
	<p>भारत सरकार/ Government of India वित्त मंत्रालय/ Ministry of Finance आयुक्त सीमा शुल्क एनएस-II का कार्यालय, केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन न्हावा शेवा, तालुका-उरण, जिला -रायगढ़, महाराष्ट्र- 400 707 OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-II CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA, DIST- RAIGAD, MAHARASHTRA-400707</p>	
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फ़ा.सं. /F. No.: S/10-1245/2023-24/ADC/CEAC/NS-II/CAC/JNCH

Date of Order: 28.11.2025

Date of Issue: 28.11.2025

द.प.सं./DIN: 20251178NT000000CD15

SCN No. 2236/2023-24/ADC/CEAC/NS-II/CAC/JNCH

Date of SCN 02.01.2024

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

मूल आदेश सं./Order-In-Original No.: 1235/2025-26/ADC/CEAC/NS-II/CAC/JNCH

निर्यातक का नाम/Exporter's Name: एस.पी.के इम्पेक्स (आयात निर्यात कोड: 2914002076)  
M/s. S.P.K Impex (IEC No.: 2914002076)

### मूल आदेश

- 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, महाराष्ट्र -400707 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 1.50 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 1.50 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करनेवाला 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, items 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**

The Special Investigation and Intelligence Branch (Export), JNCH, Nhava ('SIIB (X)/JNCH' in short) received an information from Regional Unit, DRI, Noida vide its letter F. No. DRI/NRU/STR/SPK/45/2018 dated 13.09.2021(RUD - 01) regarding investigation in respect of STR No. 10239895 pertaining to M/s. S.P.K. Impex (IEC No. 2914002076) addressed at Tajpur Mafi Road, Barwal Manjhra Rapur Dauraha, Moradabad, Uttar Pradesh (hereinafter referred to as 'the Exporter' or 'the Noticee' for sake of brevity). It was further informed vide the said letter that:

- Letters sent to the said address returned undelivered with a remark "Not Known".
- On checking its technical Data, it was noticed that M/s. SPK Impex had exported items like "100 % Polyester Ladies Long Dress" and "Ready Made Garments 100 % Polyester Girls" (hereinafter referred to as 'the goods') all from INNSA1 Port, i.e. Nhava Sheva and had availed drawback.
- Total FOB value of the goods exported during Year 2014 was Rs. 7.77 Cr and Rs. 1.98 Cr during 2015 on which firm availed drawback of Rs. 97.9 lakh in 2014-15.
- On scrutiny of the data from DGFT site no BRC was found available, however, the bank statement from IndusInd Bank, Moradabad Branch shows drawback credit transactions.
- Thus, it appears that drawback availed by the party is fraudulent as no BRC has been realized.

2. Vide the above-mentioned letter dated 13.09.2021, it was further requested that an enquiry may be initiated to recover the Govt. dues in respect of the fraudulent exports done by M/s SPK Impex.

### **3. Proceedings of the investigation**

3.1 On the basis of the information forwarded by DRI vide the said letter, investigation under the provisions of Customs Act, 1962 was initiated. During the further course of investigation, it was seen in the EDI system that M/s SPK Impex has filed total 42 Shipping bills starting from 11.04.2014 till 20.07.2015(RUD - 02). The details of the Shipping Bills filed by M/s. S.P.K. Impex is as under:

Rupees in Lakhs								Country
SI.	S/Bill No.	Sb Dt.	CHA	FOB	DBK	DEPB	Item Description	Name
No.				Value	Amt	Amt		
1	5871134	11-04-2014	Self	27.48	2.8	0	Readymade Garments 100% Polyester Girls dresses	UAE
2	5871136	11-04-2014	Self	25.44	2.6	0	Readymade Garments 100% Polyester Girls dresses	UAE
3	5871139	11-04-2014	Self	23.41	2.39	0	Readymade Garments 100% Polyester Girls dresses	UAE
4	5910671	11-06-2014	Self	26.4	2.69	0	Readymade Garments 100% Polyester Girls dresses	UAE
5	5911050	11-06-2014	Self	25.38	2.59	0	Readymade Garments 100% Polyester Girls dresses	UAE



