions of Sections 117 of the Customs Act, 1962.

Submission of the exporter and Record of Personal Hearing:

6. In compliance of principle of natural justice, multiple opportunities to be heard were granted to the noticees on 07.10.2025, 29.10.2025 and 14.11.2025; however the exporter and customs broker neither appeared for personal hearing nor submitted any submissions.

DISCUSSION AND FINDINGS

7. I have carefully gone through the facts of the case, SCN, records of the case. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. The exporter failed to turn up for the personal hearing before the adjudicating authority. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice and case records, I find that the following issues arise for determination in this adjudication:

(i) Whether the impugned goods exported vide shipping bill nos. 4887142, 4887146 and 4887195 all dated 18.10.2022, mentioned in SCN are liable for confiscation under Section 113(i), Section 113(ia) and Section 113(ja) of the Customs Act, 1962 or otherwise;

(ii) Whether the drawback claim of Rs.7,48,830/- (Rupees Seven Lakh Forty Eight Thousand Eight Hundred Thirty Only) and ROSCTL claim of Rs.7,84,380/- (Rupees Seven Lakh Eighty Four Thousand Three Hundred Eighty Only) in respect of impugned Shipping Bills are liable to be rejected or otherwise;

(iii) Whether acts of the exporter and customs broker attract penal action under Section 114(iii), 114AA and 117 of the Customs Act, 1962 or otherwise.

8. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

(A) Whether the impugned goods exported vide shipping bill nos. 4887142, 4887146 and 4887195 all dated 18.10.2022, mentioned in SCN are liable for confiscation under Section 113(i), Section 113(ia) and Section 113(ja) of the Customs Act, 1962 or otherwise;

9.1 I find that M/s. Kapil Enterprises had filed three (03) Shipping Bills i.e. 4887142/18.10.2022, 4887146/18.10.2022 and 4887195/18.10.2022 for export of "Ready-Made Garments" declaring their goods under CTH-62114300 and 62042300. The Country of destination is declared as Pakistan. An NCTC alert dated 19.10.2022 was received wherein intimated that the supply chain of the exporter appears to be fake/manipulated as inward supply chain is not proper. The exporter is claiming high value export incentives. Further, NCTC also intimated that there is high probability of mis-declaration, mis-classification and over-valuation with a view to availing high undue export incentives, as well as undue ITC refund.

9.2 I observed that acting upon the NCTC alert dated 19.10.2022; a letter was issued to the Deputy Commissioner, Drawback Section, Customs House, Mundra on 07.11.2022 to hold export incentives for Shipping Bills nos. 4887142, 4887146 and 4887195 all dated 18.10.2022.

9.3 I find that this office requested the jurisdictional GST authority i.e. the Additional Commissioner, Delhi SGST—to verify the Exporter's existence and inward supply chain. Consequently, the GSTO (Ward-66, Deptt. of Trade & Taxes, GNCTD), via email dated 03.10.2024, submitted that the firm was non-existent at its registered address and that its GSTIN had been suspended w.e.f. 12.04.2023. Following this finding, summons dated 23.12.2024 was issued to the proprietor, Shri Kapil Mathur; however, the party failed to join the investigation, neither appearing in person nor submitting a written reply. Further, I find that vide email dated 27.11.2022, NCTC informed that as per CGST Delhi West verification report, the L2 supplier of the exporter M/s. Kapil Enterprises (GSTN No.

07HHHRPM2305F1Z9) namely M/s. Mega Pari (GSTIN-07AJHPN4529K1ZV) and L3 supplier M/s. Dark Wings International (GSTIN-07CBBPN2839J1ZH) were found to be non-existent.

9.4 I observed that the exporter has exported the goods with intent to avail higher export incentives like drawback and ROSCTL. Further, the exporter was found to be non-existent and the goods were exported before NCTC alert. Accordingly, it appears that the exporter had made wrong declaration in the Shipping Bill.

9.5 I find that as per sub-section (2) of Section 50 of the Customs Act, 1962, the exporter while presenting a shipping bill or bill of export shall make and subscribe to a declaration as to the truth of the contents of such shipping bill and shall ensure the accuracy and completeness of the information given and the authenticity and validity of any documents and compliance with the restriction or prohibition, if any, relating to the exported goods.

9.6 I find that the Show Cause Notice proposes confiscation of goods under the provisions of Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962. The same are reproduced below:-

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;

(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;

(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;

These acts of omission and commission as discussed above, on the part of the exporter rendered the goods liable for confiscation under Section 113(i), Section 113(ia) and Section 113(ja) of the Customs Act, 1962.

