01C

उप आयुक्त सीमाशुल्क/ Dy. Commissioner of Customs
सी.एच.एस. अनुभाग
C.H.S. SECTION
16 OCT 2025
जवाहरलाल नेहरु सीमाशुल्क भवन, न्हावा शेवा,
Jawaharlal Nehru Custom House, Nhava Sheva

प्राप्त किया/ RECEIVED
वि.आ.अ.शा./ SIIB (EXPORT)
16 OCT 2025
जवाहरलाल नेहरु सीमाशुल्क भवन, न्हावा शेवा, उरण
Jawaharlal Nehru Custom House, Nhava Sheva, Uran

RECEIVED
CRAC. (EXPORT) SECTION
16 OCT 2025
JAWAHARLAL NEHRU CUSTOM HOUSE
NHAVA SHEVA, TAL URAN,
DIST RAIGAD, MAHARASHTRA-400 707.

प्राप्त किया/ RECEIVED
केंद्रीय राजस्व वसूली कक्ष
CENTRAL REVEUE RECOVERY CELL
16 OCT 2025
Jawaharlal Nehru Custom House, Nhava Sheva
ता.उरण-Tal.Uran, जिला रायगड-Dist. Raigad-400707.

सत्यमेव जयते	भारतसरकार/ *Government of India* वित्तमंत्रालय / *Ministry of Finance* आयुक्त सीमाशुल्क एन.एस.-II काकार्यालय *Office of Commissioner of Customs NS-II* *Jawaharlal Nehru Custom House, Nhava Sheva,* *Dist- Raigad, Maharashtra – 400 707*	

F. No.: S/10-318/2020-21/ADC/NS-II/CAC/JNCH

SG/INV-80/2017-18/SIIB(X)/JNCH O/o- Commr-Cus-NS-II Date of Order: 15.10.2025

SCN NO. 817/2020-21/SIIB(X)/CAC/JNCH Date of Issue: 15.10.2025

Order Passed by: Dr. Chittaranjan Prakash Wagh डॉ. चित्तरंजनप्रकाशवाघ

Addl. Commissioner of Customs, अपरआयुक्तसीमाशुल्क
License (NS-II), JNCH, Nhava Sheva

O-IN-O No: 975 /2025-26/ADC/LIC/NS-II/CAC/JNCH

M/s. Shiv Dial Sud and Sons (IEC:0588013412)

DIN: 20251078NT000000BBBL

मूलआदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

2. 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, महाराष्ट्र400707 - को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील (नियमावली, 1982 के अनुसार फॉर्म सी.ए1-. संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टांप 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 स्टांप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है ।

3. 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

1. This copy is granted free of charge for the use of the person to whom it is issued.

2. An appeal against this order lies with the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Sheva, Taluka: 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 annexed to the Customs (Appeals) Rules, 1982. The appeal should bear a Court Fee stamp of Rs.2.00 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. 2.00 only as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1870.

3. 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.

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Sub: Adjudication of Show Cause Notice No. 817/2020-21/SIIB(X)/CAC/JNCH Dated 12.02.2021 issued to M/s. Shiv Dial Sud and Sons (IEC:0588013412).

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BRIEF FACT OF THE CASE

M/s. Shiv Dial Sud and Sons (IEC 0588013412) (herein after referred to as exporter) having address as 23, Industrial Estate, Jagadhri Road, Ambala Cantt, Haryana 133 006, had filed a Shipping Bill number 1629381 dated 18.12.2017 through Customs Broker M/s Ajay Jivaram Gupta(CB No. 11/1934)(hereinafter reffered to as the "Customs Broker") at Transindia CFS under invoice number 186/BX/2086 dated 16.10.2017 for export of '41 different chemical material items' which were destined for Iraq. The declared FOB value of the goods was Rs.2,15,95,535/- and declared invoice value was Rs.2,83,82,406/-. The exporter had further declared that they intended to claim MEIS benefit, which amounts to Rs.4,31,910/- (@ 2% on FOB value).

2. During scrutiny of export documents and examination of goods, the docks staff observed that the goods appeared to be chemical materials and highly overvalued, so the Tax invoices, Certificate of Analysis etc. were called for from the Customs Broker. As per the Tax Invoices it was observed that the goods were locally purchased from M/s. Loba Chemie Pvt. Ltd. D-22, M.I.D.C., Tarapur, Boisar and M/s. Oxford Lab Chem Unit no.12,1st floor, Neminath Industrial Estate No. 6, Navghar,Vasai(East),Palghar-401210 and the total value of the goods were found to be Rs.14,91,173/-. Since the declared FOB value appeared to be grossly overvalued, the file was forwarded to SIIB(X) for further investigation.

3. The said goods covered under Shipping bill No. 1629381 dtd 18.12.2017 were examined in detail by the officer of the SIIB(X), JNCH in the presence of Shri Mahesh Ashok Khatu, representative of CB, M/s Ajay Jivanram Gupta under panchanama dated 08.01.2018. During examination of the 70 pallets covered under Shipping bill No 1629381 dated 18.12.2017, the goods appeared to be chemical materials and the total quantity tallied with that declared in the packing list. It was observed that labels were pasted on the pallets/boxes declaring M/s Shiv Dial Sud & Sons as the manufacturer and chemical materials were packed in plastic bottles with name 'Supertek'. Thereafter, representative samples were drawn randomly and kept in three sealed carton boxes for future testing. As the goods appeared not to be in conformity with the valuation, the goods covered under the shipping bill No.1629381 dated 18.12.2017 were seized vide seizure Memo dated 08.01.2018 under Section 110 of the Customs Act,1962 on reasonable belief that the same are liable for confiscation under Section 113(i) of the Customs Act, 1962. Again on 11.01.2018 the sealed three boxes containing the representative samples were opened under

Panchanama and 41 representative samples of different chemical materials were drawn for testing.

