

 सत्यमेव जयते	भारत सरकार/ Government of India वित्त मंत्रालय /Ministry of Finance आयुक्त सीमाशुल्क एन.एस.-II कार्यालय Office of Commissioner of Customs NS-II Centralized Adjudication Cell, जवाहरलाल नेहरू कस्टम हाउस, न्हावा शेवा, जिला- रायगढ़, महाराष्ट्र - 400 707 Jawaharlal Nehru Custom House, Nhava Sheva, Dist- Raigad, Maharashtra – 400 707.	
---	--	---

F. No. S/10-125/2025-26/ADC/CEAC/NS-II/CAC/JNCH

Date of Order: 28.11.2025

F. No. S/6-Gen-01/Misc-123/2023-24/CEAC

Date of Issue: 28.11.2025

DIN NO.: 20251178NT000000F5C5

SCN No. 1376/2023-24/ADC/CEAC/NS-II/CAC/JNCH dated 22.09.2023

जारीकर्ता /Passed By: Shri Raghu Kiran B.
Addl. Commissioner of Customs,
CEAC, NS-II, JNCH, Nhava Sheva

मूल आदेश संख्या/Order-In-Original No.: 1232/2025-26/ADC/CEAC/NS-II/CAC/JNCH

निर्यातक का नाम/Exporter's Name: M/s MANAS EXPORTS (IEC: ANKPC1234H)

मूलआदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला – रायगढ़ – ४०० ७०७, महाराष्ट्र को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए.-1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal: Uran, Dist.: Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, item 6 of the Court Fee Act, 1970.
- Any person desirous of appealing against this decision or order shall, pending the appeal, make 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 MANAS EXPORTS (IEC: ANKPC1234H), having registered address at 1107, 11th Floor, Palmyra Building, Skyline Oasis, Premier Road, Near Vidhyavihar Station, Ghatkopar (West), Mumbai- 400086 (hereinafter referred to as "the exporter") had exported consignments of food coloring matters under Shipping Bill No. 2315125 dated 26.02.2019, by classifying the goods under CTH 32041990 and claimed MEIS benefit @ 3%.

2. During the course of Post Clearance Audit of the Shipping Bill as detailed in Table-A below, it appeared that the subject goods were synthetic food colorants and the exporter had classified the same under CTH 32041990 and claimed MEIS benefit @3% of FOB whereas CTH 32041990 is for Others - other, including mixture of colouring matter of two or more of the sub-headings 320411 to 320419' and the subject goods appear to be classifiable under CTH 32041989 wherein the applicable MEIS benefit is @2% of FOB, which is the correct classification heading for "Other-Food Colouring Matter. Accordingly, the excess MEIS benefit availed to be Rs. 14,603.95 rounded off to **Rs.14,604/- (Rupees Fourteen Thousand Six Hundred and Four only)**. The details of the shipping bill are reproduced as under:

Table-A

Sl. No	SB No.	SB Date	Description	FOB Declared	Declared CTH	Correct CTH	Excess MEIS
1	2315125	26.02.2019	ERYTHROSINE-ROHA MAKE 25 KGS PACKERYTHROSINE-ROHA MAKE 25 KGS PACK	9,00,089.41	32041990	32041989	9000.89
			QUINOLINE YELLOW-NEELIKON MAKE-25KG QUINOLINE YELLOW-NEELIKON MAKE-25 KG	5,60,305.81	32041990	32041989	5603.06
Total=				14,60,395.22			14,603.95

3. On the introduction of self-assessment vide Finance Act, 2011; it is the onus on the Exporter to make true and correct declaration in all aspects like classification, valuation, including calculation of duty & claim of Customs incentive/ benefit, etc. Further, as per provisions of section 50(2) of the Customs Act, 1962, 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. As per substantive

provisions of section 50(3) of the Customs Act, 1962, [(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 restrictions or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

4. However, in the instant case, it appeared that the exporter has not fulfilled the statutory obligation of correct and truthful declaration of the material facts of the export's document i.e., Shipping Bill, wherein the exporter had mis-classified the goods with an intention to claim higher export benefits in form of the MEIS as explained above. Thus, by misclassifying the goods, undue MEIS benefits amounting to **Rs. 14,604/- (Rupees Fourteen Thousand Six Hundred and Four only)** had been wrongly claimed by the Exporter which was utilized for payment of customs duty by the Exporter.