9.7 I find that goods already exported, in this matter, I rely upon the order of CESTAT, Ahmedabad in case of M/s Plasto Fine Industries v Commissioner of Customs, Kandla 2014(313) E.L.T. 593(Tri.-Ahmd.) wherein the Hon'ble CESTAT held the judgment as below:-

In view of the law laid down by Calcutta High Court {M/s. Euresian Equipments & Chemicals v. Collector of Customs 1980(6) E.L.T. 38(Cal.)}, confiscation of goods under Sec. 113(d) is an independent act from the penalties imposable under Sec. 114(i) of the Customs Act, 1962. Penalty

under Sec. 114(i) is attracted, on an act committed by the exporter, with respect to goods liable to confiscation, as soon as the goods are brought into a Customs area for export in violation of the prohibitions/restrictions. An offence is thus committed by the appellants and cannot be wiped away by the fact that attempts of the appellants were successful. Therefore, penalties under Sec. 114(i) of the Customs Act, 1962 have been rightly imposed.

In view of the above, I hold that the impugned goods are liable for confiscation under the provisions of Section 113(i), Section 113(ia) and Section 113(ja) of the Customs Act, 1962.

9.7.1 In the present proceedings, I observed that however, the goods exported vide impugned shipping bills are not available for confiscation, but I rely upon the order 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.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“23. 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.

9.7.2 I also find that 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.) has been followed in various courts and tribunals. Accordingly, I observe that the present case is also merits imposition of Redemption Fine under Section 125 of the Customs Act, 1962.

(B) Whether the drawback claim of Rs.7,48,830/- (Rupees Seven Lakh Forty Eight Thousand Eight Hundred Thirty Only) and ROSCTL claim of Rs.7,84,380/- (Rupees Seven Lakh Eighty Four Thousand Three Hundred Eighty Only) in respect of impugned Shipping Bills are liable to be rejected or otherwise;

10. Rejection of export benefits i.e. DBK, ROSCTL:-

10.1 I find that during the investigation the exporter neither appeared for the statement nor submitted any written statement in his defence. Further, during verification of the genuineness of the Exporter as well as the supply chain of the Exporter Jurisdictional GST authority has found the exporter to be non-existent in their verification report. Therefore, I find that the exporter had evident mal-fide-intentions in order to gain undue export benefits by means of mis-fide-declaration of the goods.

10.2 I find that because of his mal-intentions to gain undue export benefits, non-cooperation with the investigation and non-existence report from the jurisdictional Commissionerate, I find that the exporter's all the export benefits i.e. drawback amount of Rs. 7,48,830/- (Rupees Seven Lakh Forty Eight Thousand Eight Hundred Thirty Only) is liable for rejection under Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 and ROSCTL claim of Rs.7,84,380/- (Rupees Seven Lakh Eighty Four Thousand Three Hundred Eighty Only) /- is liable for rejection under Notification No.77/2021-Customs (NT) dated 24.09.2021.

(c) Whether acts of the exporter and customs broker attract penal action under Section 114(iii), 114AA and 117 of the Customs Act, 1962 or otherwise.

11.1 The section 114 of the Customs Act, 1962 provides for the following:

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,

114(i)

.....

114(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.]

11.2 In view of facts discussed in foregoing paras, wherein I held that for the goods covered under Shipping Bills nos. 4887142, 4887146 and 4887195 all dated 18.10.2022 having FOB value Rs. 2,06,41,566/-, are liable for confiscation under Section 113(i), Section 113(ia) and Section 113(ja) of the Customs Act, 1962. I find that it is clear from the provision that penalty under section 114 can be imposed in case where the act or omissions on the part of the exporter/noticee renders the goods liable for confiscation under Section 113 of the Act.

11.3 From the discussion as above paras, I find that the exporter has exported the goods with intent to avail higher export incentives i.e. drawback, ROSCTL and made wrong declaration in shipping bills. Therefore, proposal to impose penalty in the case under Section 114(iii) of the Customs Act, 1962 is correct and sustainable in law.

11.4 I observe that jurisdictional GST office via email dated 03.10.2024, confirmed that the firm was non-existent at its registered address and that

its GSTIN had been suspended w.e.f. 12.04.2023. Further, Shri Kapil Mathur, Proprietor neither appeared for statement/personal hearing nor submitted any written submission in his defence.