4 . In the meantime, the exporter vide letter no BX/2804 dated 29.12.2017 gave cost detail of the shipment for Invoice No. 1861BX/2086 dated 16.10.2017 stating that the purchase price of the goods were Rs.38,18,021/- and submitted Tax Invoices issued by their suppliers M/s. Loba Chemie Pvt. Ltd and M/s. Oxford Lab Chem. Since the FOB value was declared as Rs.2,15,95,535/-, **it appeared to be overvalued at 5.66 times of the market value**. To further justify the valuation of the goods, it was mentioned that the FOB value included commission amount of Rs.90,83,000/- and stated that due to political instability, Iraq is a high risk market and in the event of any crisis or political instability they have to follow up vigorously to get their payment, which also gets added in their purchase. On verifying the shipping bill, it was observed that the exporter had declared an amount of. US$ 142580.38 (i.e.Rs. 90,82,370/-) as 'Commission'.

5. Further, the exporter vide letter No. BX/2805 dated 29.12.2017 stated that as their overseas buyer, Ministry of Health under Government of Iraq, had put a condition in the contract that the order should only be placed through a 'manufacturer exporter', though they were not a manufacturer, they had signed the contract with the buyer as 'manufacturer exporter', so as not to lose the contract. During examination of the goods under Panchanama, it was observed that the exporter had declared themselves as manufacturer on the labels pasted on the goods, though they were not actual manufacturer.

6. Further the exporter vide letter BX/2924 dated 04.01.2018 informed that they have received the order from the Ministry of Health, Government of Iraq for various chemicals against a confirmed purchase order. Exporter had also informed that they were paying commission to the commission agent which amounts to 32% of the contract value and the commission payable would be to the extent of Rs. 90,83,000/- against the contract of Rs. 2,84,00,000/- approx. The exporter also submitted copy of Contract for supply of Chemicals material Order No. 34/2017/18 dated 21.09.2017 between the State Company for Marketing Drug and Medical Appliances, Baghdad, Iraq and themselves showing the details of the chemicals to be supplied, their quantity, their unit price in dollars and their total value amounting to 445563.68 US$. It was observed that these details were same which were mentioned in the Export Invoice no. 186/BX/2086 dated 16.10.17 and the shipping bill NO.1629381/18.12.17.

7. The exporter further requested that the goods may be allowed for export on provisional basis. Accordingly, exporter was given option for provisional release of the goods on submission of PD Bond equal to FOB Value and Bank Guarantee of Rs. 4,31,910/-. The exporter accordingly submitted the PD Bond and Bank Guarantee for Rs.4,31 ,910/- and on 22.01.2018, the goods were allowed provisionally for export.

8. Thereafter, the 41 representative samples drawn during, panchanama were forwarded to Dy.C.C. for confirmation of identity of the chemicals, Dy.C.C. Test reports Reports of all the 41 items have been received and as per the reports, all the goods are found to be correctly declared.

9 . During the investigation, statement of Shri Alok sood, proprietor of M/S Shiv Dial sud & sons was recorded on 19.01.2018 wherein he interalia stated that:

(i) They are not the manufacturer of the goods;

(ii) The conditions of the contract with the overseas buyer was that the supplier should be the manufacturer and hence to comply with this condition, they had knowingly mentioned themselves as manufacturer on the packages of the goods. they do not manufacture laboratory reagents or any chemical materials but they are manufacturers of laboratory equipments, microscopes, scientific instruments, hospital surgical equipments and laboratory glassware.

(iii) He stated that goods costing Rs. 10,35,623/- were purchased from M/s Loba Chemie Pvt. Ltd. and they had further purchased goods worth Rs. 27,82,398 from M/S Oxford Lab Chem on credit basis on 16.10.2017 and 26.10.2017 simultaneously and the total cost of the materials was Rs.38,18.021/- . Since the purchase cost of the goods was Rs.38.18,021/- and as the FOB value of the goods declared in the shipping bill was Rs.2,15,95,535/-.on being asked about the difference, he stated that they were exporting the goods to Iraq, which is a politically unstable country and it is very risky to carry out business. Hence the difference between the FOB value and the purchase amount was Rs.1,77,77,514/- which includes commission amount of Rs. 90.,82,370.21. the commission amount has been mentioned in the Shipping Bill and after subtracting the commission the final approximate gross profit comes to Rs. 86,95,143.79/- which is inclusive of other establishment expenses; the high profit margin was because of the high risk involved and hence the contract offer price was high. He further submitted certified contract copy and tender offer document where the estimated purchase price was mentioned.