5. Therefore, in terms of the provisions of Section 28(4) and/or 28AAA of the Customs Act, 1962, as applicable, the exporter was advised to pay the undue MEIS benefit amounting to **Rs. 14,604/- (Rupees Fourteen Thousand Six Hundred and Four Only) vide C.L. No. 289/2021-22/JNCH(A1)**. However, the exporter has not made any payment against the said dues till date.

6. In view of the above, it appears that the exporter has misclassified the goods under CTH 32041990 instead of the correct classification under CTH 32041989 for the reason stated supra and claimed undue benefit of higher MEIS @3% instead of correct MEIS @2% of FOB while filing above said shipping bill.

7. It appears willful mis-statement on the part of the exporter in the shipping bill as detailed in Table-A, filed and knowingly mis-classified the subject goods to avail the higher amount of MEIS. Therefore, the **differential MEIS** amounting to **Rs. 14,604/- (Rupees Fourteen Thousand Six Hundred and Four Only)** as detailed in para 5 supra, appears recoverable from the exporter under Section 28 (4) and/ or 28AAA of the Customs Act, 1962. In addition to duty, interest on delayed payment of duty also appears recoverable from the exporter as per Section 28AA of the Customs Act, 1962.

8. The subject goods exported vide said Shipping bill as detailed in Table-A, were mis classified to avail the undue benefit of higher MEIS @3% instead of correct MEIS @2% of FOB while filing the said shipping bill, the same appears liable for confiscation under Section 113(i) of the Customs Act, 1962. For the above act of commission and omission, the exporter also appears liable for penal action under Section 114 (ii)/114AB of the Customs Act, 1962.

9. Relevant legal provisions are reproduced here for the sake of brevity:

- (i) **Section 11 (1) of the Foreign Trade (Development and Regulation) Act, 1992:** "No export or import shall be made by any person except in accordance with the provisions of

this Act, the rules and orders made there under and the export and import policy (now termed as Foreign Trade Policy) for the time being in force".

- (ii) **Section 11H(a) of the Customs Act, 1962:** "illegal export" means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;
- (iii) **Section 17(1) of the Customs Act, 1962:** After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.
- (iv) **Section 28 (4) of the Customs Act, 1962:** Where any duty has not been (levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of –

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been (so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

- (v) **SECTION 28AA. Of the Customs Act, 1962: Interest on delayed payment of duty –**

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten percent. and not exceeding thirty-six percent. per annum, as the Central Government may, by notification in the Official Gazette, fix. shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable were, -

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

(vi) **SECTION 28AAA. Of the Customs Act, 1962: Recovery of duties in certain cases. –**

(1) Where an instrument issued to a person has been obtained by him by means of -

(a) collusion; or

(b) willful misstatement; or

(c) suppression of facts,

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued there under, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued :

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

(vii) **Section 50 (2) of the Customs Act, 1962:** "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.

(viii) **Section 50 (3) of the Customs Act, 1962:** 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 restriction or prohibition, if any, relating to the goods under Act or under any law for the time being in force.

(ix) **Section 113 of the Customs Act, 1962:** 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.

- (x) **Section 114 (iii) of the Customs Act, 1962:** 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.
- (xi) **Section 114 AB of the Customs Act, 1962:** (Penalty for obtaining Instrument by fraud etc.) Where any person has obtained any instrument by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.
- (xii) **Section 124: Issue of Show Cause Notice before confiscation of goods, etc.-** No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-
- (a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
 - (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
 - (c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

10. Accordingly, in view of the facts above and in exercise of the powers conferred by Section 124 read with Section 28 of the Customs Act, 1962 the Additional Commissioner, NS-II, CEAC, JNCH, Nhava Sheva issued SCN No. 1376/2023-24/ADC/CEAC/NS-II/CAC/JNCH dated 22.09.2023 to M/s Manas Exports (IEC: ANKPC1234H), whereby they were called upon to Show Cause to the Additional Commissioner of Customs, NS-II, JNCH, Nhava Sheva, within 30 days of receipt of this notice as to why:-

- (i) The classification of goods claimed under CTH 32041990 should not be rejected and the subject goods should not be correctly classified under CTH 32041989.
- (ii) The subject goods valued at Rs. 14,60,395.22 rounded off Rs. 14,60,395/- (Rupees Fourteen Lakh Sixty Thousand Three Hundred and Ninety-Five only) exported vide Shipping Bill No. 2315125 dated 26.02.2019 as detailed in Table-A above, should not be held liable for confiscation under Section 113(i) of the Customs Act, 1962, though the same is not available for confiscation.
- (iii) The differential duty amounting to Rs. 14,603.95 rounded off Rs. 14,604/- (Rupees Fourteen Thousand Six Hundred and Four only) should not be recovered under Section 28(4) and/or 28AAA of the Customs Act, 1962 from M/s. Manas Exports

(IEC: ANKPC1234H) along with applicable interest under Section 28 (AA) of the Customs Act, 1962.