6	5911068	11-06-2014	Self	28.43	2.9	0	Readymade Garments 100% Polyester Girls dresses	UAE
7	6004432	11-12-2014	Self	29.19	2.98	0	Readymade Garments 100% Polyester Girls dresses	UAE
8	6004433	11-12-2014	Self	29.29	2.99	0	Readymade Garments 100% Polyester Girls dresses	UAE
9	6004434	11-12-2014	Self	29.19	2.98	0	Readymade Garments 100% Polyester Girls dresses	UAE
10	6059061	14-11-2014	Self	28.5	2.91	0	Readymade Garments 100% Polyester Girls dresses	UAE
11	6059807	14-11-2014	Self	28.5	2.91	0	Readymade Garments 100% Polyester Girls dresses	UAE
12	6062269	14-11-2014	Self	29.38	3	0	Readymade Garments 100% Polyester Girls dresses	UAE
13	6149637	19-11-2014	Self	29.24	2.98	0	Readymade Garments 100% Polyester Girls dresses	UAE
14	6149638	19-11-2014	Self	24.36	2.49	0	Readymade Garments 100% Polyester Girls dresses	UAE
15	6149640	19-11-2014	Self	26.8	2.73	0	Readymade Garments 100% Polyester Girls dresses	UAE
16	6149655	19-11-2014	Self	23.15	2.36	0	Readymade Garments 100% Polyester Girls dresses	UAE
17	6179299	21-11-2014	Self	22.18	2.26	0	Readymade Garments 100% Polyester Girls dresses	UAE
18	6179301	21-11-2014	Self	24.64	2.51	0	Readymade Garments 100% Polyester Girls dresses	UAE
19	6179340	21-11-2014	Self	27.11	2.77	0	Readymade Garments 100% Polyester Girls dresses	UAE
20	6213735	22-11-2014	Self	29.58	2.93	0	Readymade Garments 100% Polyester Girls dresses	UAE
21	6213751	22-11-2014	Self	28.34	2.81	0	Readymade Garments 100% Polyester Girls dresses	UAE
22	6213758	22-11-2014	Self	29.58	2.93	0	Readymade Garments 100% Polyester Girls dresses	UAE
23	6213761	22-11-2014	Self	28.34	2.81	0	Readymade Garments 100% Polyester Girls dresses	UAE
24	6263293	25-11-2014	Self	29.58	2.93	0	Readymade Garments 100% Polyester Girls dresses	UAE
25	6263301	25-11-2014	Self	28.34	2.81	0	Readymade Garments 100% Polyester Girls dresses	UAE



26	6263303	25-11-2014	Self	29.58	2.93	0	Readymade Garments 100% Polyester Girls dresses	UAE
27	6263304	25-11-2014	Self	28.34	2.81	0	Readymade Garments 100% Polyester Girls dresses	UAE
28	6601746	12-12-2014	Shiv kumar Gupta	25.08	2.48	0	100% Polyester ladies long dress (Readymade Garments)	UAE
29	6601748	12-12-2014	Shiv kumar Gupta	29.26	2.9	0	100% Polyester ladies long dress (Readymade Garments)	UAE
30	6601749	12-12-2014	Shiv kumar Gupta	29.26	2.9	0	100% Polyester ladies long dress (Readymade Garments)	UAE
31	6601752	12-12-2014	Shiv kumar Gupta	27.87	2.76	0	100% Polyester ladies long dress (Readymade Garments)	UAE
32	1029305	06-05-2015	Self	30.07	2.98	0	Readymade garments 100% polyester ladies long dress	UAE
33	1029345	06-05-2015	Self	30.07	2.98	0	Readymade garments 100% polyester ladies long dress	UAE
34	1029351	06-05-2015	Self	28.82	2.85	0	Readymade garments 100% polyester ladies long dress	UAE
35	1029388	06-05-2015	Self	27.56	2.73	0	Readymade garments 100% polyester ladies long dress	UAE
36	1029462	06-05-2015	Self	27.56	2.73	0	Readymade garments 100% polyester ladies long dress	UAE
37	1029477	06-05-2015	Self	25.06	2.48	0	Readymade garments 100% polyester ladies long dress	UAE
38	1215272	16-06-2015	Self	0.38	0	0	Assorted rubber stamp	US
39	1905164	20-07-2015	Self	49.64	4.91	0	Readymade garments 100% polyester ladies long dress	UAE
40	1905169	20-07-2015	Self	48.4	4.79	0	Readymade garments 100% polyester ladies long dress	UAE
41	1905174	20-07-2015	Self	50.88	5.04	0	Readymade garments 100% polyester ladies long dress	UAE
42	1905176	20-07-2015	Self	49.64	4.91	0	Readymade garments 100% polyester ladies long dress	UAE
<b>Total</b>				<b>1219.3</b>	<b>122.24</b>	<b>0</b>		

**3.2** During further course of investigation, IEC-Scroll Data was generated from EDI System wherein it was seen that M/s. S.P.K. Impex had availed a total drawback of Rs.1,17,15,792/- through 40 Shipping Bills. It was also verified from DGFT website that M/s. S.P.K/ Impex having IEC No 2914002076 has not submitted even a single BRC certificate (RUD-03), thus it was apparent that the Exporter had not



realized remittance for any S/Bill. Out of 42 Shipping bills, shipping bill no. 1215272 dated 16.6.2015 has NIL DBK claim and BRC is pending against the Shipping bill no. 1905174 dated 20.07.2015.

3.3 It was further seen from the Scrutiny of the data available in the EDI system that the Exporter had exported all his consignment from Nhava Sheva Port under Drawback Scheme and vide his 41 shipping bills, he had received Drawback benefit of Rs.1.22 Crores and out of the same Drawback amounting to Rs.1,17,15,792/- had already been sanctioned to the Exporter and drawback amounting to Rs.5,03,738/- for export made vide S/Bill No. 1905174 is placed under suspension.