(iv) Further on being asked about the commission agent and mode of transaction used for paying commission to the commission agent and details of the past export where they have paid similar commission charges, Shri Alok Sood stated that their agent was Dr. Salwan Hannoudi and further stated that he would submit copies of previous shipping bills, BRC and bank transaction details for the commission paid in the last two years. On being asked, he stated that commission was paid to the agent through their bank after receiving payment equal to the amount of FOB.

10. Statement of Shri Alpesh Prajapati, employee of M/S Loba ChemiePvt. Ltd., one of the suppliers of the exporter M/s Shiv Dial Sud& Sons, was recorded on 22.06.2018. On being shown copy of invoice No. L02825 dated 29.09.2017 describing the goods as "laboratoty chemicals" he agreed that the invoice was made by them and the goods mentioned in the invoice were supplied by them to M/S Shiv Dial Sud and Sons. He further stated that they had purchased the said material from other buyer and that they were not the manufacturer of the goods. On being asked, he stated that they did not make any export to Iraq.

11. Statement of Shri Tushar Rajnikant Shah, propriotor or M/S Oxford Lab Chem, the other supplier of the exporter M/S. Shiv Dial Sud& Sons, was rocorded on 28.06.2018. On being shown copy of Invoice no. 000220 dated 26.10.2017, 000330 dated 04.12.2017, 000336 dated 06.12.2017 and 000341 dated 09.12.2017 describing the goods as "laboratory chemlcals", Shri Tuahar Rajniknnt Shah agreed that the same good were supplied by them to M/s Shiv Dial Sud and Sons and the said invoices were made by them. He further stated the they had purchased the said material from the other buyer and that they were not the manufacturer of the goods. On being asked, he stated that they had made single export to Iraq for the same goods.

12. Further statement of Shri Alok Sood, Proprietor of M/s Shiv Dial Sud and Sons was

recorded on 08.08.2018 wherein he interalia stated that:

(i) They were paying the commission to the commission agent through bank after receipt of payment equal to the invoice value and the same practices was followed in all the previous exports to Ministry of Health, Iraq. Besides, he stated that due to hostile conditions within Iraq, it was not possible to visit the country and get the matter resolved and hence they had to depend upon their appointed agent. The role of the agent was very important as he was involved from the time of getting the order till the timely delivery of the goods. The agent spends lot of time and effort in completion of an order and that no such rigorous follow ups and long duration of time was involved in other countries and that was the reason that the commission rate of agent was high in Iraq. Further he promised to provide the detaiis of the same within 10 days.

(ii) In the past, exports made to Ministry of Health, Iraq, they had paid commission @ 32% of invoice value. On being asked why the goods were purchased at a very low price from their supplies and was being exported at a very higher rate, he stated that the prices provided by their supplier were factory price for sale in India which does not include any other expenses and market risks. He further stated that in addition to the high agency commission, the other factors which have led to the high costing of the product were: that their investment remained blocked for years as it takes lot of time to receive the full payment and hence this cost was added in the product cost. The cost included the cost of samples and shipment. Penalty for delay was 10% of contract value and provision to cover such penalties was made by increasing the cost.

(iii) The transportation cost in Iraq was high as it was a disturbed country. The Iraqi Embassy charges were high which increased the cost price. As per the contract, all the bank charges had to be borne by them which they have added in the cost price. Iraq being an unstable market, the risk involved was high and therefore the margins are higher. He further stated that due to the above explained high risk and high investment cost involved, the prices for Iraq remains higher than other countries.

13. Since the exporter in his statement dated 08.08.2018 had stated that they are paying commission @ 32% of invoice value in the present shipment and same percentage of commission had also being paid to agent in the past shipments made to Ministry of Health, Iraq. The details of the past exports (from year 2015) made by the exporter to MOH, Iraq were retrieved from the EDI System. The details of the same are as below:

Table-2

Sr. No.	Shipping bill No. & Date	Description of goods	FOB value (inRs.)	Invoice value (inRs.)	Export benefits claimed (inRs.)	Commission amount declared in S/Bill	Percentage wise commission
1	1064508/ 08.06.2015	Supply of Laboratory appliances	48527138	59923342	1.90% Dbk. - 914575 MEIS - Nil	US$197549.48 Rs. 12583903	21% of invoice value and 25.93% of FOB
2	2895617/ 09.09.2015	Supply of Laboratory appliances	11767883	14175734	1.90% Dbk. – 220395 MEIS - Nil	US$45241.70 Rs. 29769054	21%of invoice value and 25.30% of FOB
3	3024595 / 15.09.2015	Supply of Laboratory appliances	47587018	56345856	1.90%Dbk.- 904153 MEIS – claimed	US$179827.2 Rs. 11958509	21% of invoice value and 25.13% of FOB

4	4645340 / 11.12.2015	Supply of Laboratory appliances	54671541	63201970	1.90% Dbk. - 1038759 MEIS - claimed	US$200338,32 Rs.13272412	21% of invoice value and 24.27% of FOB
5	4954534 / 24.03.2017	Supply of Laboratory appliances	21674156	27549627	1.% Dbk.- 219099 MEIS -claimed	US$136680.32 Rs.8815879	32% of invoice value and 40.67% of FOB
6	1629381 / 16.12.2017	Supply of Laboratory appliances	21595535	28382406	Dbk. – Nil MEIS - claimed	US$142580 Rs.9082346	32% of invoice value and 42.06% of FOB