- (iv) Penalty under Section 114(ii)/114AB of the Customs Act 1962 should not be imposed on the exporter M/s. Manas Exports.

WRITTEN SUBMISSIONS BY THE NOTICEES

11. The Noticee was directed to file written reply to the SCN within 30 days of receipt of the SCN. However, so far, the Noticee did not file written reply in his defence within the stipulated period of time.

RECORDING OF PERSONAL HEARING

12. In adherence of the Principles of Natural Justice, the Noticee was granted an opportunity to appear before the undersigned for Personal Hearing in virtual mode/in persons and submit oral/written submissions. Accordingly, PH Memos dated 01.08.2025, 25.08.2025 and 10.09.2025 were issued to the Noticee informing that PH are fixed on 08.08.2025, 04.09.2025 and 18.09.2025, respectively. However, neither the Noticee nor their authorized representatives appeared for PH on scheduled date and time.

DISCUSSIONS AND FINDINGS

13. I have carefully gone through the facts of the case, the evidence put forth by the Department, and the contents of the SCN. I find that the Noticee had neither submitted a written reply to the SCN nor appeared for the PH on the scheduled date and time. These acts on the part of the Noticee amount to non-cooperation and appear to be a tactic to delay the adjudication proceedings in the present case. The adjudication proceedings cannot be kept pending indefinitely. Accordingly, I take up the case for adjudication on merits on the basis of the evidence available on record.

14.1 I find that M/s Manas Exports (IEC: ANKPC1234H) had exported consignments of food coloring matters under Shipping Bill No. 2315125 dated 26.02.2019, by classifying the goods under CTH 32041990 and claimed MEIS benefit @ 3%.

14.2 I find that it appeared during the course of Post Clearance Audit that the goods are Synthetic Food Colorants. Hence, the goods appeared to be rightly classifiable under CTH 32041989 instead of declared CTH 32041990 by the Exporter. The exporter has claimed MEIS benefit @3% under CTH 32041990 instead of eligible MEIS @2% under correct CTH 32041989. Therefore, it appeared that the excess MEIS claimed amounting to **Rs. 14,604/- (Rupees Fourteen Thousand Six Hundred and Four only)** [(MEIS @3% -MEIS @2%)], are liable to be recovered from the exporter under the provisions of the section 28AAA of the Customs Act, 1962 with applicable interest under section 28AA of the Customs Act, 1962.

14.3. I find that the classification of the goods under the Customs Tariff is governed by the principles as enumerated in **the General Rules of Interpretation ('GRI') and General Explanatory Notes (GEN)** set out in the Tariff.

(A) **The General Rules for Interpretation of the First Schedule to the Customs Tariff Act (CTA), 1975** provide that Classification of goods in the Nomenclature shall be governed by the following principles:

***Rule 1** The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

***Rule 6** For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

This means that if one heading contains 5-6 sub-headings, these sub-headings can be compared with each other. However, sub-heading under one heading cannot be compared with sub-heading under different heading. Thus, first heading has to be decided and then one of the subheadings with in that heading has to be considered.

(B) **The General Explanatory Notes to First Schedule of the Customs Tariff Act (CTA), 1975** provide that Classification of goods in the Nomenclature shall be governed by the following notes:

Note1:** "Where in column (2) of the Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "--", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is proceeded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--". **Where the description of an article or group of articles is preceded by "----", 'in addition to being a sub-classification of "-" or "--", the said article or group of articles may also be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "----".

14.4 Thus, I find that, the article under heading 3204 1989 with description of "other" has four dashes (----). In view of preceding paras, **Food Coloring Matter** under **Heading 32041989** should first satisfy classification of '**Food Coloring Matter**' and then it can be further sub-classified under

Heading 32041989. From this, it is clear that **Food Coloring Matter**, viz **FOOD COLOUR POWDER SUNSHINE YELLOW** under Tariff Item 32041989 should be treated as sub-classification of *“other, including mixtures of coloring matter of two or more of the sub-headings 32041981 to 32041988”* which is preceded by four dashes (----)

15. Further I find that, the articles covered under heading 3204 1990 with description of “other” has three dashes (---) which should be treated as sub-classification of *“other, including mixtures of coloring matter of two or more of the sub-headings 32041911-16 to 32041981-88”* which is covered under heading preceded by Three dashes (---).