3.4 To further proceed in the investigation, Summons dated 09.12.2021, under Section 108 of Customs Act was issued to the Director of M/s. S.P.K. Impex at its declared addressed, i.e. Tajpur Mafi Road, Barwal Manjhra, Rapur Dauraha, Moradabad, UP. However, the Summons returned undelivered with postal remark of "Untraceable" (RUD- 04).

3.5 It was further seen in the investigation that M/s. S.P.K. Impex was having Current Accounts in ICICI Bank and IndusInd Bank bearing Account Nos. 019005500703 and 20999731156 respectively. Hence, request letters were forwarded to IndusInd Bank and ICICI Bank to forward KYC Documents along with Bank Statement and other details.

3.6 As summon u/s. 108 returned undelivered, letter was issued to DC/CGST requesting to verify the registered address and to serve a fresh Summon dated 07.07.2022 to Shri Abdul Rashid, Director of M/s. S.P.K. Impex.

3.7 It was further seen during the course of investigation that, out of 42 S/Bills filed by the Exporter, 38 S/Bills were filed by 'Self without using any CHA. However, four S/Bills bearing Nos. 6601746, 6601748, 6601749 and 6601752 all dated 12.12.2014 were filed through Customs Broker firm, M/s. Shiv Kumar Gupta (CB No. 11/700; CB PAN Na. AAAPG8606NCH001) (hereinafter referred to as 'the CB'). Hence, a Summon u/s. 108 of Customs Act, 1962 was issued to M/s. Shiv Kumar Ramchandra Gupta on 28.12.2022 at its registered address, i.e. 301, 3<sup>rd</sup> Floor, MU Chambers, Goregaon (East), Mumbai - 400063, Maharashtra. However, Shri Shiv Kumar Ram Chandra Gupta failed to appear before SIIB (X), JNCH for recording of statement.

3.8 A summon under Section 108 was again issued on 28.12.2022 to Shri Abdul Rashid, Director of M/s. SPK impex to record his statement. However, the Summon again returned undelivered (RUD-05).

3.9 In view of non-appearance the Exporter, M/s. S.P.K. Impex as well as CB, M/s. Shiv Kumar Ram Chandra Gupta, fresh summons were issued to both of them on 16.05.2023 and again on 15.06.2023. However, both M/s. S.P.K. Impex and M/s Shiv Kumar Ramchandra Gupta ignored Summons issued u/s. 108 on both the occasions (RUD-06).



**3.10** In view of non-appearance of both the parties, Summons under Section 108 of Customs Act, 1962 was again issued on 22.06.2023 to the Exporter M/s. SPK Impex as well as CB, M/s. Shiv Kumar Ram Chandra Gupta. Summon of M/s SPK Impex again returned undelivered. However, Shri Shiv Kumar Gupta, proprietor of M/s Shiv Kumar Ram Chandra Gupta presented himself for recording of statement on 11.07.2023(RUD - 07).

**3.11** In his statement recorded under Section 108 of Customs Act, 1962, wherein, he inter alia:

(i) on being asked about M/s SPK Impex, Shri Shiv Kumar Gupta stated that he is completely unaware of any such exporter and that he has not filed any S/Bill on his behalf.

(ii) He further stated that, online facility of self-filing of S/Bill started with effect from 2016- 17 and prior to that facility for self-filing of S/Bill was not available. He further stated that during those days in 2014 S/Bills were filed through CMC, wherein, they had to submit the documents to CMC(RUD-08).

**3.12** However, on all the occasions the summons of M/s. S.P.K. Impex returned undelivered. Hence it was apparent that the exporter was not functional at the addresses mentioned by him and he deliberately provided vague address and documents to file S/Bills.

#### **4. RELEVANT PROVISIONS OF LAW APPLICABLE IN THIS CASE:**

The relevant provisions of the Customs Act relating to export of goods in general, the liability of the goods to confiscation and liability to penalty for improper exportation under the provisions of the Custom Act, 1962, Foreign Trade (Development & Regulation) Act, 1992, Foreign Trade (Regulation) Act, 1993 are summarized as under:

- (i) **Rule 11 of the Foreign Trade (Regulations), 1993:** Stipulates that on exportation out of any customs port of any goods, whether liable to duty or not, the owner of the such goods shall in the S/bill or any other documents prescribed under the Customs Act,1962, state the value, quantity and description of such goods to the best of his knowledge and belief and certify that the quality and specifications of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a truthful declaration of such statement at the foot of such Shipping bill or any other documents.
- (ii) **Section 50(2) of the Customs Act, 1962:** The exporter of any goods, while presenting a Shipping bill or bill of export, shall be at the foot thereof make and subscribe to a declaration as to the truth of its contents.
- (iii) **Section 113 of the Customs Act, 1962:** Confiscation of goods attempted to be improperly exported, etc.: The goods entered for exportation under claim of Drawback which do not correspond in any material with any information furnished by the exporter or the manufacturer under this Action relation to the fixation of rate of drawback under Section 75.