13.1 From the above it can be observed that in addition to the present consignment filed under shipping bill no. 1629381/18.12.2017, the exporter had also exported 05 consignments to Ministry of Health, Iraq earlier and in all the cases, **they had declared the commission amount in the shipping bills which ranges from 21% to 32% of the invoice value and 24% to 42% of the FOB value.**

13.2 In this regard, reference is invited to Para 4 of Board Circular no. 64/2003-Cus dated 21.07.2003 wherein it is stated that "*....it is clarified that the field formations may continue to pemit export benefits on f.o.b. value without deducting agency commission if such commission is upto the limit of 12.5% of f.o.b. value. Agency commission exceeding this limit should be deducted from the f.o.b. value for granting export benefits under Drawback /DEPB/Advance Licences/DFRC Schemes.*"

On perusal of 'Table— 2' above, it can be observed that the exporter has declared commission amount at 42% of the FOB value in the present consignment filed under shipping bill No. 1629381/18.12.17 and at 24% to 40% of FOB value in the remaining 05 past exports. Hence the commission declared in all the above 06 shipments exceeds the limit of 12.5% of the FOB value. Further, it appears that the agency commission exceeding the limit of 12.5% has not been deducted from the FOB value while granting the export benefits.

13.3 Further from the DGFT site, it is observed that BRCs have been issued In the previous 05 Shipping bills and present consignment filed under Shipping bill no. 1629381/18.12.2017, details are tabulated as below:

Table-3

BRC Date	BRC status	Bill ID	SHB No.	SHB Port	SHB Date	BRC status	Utillisation
23.11.2015	Active	0432FSGC1500300	1064508	INNSA1	O8.06.2015	Used	
23.11.2015	Active	0432FSGC1500300	1064508	INNSA 1	08.06.2015	Used	
31.07.2015	Active	0432FSGC1500300	1064508	INNSA1	08.06.2015	Used	
O9.02.2016	Active	0432FSGC1500300	2895617	INNSA1	O9.O9.2015	Used	
28.10.2015	Active	0432FSGC1500300	2895617	INNSA1	09.09.2015	Used	
05.02.2016	Active	0432FSGC1500300	3024595	INNSA1	15.09.2015	Used	
28.10.2015	Active	0432FSGC1500300	3024595	INNSA1	15.09.2015	Used	
08.02.2017	Active	0432FSGC1500300	4645340	INNSA1	11.12.2015	Used	

27.06.2016	Active	0432FSGC1500300	4645340	INNSA1	11.12.2015	Used
21.01.2016	Active	0432FSG500300	4645340	INNSA1	11.12.2015	Used
25.10.2015	Active	0432FSGC1500300	4954534	INNSA1	24.03.2017	Used
11.05.2017	Active	0432FSGC1500300	4954534	INNSA1	24.032017	Used
26.09.2019	Active	0432FSGC1800069	1629381	INNSA1	18.12.2017	Used

14. As per the Rule-6.(Residual Method) of Customs Valuation(Determination of Value of Export Goods) Rules, 2007.

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

As the market enquiry method of 41 Chemicals appears Infeasible, online price quotations of the suppliers M/s Oxford Lab Fine Chem LLP and M/s Loba Chemie Pvt. Ltd.2017-18 have been downloaded. The declared FOB prices of the Chemicals are compared with prices quoted in the Price-list of the suppliers i.e. M/s Oxford Lab Fine Chem LLP and M/s Loba Chemie Pvt. Ltd

Table-4

Sr. No.	Item Desription	Value declared in Tax Invoice	M/s Oxford Lab Fine Chem LLP	M/s Loba Che mie Pvt. Ltd.
1	Ponceau S	400		770
2	Potassium Chloride	137.5	160	190
3	Sodium Chloride 99.5% Extra Pure	112.5	135	135
4	5-Sulphosalicyclic Acid	687.5	850	
5	E.D.T.A Dipotassium Salt	175	200	
6	Tris Buffer	550	650	700
7	Fuchsin basic	575	590	600
8	Methyl red indicator AR	175	220	290
9	methylene blue	175		
10	Sucrose extra pure	175	230	260
11	sulphanilic acid	225	250	200

12	toluidine blue	825/50g	640/25g	730/25g
13	Bromocresol green indicator	1062.5/10g	670/5g	760/5g
14	Buffer capsule ph 10	425	650	
15	Buffer solution Ph 4.0	162.5	210	
16	Trypan blue	825	830	910
17	Eosine Yellow Water solution	175		
18	Alumonium Pottasium Sulphat e	75/100g	260/500g	200/500g
19	Sodium Lauryl Sulphate powd er	800/1000g	600/500g	630/500g
20	1-hexane sulphonic acid	15000/1000g	4000/100g	4000/100g
21	1-heptane sulphonic acid	15000/1000g	4000/100g	4000/100g
22	Sodium phosphate dibasic	625/1000g	3500/500g	410/500g
23	Dimethyl Amio Benzaldehyde	1987.5/250g	3700/500g	950/100g
24	Citric Acid (Monohydrate)99 % Extra pure	425/1000g	260/500g	240/500g
25	Borax 99%	375/1000g		220/500g
26	Ferrous SulphateHeptahydate	125/500g	160	190/500g
27	Sodium Bicarbonate	272/1000g	150/500g	320/500g
28	Boric Acid (powder) 99% pur e	1420/1000g	300/500g	620/1000'g
29	Ammonium Sulphate 98.5%	192.5/1000g	185/500g	170/500g
30	Calcium Chloride Dihydrous	252.5/500g	200/500g	200/500g
31	Leishman`s stain powder	350/25g	480/25g	600/25g
32	Calcium Chloride Anhydrous 90%	125/250g	600/500g	
33	Glemsa` s Stain	425/25g	560/25g	640/25g
34	Paraffin Wax	275/500g	550/500g	500/600g
35	TetrabutylAmmoniumDihydro gen	3000/25g		3000/5g
36	Formaldehyde Solution	80/L	175/ML	180/500ML