16. I find that the exporter neither submitted a written reply to the SCN nor appeared for the PH on the scheduled date and time.

17. I find that the SCN proposed confiscation of the goods covered under subject S/Bills (as detailed in Table A above) whereby the Exporter attempted to avail higher export incentives in the form of MEIS.

17.1. I find that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, ‘Self-Assessment’ has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of export incentives on exported goods by the exporter himself by filing a S/Bill, in the electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make entry for the export goods by presenting a S/Bill electronically to the Proper Officer. Thus, under self-assessment, it is the exporter who has to ensure that he declares the correct RITC, applicable export incentives, value in respect of the export goods while presenting the S/Bill. Self-Assessment can result in assured facilitation for compliant exporters. However, delinquent exporters would face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied Acts. However, the facts as stated above appear to reveal that the exporter has mis-declared CTH of the goods and classified the goods under CTH which attracts higher MEIS. It appeared that the Exporter with *mala fide* intention to avail more and undue export incentives resorted to the said mis-classification. Therefore, these acts of omission and commission on the part of the Exporter rendered the goods liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 read with Section 11 of Foreign Trade (Development & Regulation) Act, 1990 & Rule 11 of Foreign Trade (Regulation) Rules, 1993. Further, though the goods have already been released for exportation, the same are liable for imposition of Redemption Fine under the provisions of Section 125 of the Customs Act, 1962 in lieu of confiscation.

17.2. I find that the goods have already been exported and not physically available for confiscation. In the present case, goods were mis-classified which resulted in excess availment of MEIS which is liable to be recovered under the provisions of Section 28AAA of the Customs Act, 1962 along with applicable interest u/s. 28AA of the said Act *ibid*. Impugned goods covered under subject S/Bills (as detailed in Table-A above) were found to be already exported, so same are not

physically available. I find that there are plenty of judgments stating that Redemption Fine cannot be imposed in case goods are not physically available for confiscation.

17.3. However, I find that as per the judgment in the case of Visteon Automotive Systems India Limited V/s. CESTAT, Chennai, the Hon'ble High Court of Chennai has held that *availability of goods is not necessary for imposing 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.*

17.4. 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.).

17.5. 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.

17.6. In view of above judgements, I hold that the Redemption Fine is imposable on the exported goods covered under subject S/Bills (as detailed in Table-A above), which are not physically available for confiscation.

17.7 Therefore, I agree with the proposal of SCN and found that the goods covered under subject S/Bills are liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 read with Section 11 of Foreign Trade (Development & Regulation) Act, 19902 & Rule 11 of Foreign Trade (Regulation) Rules, 1993 as well as imposition of Redemption Fine on the Exporter under the provisions of Section 125 of the Customs Act, 1962.

18. I find that the Exporter had made an incorrect declaration of the goods, in the S/Bills (as detailed in Table-A above) filed by them to the Customs Authorities and mis-classified the goods to claim higher MEIS benefits. As the exporter had not made correct declaration in the said Shipping Bills, they have violated the conditions of Section 50(2) & 50(3) of the Customs Act, 1962. Hence, I find that there was a mis-classification of the said exported goods to avail undue/excess export benefit in form of MEIS. I further find that the Exporter has violated the provision of Rule-11 of the Foreign Trade (Regulations) Rules, 1993 in as much, as they had made an incorrect declaration of goods, in the S/Bills submitted by them to the Customs Authorities and mis-classified the goods to claim higher MEIS benefits. As the Exporter had not made correct

declaration in the said Shipping Bills, they have violated the conditions of Section 50(2) & 50(3) of the Customs Act, 1962.

18.1 In view of the above, I find that there was mis-declaration regarding the actual classification of the impugned goods cleared vide above said S/Bills. Therefore, I hold that the goods cleared vide above said Shipping Bills, are liable to confiscation under **Section 113(i) of the Customs Act, 1962. Consequently, I find that the exporter is liable to** penalty in terms of Section 114(iii) of the Customs Act, 1962.

19. I find that in the self-assessment regime, it is the responsibility of the exporter to correctly declaration value, classification, description of the goods. In view of discussions in foregoing paras, I find that Shri/Smt Manasi Vishal Tanna, Proprietor of the Exporting firm, M/s Manas Exports (IEC: ANKPC1234H) has made wilful mis-statement of declaration in respect of CTH and did not classify the goods correctly under CTH 32041990.