- (iv) **Section 114 (iii) of the Customs Act, 1962:** Penalty for attempt to export goods improperly, etc. - (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.
- (v) **Section 114 AA of the Customs Act, 1962:** 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 the goods.
- (vi) **Section 114AB 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 utilized 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.
- (vii) **Section 117 of the Customs Act, 1962:** —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, mere no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 2[ten thousand rupees].
- (viii) **Section 75 (A)(2) of Customs Act, 1962:** Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made there under, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AB and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.
- (ix) **Rule 3 of Customs and Central Excise Duties Drawback Rules, 1995: -**  
**Repayment of erroneous or excess payment of drawback and interest. -** Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).
- (x) **Customs, Central Excise & Service Tax Drawback Rules, 1995:**
1. **Rule 3:** provides for payment of drawback on the export of goods at such amount, or at such rates, as may be determined by the Central Government.
  2. **Rule 16:** provides that, where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant



shall, on demand by proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and that if the claimant fails to repay the amount, it shall be recovered in the manner laid down under sub-section (1) of Section 142 of the Customs Act, 1962 (52 of 1962).

3. **Rule 16A:** (1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall, except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below.

**Provided** that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

- (2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of customs shall cause notice to be issued to the exporter for production of evidence of realisation on of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of Customs shall Pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order:

**Provided** that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds Not realised bears to the total amount of sale proceeds.

- (3) Where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 16.

- (1) Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realization within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant.

Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of



sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered

**(xi) Section 28AA. 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 thereunder, 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 per cent. and not exceeding thirty-six per cent. 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 where,  
(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 1514; 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]

**(i) Sub Regulation 10 of Customs Brokers Licensing Regulations, 2018, Obligations of Customs Broker:**

- a) Obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be
- d) Advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be,
- e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage:
- 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,

**5. FINDINGS OF INVESTIGATION:**



- (i) M/s. S.P.K. Impex (IEC No. 2914002076) filed 42 S/Bills for export of "100% Ladies Long Dress" and "Ready-Made Garments 100% Polyester Girls Dress" during the financial year 2014-15 and 2015-16. During the whole period, the Exporter filed 42 S/Bills wherein total FOB value was Rs. 12.19 Crores and in the said 42 S/Bills the Exporter claimed Drawback benefits of Rs. 1.22 Crores. Out of the said 42 S/Bills, wherein, Drawback benefit was claimed, Drawback benefit of RS. 1.17 Cr was sanctioned to the Exporter, and in only one S/ Bill bearing No. 1905174 dated 20.07.2015, the Drawback benefit of Rs.5,03,738/- was placed under suspension and shipping bill no. 1215272 dated 16.6.2015 has NIL DBK claim.
- (ii) It is ascertained during the course of investigation that the Exporter, M/s. S/P.K. Impex was not a genuine exporter, and received export proceeds of none of their S/Bills. The Exporter has not submitted BRC for any of their S/Bills. From the investigation it is also established that the Exporter was not functional at the given address and all the Summons sent to them under the provisions of Section 108 of Customs Act, 1962 returned undelivered.
- iii) Out of total 42 S/Bills, the Exporter filed 38 shipping bills on Self-basis while four S/Bills were filed through CB firm, M/s Shiv Kumar Gupta (CB No. 11/700) in his statement recorded u/s 108 of the Customs Act, 1962, Shri Shiv Kumar Gupta Proprietor of CB firm stated that he had never heard of this exporter, Le. M/s. S.P.K. Impex, and he had heard of this exporter only when he received the Summon. He further stated that during the period of 2014-2015, S/Bills were filed through CMC and there was no mechanism for filing S/bills on their own.
- (iv) However, it was ascertained during the course of investigation that in INCH, EDI System was introduced much earlier in 2011 vide Public Notice No. 29/2011 dated 15.03.2011. In the EDI System, CB was under obligation to check all the S/Bills filed under their CB License on regular basis. CB firms were also receiving E-mail from EDI system on filing of S/Bills. Hence, it is apparent that the CB firm, M/s. Shiv Kumar Gupta is deliberately trying to misguide the investigation by stating that he was not aware of S/Bills filed by M/s. SP.K. Impex in his CB firm.

## 6. ROLE OF M/S S.P.K. IMPEX AND IT'S PROPRIETOR SHRI ABDUL RASHID:

Shri Abdul Rashid, Director of M/s. S.P.K. Impex obtained IEC Code for his firm M/s S.P.K. Impex by submitting vague documents. His firm is not functional at the given address and all the Summons forwarded to him returned undelivered with postal remark of "Untraceable". He deliberately and fraudulently exported goods solely for the purpose of getting Drawback benefits. He had not submitted Bank Remittance Certificate for any of his export. He fraudulently exported goods to claim undue Drawback benefits.

6.1. Thus, it is apparent that the exporter M/s SPK Impex through its Proprietor had exported the impugned goods to defraud the Government by claiming undue Drawback Even after a considerable lapse of time, no BRC on the export of 42 S/Bills has been realized. By indulging in such fraudulent export activities, the exporter has violated **Rule 11 of the Foreign Trade (Regulations), 1993**, and



knowingly acted in a manner which rendered the goods liable to confiscation under Section 113(ia) of the Customs Act, 1962. Thus, the Exporter has rendered themselves liable for penalty under Section 114(iii) and 114AA of the Customs Act, 1962, for their acts of omission and commission to export the goods covered under the aforesaid 42 S/Bills.