37	Iso-propyl alchol	150/L	270/500ML	580/L
38	Acentonitrile for HPLC	415/L	1200/L	1400/L
39	Buffer tablets Ph4	260/50TAB		700/50TAB
40	Buffer Tablets Ph7	260/50TAB		700/50TAB
41	Buffer Tablets Ph9.2	260/50 TAB		700/50TAB

14.1 From the Table-4 it is clear that exporter's declared prices in the tax-invoices are lower (Except item No. 28, 30) than the values quoted in the price-lists of the Suppliers.so, values declared in the Tax-invoices may be taken as the domestic market prices.

14.2 As it is a standard operating procedure in the valuation to load 30% extra value on domestic market prices to compensate the exporter for associated miscellaneous expenses and allowing a responsible profit margin. Further exporter during his statement dated 19.01.2018 has submitted that due to high risk Iraqi market, they have to pay high commission to the Agent. The market commissions given by exporter range from 21% to 41%. The exporter has also declared the agent`s commission in their Shipping bills. The relevant Para of the Circular No. 64/2003-Cus dated 21.07.2003 is quoted below:

"The field formations may continue to permit export benefits on FOB value without deducting agency commission is up to the limit of 12.5% of FOB value. Agency Commission exceeding this limit should be deducted from the FOB value for granting export benefit under Drawback/DEPB/Advance Licenses/DERC scheme".

14.3 Taking the standard operating procedure into account, the New FOB and Export benefits are calculated as per the table 4:-

Table-5

S.B/Date	Old FOB with agent Commission	TAX Invoice value	FOB after 30% loading	Determined FOB after adding 12.5% commission	DBK claimed (Rs.)	Redetermined DBK (Rs)	MEIS rate	MEIS claimed (Rs)	Redetermined MEIS(Rs.)
1064508/ 08.06.2015	48527138	12578736	16352357	18396401	914575	230055.28	3	1455814.14	551892.03
2895617/ 09.09.2015	11767883	5448646	7083240	7968645	220395	151083.91	3	353036.49	239059.35
3024595/ 15.09.2015	47587018	28510046	37063060	41695942	904153	792222.89	3	1427610.54	1250878.26
4645340/ 11.12.2015	54671541	15035643	19546336	21989628	1038759	417802.932	3	1640146.23	659688.84
4954534/ 24.03.2017	21674156	5760080	7488104	8424117	219099	86598.49	2.	433483.12	168482.34
1629381/ 18.12.20	21595535	3818020	4963426	5583854	0	0	1.39	300955.376	77816.589

17									
	205823271	71151171	92496523	104058587	3296981	1677763.5		5611045.9	2947817.1

15. **On the basis of above the following facts emerges:**

- It was observed that the exporter had declared an amount of US$ 142580.38 (i.e. Rs. 90,82,370/-) as 'Commission' in the shipping bill no. 1629381/18.12.2017, 'which is 42% of FOB value.

- In his statement, the exporter accepted that the purchase cost of the goods was only Rs.38,18,021/- and the FOB value was Rs. 2,15,95,535/- because It included commission amount of Rs. 90,82,370/-and the remaining amount of Rs. 86,95,144/- was their profit.
- To justify the high profit margin, he stated that it was very risky to carry out business with Iraq, which is a politically unstable country and that the profit was inclusive of other establishment expenses.

- To justify the high commission amount, he stated that the role of the agent was very important as he was involved from the time of getting the order till the timely delivery of the goods. He stated that the agent spends lot of time and effort in completion of an order and that no such rigorous follow ups and long duration of time was involved in other countries and this was the reason why the commission rate of the agent was high in Iraq.

- He further stated that the other factors which have led to the high costing of the product were: that their investment remained blocked for years as it takes lot of time to receive the full payment and hence this cost was added in the product cost. The cost included the cost of samples and shipment. Penalty for delay was 10% of contract value and provision to cover such penalties was made by increasing the cost. The transportation cost in Iraq was high as it was a disturbed country. The Iraqi Embassy charges were high which increased the cost price. As per the contract, all the bank charges had to be borne by them which they have added in the cost price. Iraq being an unstable market, the risk involved was high and therefore the margins were higher. He further stated that due to the above explained high risk and high investment cost involved, the prices for Iraq remains higher than other countries.

- He also stated that in the past exports made to Ministry of Health, Iraq, they had paid commission @ 32% of invoice value.