11.5 I find that the exporter was found to be non-existent at the address declared by him in the export documents and the exporter has created firm for availing export incentives i.e. Drawback and ROSCTL. The exporter had submitted the mis-declared documents. Accordingly, it is evident that M/s. Kapil Enterprises and its Proprietor knowingly and intentionally made, signed, used and/or caused to be made, signed or used export documents and related papers that were false or incorrect in material particulars for the purpose of illegally exporting the subject goods. Therefore, I find that exporter is also liable for penal action under Section 114AA of the Customs Act, 1962.

11.6 I find that M/s. Shree Radhakrishna Shipping Pvt. Ltd. (Customs Broker) is required to verify correctness of IEC, GSTIN, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. However, M/s. Shree Radhakrishna Shipping Pvt. Ltd. neither appeared to tender their statement against the summons nor submitted any documents related to the above mentioned Shipping Bills. It clearly indicates that M/s. Shree Radhakrishna Shipping Pvt. Ltd. had not joined the investigation and showed complete disregard to the summons. I also find that the Custom Broker had not followed due diligence in respect of the said exporter and during filling of shipping bills.

11.7 Custom Broker has also failed to comply with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018), customs broker is required to verify correctness of IEC, GSTIN, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. However, it appears that the CB failed to comply with the above regulation. It is also evident that custom broker was very much aware about the exporter intentions of availing undue benefit of export incentives i.e. Drawback, ROSCTL by way of overvaluation of the goods. Therefore, M/s. Shree Radhakrishna Shipping Pvt. Ltd, CHA has rendered themselves liable for penal action under the provisions of Customs act, 1962. In view of foregoing paras, for their acts of omission and commission, I find the M/s. Shree Radhakrishna Shipping Pvt. Ltd liable for penal action under Section 117 of the Customs Act, 1962.

12. In view of the above, I pass the following order:-

ORDER

(i) I order to confiscate the goods covered under Shipping Bill nos. 4887142, 4887146 and 4887195 all dated 18.10.2022 (as mentioned above in Table-A) having FOB value of Rs. 2,06,41,566/- (Rupees Two Crore Six Lakh Forty One Thousand Five Hundred & Sixty-Six Only) under Section 113(i), 113 (ia) and 113(ja) of the Customs Act, 1962 and I impose redemption fine of Rs. 10,00,000/- (Rs. Ten Lakh Only) in respect of these goods under Section 125 of

the Customs Act, 1962.

(i i) I deny and reject the drawback claim of Rs. 7,48,830/- (Rupees Seven Lakh Forty Eight Thousand Eight Hundred and Thirty Only) in respect of goods covered under Shipping Bill Nos. as mentioned above in Table-A in terms of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.

(iii) I deny and reject the ROSCTL claim of Rs. 7,84,380/- (Rupees Seven Lakh Eighty Four Thousand Three Hundred and Eighty Only) in respect of goods covered under Shipping Bill Nos. as mentioned above in Table-A in terms of the Notification No.77/2021-Customs (NT) dated 24.09.2021 read with relevant provisions of the Customs Act, 1962.

(iv) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) upon the exporter M/s. Kapil Enterprise under Section 114(iii) of the Customs Act, 1962.

(v) I impose penalty of Rs. 3,00,000/- (Rupees Three Lakh Only) upon the exporter M/s. Kapil Enterprise under Section 114(AA) of the Customs Act, 1962.

(vi) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) upon M/s. Shree Radhakrishna Shipping Pvt. Ltd the under Section 117 of the Customs Act, 1962.

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

14. The Show Cause Notice No. 10/2025-26/ADC/MK/ADJ/MCH dated 15.04.2025 is hereby disposed off on above terms.

(Amit Kumar Mishra),
Additional Commissioner of Customs,
Custom House, Mundra.

GEN/ADJ/ADC/945/2025-Adjn

BY SPEED POST/MAIL

To,

1. M/s. Kapil Enterprises, Wazirpur Industrial Area,
Basement Floor, Rajender Jaina Tower,

RJT 37 Plot No. 18, New Delhi,
North West Delhi, Delhi – 110052.

2. M/s. Shree Radhakrishna Shipping Pvt. Ltd.,
1st Floor, Office No. 2, Savla Chambers,
Plot No. 455, Sector 1/A,
Gandhidham – 370201.

Copy to:

The DC/AC, TRC/RRA/EDI, SIIB, Mundra.