**7. ROLE OF M/S. SHIV KUMAR GUPTA (CD NO. 11/700) AND ITS PROPRIETOR SURA SHIV KUMAR GUPTA:**

The CB firm, M/s Shiv Kumar Gupta filed four (04)S/Bills for M/s SPK. Impex, wherein, they failed in carrying out the obligations mandated to be followed under the CBLR, 2013. It appears that they have violated Regulation 10(a), 10(4) 10(e) and 10(n) of CBLR, 2018. It appears that the CHA/CB had acted in very callout manner and that by contravening the aforesaid Regulations of CBLR 2018, the CHA/CB appears to have connived with the Exporter in availing the undue benefits. Further, it appears from the above that the said CHA/CB has not acted efficiently in discharge of his/their duty, as they have contravened various provisions of CBLR, 2010, ix. 10 (a), 10(3), 10(e) and 10(n) of COLR, 2018 Accordingly, the CHA/CB by their acts of mis-conduct and for contravention of provision of the Regulations under CBLR, 2010 mentioned hereinabove aided and abetted the said export and thereby appears to have rendered themselves liable for penal consequences under section 114 (ii) and 114AA of the Customs Act, 1962.

8 The goods exported vide 42 shipping bills having FOB value of Rs. **12.19 Crores** should be held liable for confiscation u/s 113(ia) of the Customs Act, 1962. It is verified from the ICES system that Drawback amounting to Rs. 1.22 Crores has been sanctioned to the Exporter M/s S.P.K. Impex, is recoverable along with applicable interest under the provisions of 2<sup>nd</sup> Proviso of Section 75 of Customs Act, 1962 read with Rule 3 of Customs and Central Excise Duties Drawback Rules, 1995 and Section 28AA of the Customs Act, 1962

9. Now, therefore, M/s S.P.K Impex (IEC No. 2914002076) addressed at Tajpur Mall Road, Barwal Manjhra Raper Dauraha, Moradabad, Uttar Pradesh, is hereby required to show cause, in writing, within 30 days of the receipt of this Show Cause Notice, to the Additional Commissioner of Customs, NS-II, Nhava Sheva, having his office at Jawaharlal Nehru Custom House, PostShers. Taluka-Uran, Dist Raigarh 400 707, Maharashtra, as to why:-

- (i) The goods covered under a total of 42 shipping bills as mentioned above in Table-1 having declared FOB value of **Rs.12.19 Crores** should not be held liable for confiscation under Section 1130) and 113a) of the custom Act, 1962.
- (ii) The drawback arising to **Rs.1.22 Crores** sanctioned to M/s S.P.K Impex along with applicable interest, should not be recovered as per Provision of Section 75 of the Customs Art, 1962 read with Rate 16 (1) of Customs and Central Excise Dunes Drawback Bales, 1995 and Section 28AA of the Customs Act, 1962.
- iii Penalty under Section 114(iii) and 114AA of the Customs Act, 1962 should not be imposed on M/s S.P. K. Impex



10. Now, therefore, the CB firm, M/s Shiv Kumar Gupta (CB No. 11/700), having its address at 301, 3rd Floor, MU Chambers, Station Road, Goregaon (East), Mumbai - 400063, is hereby required to show cause, in writing, within 30 days of the receipt of this Show Cause Notice, to the Additional Commissioner of Customs, NS-II, Nhava Sheva, having his office at Jawaharlal Nehru Custom House, Post - Sheva, Taluka - Uran, Dist. - Raigad -400 707, Maharashtra as to why:

- (i) Penalty 114AA and 114 (iii) of the Customs Act 1962 should not be impound on M/s Shiv Numar Gupta (CB No. 11/700),

### **WRITTEN SUBMISSIONS BY THE NOTICEES**

11. Vide SCN dated 02.01.2024, the Noticees was directed to submit written reply to the SCN within 30 days of receipt of the subject SCN, however, the Noticees did not submitted any reply to the SCN.

### **RECORD OF PERSONAL HEARING**

12. In adherence to the Principles of Natural Justice, the Exporter and Customs Broker was granted an opportunity to appear before the Adjudicating Authority for a Personal Hearing (PH). Accordingly, PH Memos dated 23.04.2024, 03.05.2024, 21.05.2024, 29.10.2024, 18.11.2024, 04.12.2024, 09.01.2025, 26.03.2025 were issued. The Customs Broker, through its representative Shri RK Tomar, appeared on 29.04.2024 and submitted a written submission. As, Adjudicating Authority has been changed, fresh opportunity of PH was granted to the Exporter and Custom Broker by the undersigned under the Principles of Natural Justice. Accordingly, PH Memos dated **23.07.2025, 01.08.2025, 25.08.2025** were issued to the Exporter. However, neither the Exporter nor the custom broker or their authorized representative appeared for PH on the scheduled dates and time.