- He also submitted the certified contract copy and tender offer documents with the overseas buyer. The Contract for supply of Chemicals material Order no. 34/2017/18 dated 21.09.2017 between the State Company for Marketing Drug and Medical Appliances, Baghdad, Iraq and the exporter was verified which had the details of the chemicals to be supplied, their quantity, their unit price in dollars and their total value amounting to 445563.68 US$. It was observed that these details were same which were mentioned in the Export Invoice no. 186/BX/2086 dated 16.10.17 and the shipping bill no. 1629381/18.12.17. Hence it appears that the invoice value declared in the shipping bill is the agreed transaction value between the exporter and the overseas buyer.

- Past exports (from year 2015) made by the exporter to MOH, Iraq were retrieved from EDI System and it was observed that in addition to the present consignment filed under shipping bill no. 1629381/18.12.17, the exporter had exported 05 consignments to Ministry of Health, Iraq earlier and in all the cases, they had declared the commission amount in the shipping bills which ranges from 24% to 42% of the FOB value.

- It was observed that the exporter had claimed total Drawback benefit of Rs. 32,96,981/- in past 05 consignments (viz. in shipping bill no.1064508/08.06.15, 2895617/09.09.15, 3024595/15.09.15. 4645340/11.12.15 & 4954534/24.03.17) and in all these cases though the declared commission amount is more than 12.5% of FOB value, it appears that the drawback amount had been disbursed to the exporter without deducting the excess agency commission from the FOB value.

- Further it is observed that the exporter had claimed MEIS benefit in past 05 cases. As per Policy Circular no. 55(RE-98) dated 10.12.1998 and Policy Circular no. 24(RE-2004)/2004-07 dated 14.01.2004 issued by DGFT in case of calculation of DEPB entitlement, it is clarified that *"the agency commission would be allowed for the DEPB benefit if such commission is upto the limit of 12.5% of FOB value. Agency commission exceeding this limit should be deducted from the FOB value for granting benefit under DEPB Scheme."* Though the declared commission amount is more than 12.5% of FOB value in the above mentioned past 05 cases, it is not known whether the MEIS benefit was given by DGFT after deducting the excess agency commission from the FOB value.

16. **Investigation has revealed that:**

The exporter, M/s Shiv Dial Sud and Sons(IEC-0588013412), had attempted to export the consignment of 41 different chemicals material items covered under Shipping Bill No. 1629381 dated 18.12.2017 filed through their Customs Broker for the total declared FOB value of Rs. 2,15,95,535/- under the MEIS benefit, which amounts to Rs. 3,00,955/-(@ 1.3936% on FOB value). The declared FOB Value of the goods was Rs. 2,15,95,535/-and they attempted to claim MEIS benefit of Rs. 3,00,955/- but the Re-determined FOB Value of the goods is Rs. 55,83,854/-and the Re-determined MEIS benefit of the goods is Rs. 77,817/-. Thus, it appears that by mis-declaring the value of the goods, the Exporter had inflated FOB value of the export goods by Rs. 1,60,11,681/- and thereby illegally attempted to avail excess/undue export benefits of Rs. 2,23,138/-.

16.2 The Exporter has violated the provisions of Rule 11 of the Foreign Trade (Regulations), 1993 in as much, as they did not make a correct declaration of value of goods, in the Shipping Bill submitted by them to the Customs authorities.

16.3 The exporter had mis-declared the value of the goods and attempted to export the aforesaid goods in breach of provisions of section 50 (2) of the customs Act, 1962 and Rule

11 of Foreign Trade (Regulations) Rules,1993 read with Regulation 3 of the Foreign Exchange Management Act, 2000 and hence it appeared that there was a deliberate misdeclaration, and suppression of facts regarding the actual value of the impugned goods on the part of the exporter with mala-fide intention to claim undue export benefits not legitimately payable to them.

16.4 The exporter, M/s Shiv Dial Sud and Sons (IEC 0588013412) had deliberately mis-declared the impugned goods in past five Shipping Bills and Shipping Bill no. 1629381 dated 18.12.2017 in terms of value and attempted to defraud the Government by claiming undue higher amount of drawback benefit as well as MEIS benefit and thereby acted in a manner which rendered the said goods liable for confiscation in terms of the provisions of Section 113 (i) and 113(ia) of the Customs Act, 1962 and they have thus rendered themselves liable to penalty in terms of Section 114 (iii) of the Customs Act, 1962.

16.5 **The Summary of Drawback and MEIS benefit for the past five Shipping Bills are asunder:-**

Total Declared FOB Value	: Rs.18, 42, 27,736/-
Total Re-determined FOB	: Rs 9, 84, 74,733/-
Total Drawback Claimed	: Rs. 32, 96,981/-
Total eligible Drawback	: Rs. 16, 77,763.5/-
Total Difference in drawback	: Rs 16, 19,217.5 **(To be recovered)**
Total MEIS Claimed	: Rs 53, 10,091/-
Total eligible MEIS	: Rs 28, 70,001/-
Total difference in MEIS	: Rs 24, 40,090/-**(To be recovered)**
Total excess amount received	: Rs 40, 59,308/-**(Total to be recovered)**

The total FOB value of the goods covered under past 5 Shipping Bills appears liable to be re-determined to Rs 9, 84, 74,733/- under Rule 6 of CVR 2007 as against declared FOB value of Rs. 18, 42, 27,736/-.This clearly shows that the exporter appears to have attempted to claim undue Drawback and MEIS benefit collectively amounting to Rs. 40, 59,308/- with mala-fide intention and suppression of facts intentionally and deliberately by over invoicing the goods and deliberately caused revenue loss to the Government exchequer and the same is thus liable to be recovered along with interest. As the above said undue drawback and MEIS benefit have been availed by the Exporter by willful mis-statement and suppression of facts by the way of fraudulently mis-declaring the value of subject goods, the same is liable to be demanded and recovered alongwith interest under Section 28AAA of the Customs Act, 1962 read with Section 28AA of ibid and in terms of Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section Customs Act, 1962 read with Para3.19 of Foreign Trade Policy 2015-20.