20. In view of the foregoing discussions, facts on record, and the findings arrived at hereinabove, I hold that the Noticee has contravened the statutory provisions under the Customs Act, 1962 and the Foreign Trade (Development & Regulation) Act, 1992 by mis-classifying the exported goods and availing excess MEIS benefit through wrong declaration in the Shipping Bill. The act of mis-classification and mis-declaration resulted in attempted availment of higher export incentives, which attracts the penal provisions under Section 114(iii) of the Customs Act, 1962, as the Noticee has rendered the export goods liable to confiscation under Section 113(i) of the Customs Act, 1962.

21. Further, I also find that the excess MEIS scrip issued and subsequently utilized for duty payment was obtained based on such mis-statement. Accordingly, the ingredients required to invoke Section 114AB of the Customs Act, 1962 stand satisfied, as the instrument issued under the Foreign Trade Policy has been obtained and utilized by means of willful mis-declaration. Therefore, the Noticee is liable to penalty under Section 114AB of the Customs Act, 1962, in addition to penalty under Section 114(iii) of the Act.

Thus, based on evidence available on record, I find that imposition of penalty under Section 114(iii) and Section 114AB of the Customs Act, 1962 is justified and warranted in the present case.

ORDER

22. In view of the above discussion and findings, I pass the following order:

- (i) I reject the classification of subject goods under CTH 32041990 and order for re-classification of the subject goods under CTH 32041989.
- (ii) I order to recover differential MEIS benefit amounting to **Rs. 14,604/- (Rupees Fourteen Thousand Six Hundred and Four only)** u/s. 28AAA of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 from M/s. Manas Exports (IEC: ANKPC1234H). The entitlement of MEIS is governed under Para 3.06 of the Foreign

Trade Policy 2015-20 read with Appendix 3B, wherein the notified rate for CTH 32041989 is 2% against 3% applicable for CTH 32041990.

- (iii) I order to confiscate the impugned goods having declared **FOB Value of Rs. 14,60,395/- (Rs. Fourteen Lakh Sixty Thousand Three Hundred Ninety Five Only)** for the subject Shipping Bills (as detailed in Table-A of the SCN) u/s. 113(i) of the Customs Act, 1962. However, since the goods are not available for confiscation, I hold the impugned goods liable to confiscation Section 113(i) of the Customs Act, 1962 and I give the exporter an option to redeem the impugned goods on payment of **Redemption Fine of Rs. 50,000/- (Rupees Fifty thousand Only)**, under Section 125 of the Customs Act, 1962, in lieu of confiscation.
- (iv) I impose penalty of **Rs. 10,000/- (Rupees Ten thousand Only)** on M/s. Manas Exports (IEC: ANKPC1234H) under the provisions of Section 114(iii).
- (v) I impose penalty of **Rs. 10,000/- (Rupees Ten thousand Only)** on M/s. Manas Exports (IEC: ANKPC1234H) under the provisions of Section 114AB of the Customs Act, 1962.

23. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.



(RAGHU KIRAN B.)

ADDL. COMMISSIONER OF CUSTOMS
CEAC, NS-II, JNCH, Nhava Sheva

To,
M/s Manas Exports (IEC: ANKPC1234H),
1107, 11H Floor, Palmyra Building, Skyline Oasis,
Premier Road, Near Vidhyavihar Station,
Ghatkopar (West), Mumbai- 400086

Copy to:

- 1) The Commissioner of Customs, NS II, JNCH, Nhava Sheva.
- 2) The Dy./Asstt. Commissioner of Customs, SIIB (X), JNCH, Nhava Sheva
- 3) The Dy./Asstt. Commissioner of Customs, CRAC (X), JNCH, Nhava Sheva.
- 4) The Dy./Asstt. Commissioner of Customs, CRRC Cell, JNCH, Nhava Sheva.
- 5) The Dy. Commissioner of Customs, Centralized Adjudication Cell (CAC) NS-V, JNCH, Nhava Sheva.
- 6) The Dy. Commissioner of Customs, EDI, JNCH, Nhava Sheva.
- 7) Supdt. (P), CHS, JNCH for display on Notice Board.
- 8) Customs Broker: M/s. Vishal Shipping Agency Pvt. Ltd., 701/702, Skyline Epitome, 7th Floor, Near Fatima School, Kirol Road, Vidyavihar (West), Mumbai, Maharashtra, India - 400086
- 9) The Dy. Director, DGFT, Nishtha Bhavan, 48, Vithaldas Thackersey Marg, Churchgate, Mumbai-400020 - for necessary action .
- 10) Office Copy