However, Shri Shiv Kumar Ramchandra Gupta, the Customs Broker (CB), through its representative i.e Shri R.K Tomar appeared for PH on 29.04.2024 and made the following submissions:

- (i). He submitted that the CB had not filed the four Shipping Bills dated 12.12.2014.
- (ii). He further submitted that the issuance of the SCN after more than 9 years is wholly outside the legally acceptable *reasonable period*, and therefore the proceedings are without jurisdiction, relying on judicial rulings including *Bhatinda Milk Union*, *Maersk Line*, and *Jairath International*.
- (iii). He argued that the SCN does not allege any knowledge, intent, facilitation, or abetment on the part of the CB in the alleged non-realization of export proceeds, and therefore penalties under Sections 114(iii) and 114AA are not applicable.
- (iv). He also submitted that alleged violations of Regulations 10(a), 10(d), 10(e), and 10(n) of the CBLR, 2018 cannot sustain penalty because the CB did not file the S/Bills.



(v). He requested that the proceedings initiated vide the Show Cause Notice may kindly be dropped in full.

13. The submissions made during the Personal Hearing have been carefully considered and are discussed in the subsequent paragraphs while arriving at the findings.

### **DISCUSSION AND FINDINGS**

14. I have carefully gone through the facts of the case and evidences available on records. The Exporter did not participate in the present adjudication proceedings in spite of the servicing of PH Memos for Personal Hearings in terms of Section 153 of Customs Act, 1962 (as detailed in Paras 13 & 31.1 *supra*). Section 153 of the Customs Act, 1962 reads as under:

**Section 153. Modes for service of notice, order, etc.** (1) *An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: -*

(b) *by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorized representative, if any, at his last known place of business or residence;*

(c) *by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;*

(e) *by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.*

15. Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly sent to the Exporter at their known addresses (as mentioned in the SCN and export documents) through Registered Post. Further, these PH letters were also displayed on the Notice Board of this Office in compliance to the provision of section 153 (1)(e) of the Customs Act, 1962 as mentioned above. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Exporter but they chose not to join the adjudication proceedings. As the matter pertains to export of goods under 42 Shipping Bills filed by M/s. S.P.K. Impex, wherein drawback amounting to ₹1.22 Crores was sanctioned but subsequently found inadmissible on account of non-realisation of export proceeds and failure to furnish Bank Realisation Certificates (BRCs), and further considering that repeated summons issued under Section 108 of the Customs Act, 1962 to the Exporter remained unserved or unattended and the Noticee failed to appear or submit any explanation in response to the Show Cause Notice, so even in absence of the Exporter from adjudication proceedings, I am compelled to decide the matter in time bound and logical manner.

15.2. In this regard, it is pertinent to refer to the case of *M/s. Sumit Wool Processors V/s. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri.- Mumbai)]* wherein Hon'ble CESTAT, Mumbai has observed that natural justice not violated when opportunity of being heard given and notices sent to addresses given by the Noticee. If appellants fail to avail such opportunity, mistake lies on them - Principles of natural justice not violated.

*"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing*



*of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard" 2014 (312) E.L.T. 401 (Tri. - Mumbai)"*

15.3. Considering the aforesaid scenario and the fact that the Exporter has not participated in the adjudication proceedings, I take up this SCN for discussion on the merit of the case. With regard to proceeding to decide the case following the Principle of Natural Justice, reliance is placed on the decision of the **Hon'ble High Court of Allahabad in the case of M/s. Modipon Ltd. V/s. CCE, Meerut [reported in 2002 (144) ELT 267 (All)]** effectively dealing with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

*"Natural justice- Hearing- Adjournment- Adjudication- Principle of audi alteram partem does not make it imperative for the authorities to compel physical presence of the party for hearing and go on adjourning proceedings so long as party does not appear before them- What is imperative for the authorities to afford the opportunity- If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.*

*Natural justice - Hearing - Adjudication - Requirement of natural justice complied with if person concerned afforded an opportunity to present his case before the authority - Any order passed after taking into consideration points raised in such application not invalid merely on ground that no personal hearing had been afforded, all the more important in context of taxation and revenue matters. [1996 (2) SCC 98 relied on] [para 22]"*

15.4. In view of the above, it is observed that sufficient opportunities have been given to the Exporter but they chose not to join the adjudication proceedings. Having complied with the requirement of the Principles of Natural Justice and having granted Personal Hearings, the adjudication proceeding is a time bound matter and cannot be kept pending indefinitely. I, therefore, proceed with the adjudication of the case *ex-parte*, on the basis of available evidences on record.

16. During the Personal Hearing, the Authorized Representative of the Customs Broker reiterated the detailed written submissions. He submitted that the Noticee had not filed the four Shipping Bills dated 12.12.2014 attributed to him, and that there is no evidence whatsoever to show that the Noticee was involved in or had knowledge of the exports undertaken by M/s S.P.K. Impex during 2014-15. He further submitted that the proceedings are grossly time-barred, have been initiated after an unreasonable delay of more than nine years, and are therefore without jurisdiction. He emphasized that the allegations regarding violation of CBLR provisions and liability under Sections 114(iii) and 114AA are presumptive, unsupported by facts, and unsustainable. The submissions made during the hearing have been taken on record and are duly considered.