17. Now, therefore, M/s Shiv Dial Sud and Sons (IEC 0588013412), having declared registered address at 23, Industrial Estate, Jagadhri Road, Ambala Cantt, Haryana 133 006 and their Proprietor Shri Alok Sood having address at 5361/4, Punjabi Mohalla, Ambala Cantt-Haryana is hereby called upon to Show Cause to the Joint Commissioner of Customs (Licence NS-II, having office at Jawaharlal Nehru Customs House,Nhava Sheva, Tat. Uran, Dist. Raigad (Maharashtra) within 30 days of receipt of this notice as to why:-

(i) The declared FOB value of Rs. 2,15,95,535/- of goods covered under shipping Bills Number 1629381 dated 18.12.2017 should not be rejected under Rule-8 of Customs Valuation (Determination of Value of Export Goods) Rules. 2007 (CVR) and re-determined to Rs.55,83,854/- as per Rule-6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007(CVR), read with Section 14 of the Customs Act, 1962, for reasons and in the manner detailed above.

(ii) The said impugned export goods, covered under Shipping Bill No. 1629381 dated 18.12.2017 having total declared FOB value of Rs. 2,15,95,535/- found to be mis-declared in terms of value and fraudulent availment of MEIS benefit should not be confiscated under the provisions of Section 113 (i) of the Customs Act, 1962.

(iii) The MEIS benefit of Rs. 300955/- for Shipping Bill No. 1629381 dated 18.12.2017, attempted to be availed should not be rejected and re-determined to Rs. 77,817/- and excess MEIS benefit should not be recovered from them along with interest due thereupon under Section 28AAA & section 28AA of the Customs Act, 1962 for mis-declared in terms of value of the goods under the provisions of Chapter 3 of Foreign Trade policy 2015-20, Public Notice 02/2015-20 dated 01.042015 issued by DGFT and CBIC Notification 24/2015-Customs dated 08.042015.

(iv) The declared FOB value of Rs. 18, 42, 27,736/-of goods covered under past five Shipping bills (Table-5) should not be rejected under rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007(CVR) and re-determined to Rs. 9,84,74,733/- as per Rule-6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007(CVR), read with section 14 of the Customs Act, 1962, for reasons and in the manner detailed above.

(v) The claimed Drawback amount of Rs. 32,96.981/- for the past five Shipping Bills (Table-5) should not be rejected and re-determined to Rs. 16,77,763.5/-and the excess drawback amount of Rs. 16,19,217.50/-along with interest should not be demanded from M/s. Shiv Dial Sud and Sons (IEC 0588013412) towards the ineligible drawback availed by them in respect of the past five Shipping Bills (Table-5), in terms of Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.

(vi) The MEIS benefit amounting to Rs. 53,10,091/-claimed for the past five Shipping Bills as specified in Table-5 should not be rejected and re-determined as Rs. 28, 70,001/- and excess MEIS benefit of Rs. 24,40,090/-should not be recovered from them along with interest due thereupon under Section 28AAA & section 28AA of the Customs Act, 1962 for mis-declared in terms of value of the goods under the provisions of Chapter 3 of Foreign Trade policy 2015-20, Public Notice 02/2015-20 dated 01.04.2015 issued by DGFT and CBIC Notification 24/2015Customs dated 08.04.2015.

(vii) The said impugned export goods, covered under the past five Shipping Bills (Table-5) having total declared FOB Value of Rs. 18, 42, 27,736/-which were found to be mis-declared in terms of value, drawback claim and MEIS benefit, should not be held liable for confiscation under the provisions of Section 113(i) and 113(i) (a) read with section 50(2) of Customs ACt,1ė62, read with Rule 11 of the Foreign Trade (Regulations) Rulest1993, Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.

(viii) Penalty should not be imposed on M/s Shiv Dial Sud and Sons (IEC 0588013412) under section 114 (iii) ofthe Customs Act, 1962.

(ix) Penalty should not be imposed on Shri Alok Sood, proprietor of M/s Shiv Dial Sud and Sons (IEC 0588013412) under section 114 (AA) of the Customs Act, 1962.

(x) Penalty should not be imposed on Shri Alok Sood, proprietor of M/s Shiv Dial Sud and Sons (IEC 0588013412) under section 114 (AB) of the Customs Act, 1962.