17. As the Noticee has been afforded adequate and effective opportunity to present both written and oral submissions, I find that the requirements of the Principles of Natural Justice stand duly fulfilled. I therefore proceed to examine the matter on merits strictly on the basis of the evidence available on record, including the justification for limitation, the absence of any documentary proof of filing of the impugned Shipping Bills by the Noticee, and the statutory pre-conditions for imposition of penalty under the Customs Act and the CBLR.



18. I find that the following issues are required to be decided in the instant case:

- i) Whether the goods covered under a total of 42 shipping bills as mentioned above in Table-1 having declared FOB value of Rs.12.19 Crores should not be held liable for confiscation under Section 113(i) and 113(ia) of the custom Act, 1962 or not.
- ii) Whether the drawback arising to Rs.1.22 Crores sanctioned to M/s SPK Impex along with applicable interest, should not be recovered as per Provision of Section 75 of the Customs Act, 1962 read with Rate 16 (1) of Customs and Central Excise Dunes Drawback Bales, 1995 and Section 28AA of the Customs Act, 1962 or not.
- iii) Whether the penalty under Section 114(iii) and 114AA of the Customs Act, 1962 should not be imposed on M/s S.P. K. Impex or not.
- iv) Whether the penalty 114AA and 114 (iii) of the Customs Act 1962 should not be impound on M/s Shiv Numar Gupta (CB No. 11/700).

19. I have carefully gone through the SCN No. 2236/2023-24/ADC/CEAC/NS-II/CAC/JNCH dated 02.01.2024 issued to noticee M/s. S.P.K Impex and M/s Shri Shiv Kumar Ramchandra Gupta, CB No. 11/700, submissions and arguments of the Noticees made during the Personal Hearing and other evidences on record in this case. Accordingly, I am proceeding to adjudicate the SCN on the basis of available evidence on record as well as written/ oral submissions of the Noticees.

20. I find that M/s. S.P.K. Impex (IEC No. 2914002076) filed 42 S/Bills for export of "100% Ladies Long Dress" and "Ready-Made Garments 100% Polyester Girls Dress" during the financial year 2014-15 and 2015-16 wherein total FOB value was Rs. 12.19 Crores and in said 42 S/bills the total drawback sanctioned comes to about Rs. 1.17 crores, and drawback of Rs. 5,03,738/- relating to Shipping Bill No. 1905174 dated 20.07.2015 has been kept under suspension, taking the total claimed drawback to Rs. 1.22 crores. M/s S.P.K. Impex received drawback amounts, but did not realise export proceeds against any of the 42 Shipping Bills, as confirmed from DGFT data showing non-submission of a single BRC. The absence of BRCs, despite the lapse of the prescribed FEMA period, shows that the exporter did not realise foreign exchange and had no intention to honour export contracts, thereby violating Rule 11 of the Foreign Trade (Regulations), 1993 and conditions relating to realisation of sale proceeds under FEMA. Therefore, the exports were undertaken solely for the purpose of obtaining undue drawback benefits, which renders the exported goods liable for confiscation under Sections 113(i) and 113(ia) of the Customs Act, 1962.

21. I find that M/s. S.P.K. Impex has neither realised export proceeds within the prescribed period nor submitted BRCs for any of the 42 Shipping Bills, the drawback amount of Rs. 1.22 crores sanctioned to them becomes recoverable. Further, under Rule 16A of the Customs and Central Excise Drawback Rules, 1995 read with Section 75/75A(2) of the Customs Act, drawback paid must be returned when sale proceeds are not realised. The sanctioned drawback was wrongly availed through fraudulent means, and therefore, the same is recoverable along with statutory interest under Section 28AA of the Customs Act, 1962 until full repayment is made by the exporter. Accordingly, the sanctioned drawback amount of Rs. 1.22 crores appears liable to be recovered from M/s S.P.K. Impex along with statutory interest.



22. I find that M/s S.P.K. Impex was not found functional at the declared premises; all summons issued under Section 108 returned undelivered with remarks such as "Untraceable" by such acts and omissions, the exporter has rendered the goods liable to confiscation under Section 113(i) and 113(ia), thereby attracting penalty under Section 114(iii), which provides for penalty where any person, by an act or omission, renders goods liable to confiscation. Further, by knowingly using incorrect address and declarations, misrepresenting the genuineness of exports and misusing IEC and export documents for fraudulent drawback, the exporter appears to have made and used false or incorrect declarations/documents in the course of business under the Customs Act, attracting penalty under Section 114AA. Accordingly, M/s S.P.K. Impex appears liable for imposition of penalty under Sections 114(iii) and 114AA of the Customs Act, 1962.

23. I find that, on the basis of the facts and circumstances mentioned herein above, it appears that the Exporter have knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to Shipping Bills mentioned in SCN, with an intent to violate the provisions of Custom Act by their aforesaid acts of omission and commission appears to have rendered the impugned goods liable for confiscation under Section 113 (i) & 113 (ia) of the Customs Act, 1962. 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 regularized, 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 authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 the payment of the 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. We accordingly answer question No. (i)."*

24. I find that 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.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly exported as provided in any sub-section of Section 113 of the Customs Act, 1962 are liable to



confiscation and merely because the exporter was not caught at the time of clearance of the exported goods, can't be given differential treatment. In view of the above, I find that the decision of the 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.), which has been passed after observing the 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), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.

25 I find that out of the total 42 Shipping Bills filed by M/s S.P.K. Impex, only four (04) Shipping Bills bearing Nos. 6601746, 6601748, 6601749 and 6601752 all dated 12.12.2014 were filed by the Customs Broker M/s Shiv Kumar Gupta (CB No. 11/700). Further, it is observed that the alleged overvaluation, misdeclaration and non-realisation of export proceeds pertains to the actions of the exporter and not attributable to the Customs Broker, since realisation of export proceeds (BRC) is beyond the control and legal scope of responsibility of a Customs Broker. In this case, the CB failed to verify the genuineness of the exporter, its address and KYC documents and did not detect that the exporter was non-existent at the declared premises, thereby facilitating fraudulent exports and drawback claims and abetting acts rendering the goods liable for confiscation under Section 113.

25.1 Such failure of due diligence and participation in filing Shipping Bills with incorrect particulars amounts to abetment of improper exportation, attracting penalty under Section 114(iii); and the use of Shipping Bills/documents containing incorrect details in the transaction of business under the Customs Act. Accordingly, M/s Shiv Kumar Gupta (CB No. 11/700) appears liable for imposition of penalty under Sections 114(iii) of the Customs Act, 1962, for contravention of their statutory obligations as a Customs Broker.

It is also noted that the exports in question pertain to the year 2014, whereas CBLR, 2018 was notified much later, and therefore has no retrospective applicability. Since the SCN does not establish any evidence of abetment, knowledge, intent or involvement of the Customs Broker in the alleged fraudulent export proceeds or misdeclaration, the invocation of provisions under Section 114AA of the Customs Act, 1962 is not legally sustainable.

### ORDER

26. In view of the above discussions, I pass the following order.

(i) The export goods covered under a total of 42 Shipping Bills filed by M/s S.P.K. Impex (IEC No. 2914002076) during the period 11.04.2014 to 20.07.2015, having aggregate FOB value of Rs. 12.19 crores and exported under claim of duty drawback amounting in total to Rs. 1.22 crores, in respect of which no Bank Realisation Certificate has been submitted and no export proceeds have been realised within the period prescribed under FEMA, 1999, are held liable to confiscation under Sections 113(i) and 113(ia) of the Customs Act, 1962. I impose a Redemption Fine of **Rs. 50,00,000/- (Fifty Lakhs only)** under Section 125 of the Customs Act, 1962, in lieu of confiscation.



(ii) The entire drawback amount of Rs. 1,22,19,530/- (Rupees One Crore Twenty-Two Lakhs Nineteen Thousand Five Hundred Thirty only) sanctioned/claimed against the aforesaid 42 Shipping Bills is ordered to be recovered from M/s S.P.K. Impex under Section 75 of the Customs Act, 1962 read with Rules 3, 16 and 16A of the Customs and Central Excise Duties Drawback Rules, 1995, along with interest in terms of Section 75A(2) read with Section 28AA of the Customs Act, 1962.

(iii) A penalty of Rs 15,00,000/- (Rupees Fifteen Lakhs only) is imposed upon M/s S.P.K. Impex under Section 114(iii) of the Customs Act, 1962 for acts and omissions in relation to the aforesaid 42 Shipping Bills, including filing of export documents with non-realisation of export proceeds, which rendered the export goods liable to confiscation under Sections 113(i) and 113(ia) of the Customs Act, 1962.

(iv) A further penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) is imposed upon M/s S.P.K. Impex under Section 114AA of the Customs Act, 1962 for knowingly making and using false and incorrect declarations, statements and documents (including use of non-existent/vague address, declarations in Shipping Bills and related export documents) in the course of export and for availing undue drawback benefits.

(v) The proposed penalty under Section 114AA of the Customs Act, 1962 is found to be unsustainable hence, the penalty is dropped.. However, it is observed that the four Shipping Bills were filed through the Customs Broker licence of M/s. Shiv Kumar Gupta. Considering the regulatory responsibilities associated with the role of a Customs Broker, a penalty of ₹10,000/- (Rupees Ten Thousand only) is hereby imposed upon M/s. Shiv Kumar Gupta (CB Licence No. 11/700) under Section 114(iii) of the Customs Act, 1962.

27. 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

To,

1. M/s S.P.K Impex (IEC No. 2914002076)  
Tajpur Mafi Road, Barwal Manjhra Rapur Dauraha,  
Moradabad, Uttar Pradesh
2. M/s Shiv Kumar Ramchandra Gupta (Customs Broker No. 11/700).  
301, 3<sup>rd</sup> Floor, MU Chambers,  
Goregaon (East), Mumbai-400063.  
Maharashtra

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. The Dy. Commissioner of Customs, CBS, NCH, Mumbai.
8. Supdt. (P), CHS, JNCH for display on Notice Board.
9. The Dy./Asstt. Commissioner of Customs, Drawback Section, JNCH, Nhava Sheva.
10. Office copy.