WRITTEN SUBMISSION OF THE NOTICEE

18. The Noticee in their written submission dated 01.08.2022 rejects the allegation made in and oppose the punitive actions proposed in impugned SCN as the allegations are equally unfair, improper and matter of facts entirely unlawful. The noticee arises the following questions

A. **Officers of SIIB are not proper officers to issue SCN.**

The notice submitted that SIIB officers are not the proper officers to issue the SCN under Section 28AAA of the Customs Act, 1962. Therefore, the same is liable to be set aside on this ground alone. The noticee has placed reliance on various judgments of Tribunals, and Apex Court and relevant sections of Customs Act, 1962 as below:

A-1 The expression 'proper officer' is defined in section2(34) of the Customs Act as under:

"2(34) Proper Officer-in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs"

It is evident that a notice under section 28AAA can only be issued by the proper officer and the proper officer for issuing a notice under section 28AAA is the officer of customs who is assigned those functions by the Board or the Commissioner of Customs in terms of Section2(34) of the Customs Act. The notice relies the judgment of Hon'ble Supreme Court in the case of Commissioner of Customs vs. Sayed Ali &Anr. 2011(265)ELT 17(SC).

A-2 Substitution of Section 28 with effect from 08.04.2011

The Finance Act, 2011 substituted the earlier section 28 with new section 28 with effect from April 8, 2011. the new section 28 states that any non-levy or short-levy or erroneous refund arising before April 8, 2011 (the date of enactment of Finance Bill, 2011) shall continue to be governed by the provisions of section 28 as it stood immediately prior to April 8, 2011. In other words, the provisions of new section 28 shall not be applicable to short-levy or non-levy or erroneous refund arising before April 8, 2011.

Thereafter, Notification No. 44/2011-Cus. (N.T.), dated July 6, 2011 was issued by the CBEC. By way of this notification, the CBEC, in exercise of the powers conferred by section 2(34) of the Customs Act, assigned the functions of the proper officer to various officers (including Commissioner of Customs, Preventive) mentioned in the notification, for the purposes of section 17 and Section 28 of the Act. Thus, w.e.f. July 6, 2011, Commissioner of Customs (Preventive) was prospectively appointed as 'proper officers' for the purpose of section 17 and 28 of the Customs Act.

Further, an amendment was made to the new section 28 of the Customs Act vide the Customs (Amendment and Validation) Act, 2011 with effect from September 16, 2011 by inserting a new sub-section (11). The newly inserted sub-section (11) provides that all officers of customs (appointed prior to July 6, 2011) shall be deemed to have been and always had been proper officers for the purposes of "this section". sub-section (11) refers to the new section 28 (inserted w.e.f. April 8, 2011) and not to the old section 28, as it existed prior to April 8, 2011. Thus, it is submitted that the effect of sub-section (11) is to deem all officers of customs to be proper officers only for the purpose of new section 28 of the Customs Act.

For this, the Noticee relies on the case of ***Mangali Impex and Ors. vs. Union of India, 2016-TIOL-877-HC-DEL-CUS***, wherein the Hon'ble Delhi High Court on 03.05.2016 has held that for all imports made prior to 8th April, 2011, DRI/ Preventive/ SIIB/ DGCEI officers do not have jurisdiction to issue show cause notices under Section 28 of the Customs Act. Such reasoning was adopted to ensure a harmonious interpretation between Section 28(11), Customs Act.

Reliance is also placed on the case of ***Rajinder Arora vs. Union of India, 2016-TIOL-1257-HC-P&H-CUS***, wherein the Hon'ble High Court at Punjab & Haryana had accepted the reasoning provided by the Hon'ble High Court at Delhi, in the case of ***Mangali Impex (supra)***, quashed the show cause notices issued by DRI for imports made during the period prior to 08.04.2011.

Thus, in the light of the above judgments of the Hon'ble High Court at Delhi and Punjab & Haryana, it is humbly submitted the demand in the present case issued under *pari-materia* Section 28AAA is to be set aside as the SCN was issued by the SIIB officer who is not the proper officer. reliance is placed on the judgment of the Andhra Pradesh High Court in the case of ***Sri Balaji Rice Company vs. CTO, [1984] 55 STC 292.***

A-3 Person who has made assessment under Section 51 is the proper officer to issue show cause notice under Section 28AAA of the Customs Act

It is submitted that the proper officer for the purposes of Section 28AAA of the Customs Act is that officer who has been assigned the specific function of assessment of Shipping Bills. In other words, the proper officer for issuing a show cause notice under Section 28AAA of the Customs Act will be the proper officer who has assessed the concerned Shipping Bills under Section 51 of the Customs Act. This proposition with regard to Section 28AAA also finds support in the judgment of the Supreme Court in ***Commissioner of Customs vs. Sayed Ali &Anr., 2011 (265) ELT 17(SC)*** pertaining to *pari-materia* Section 28. It is pertinent to point out that even the language used in Section 28(11) of the Customs Act shows that the legislature wanted to link between the proper officer for the purposes of Section 17 (*parimateria* to Section 51) and Section 28 of the Customs Act. Section 28(11) provides that all officers of Customs shall be deemed to have and always had the power of assessment under Section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.

Thus, the effect of Section 28(11) of the Customs Act is merely to confer the power of assessment under Section 17 on the officers of DRI, etc. and such officers would also be proper officers for the purposes of issuing a show cause notice under Section 28 of the Customs Act. Thus, in cases where the officers of DRI, etc. had exercised the power of proper officer to make assessments under Section 17, only in those cases, the said officers (DRI, etc.) will also have the power of proper officer to issue a show cause notice under Section 28 of the said Act. The same applies to Section 28AAA also.

However, in cases, where the Shipping Bills were assessed under Section 51 by proper officers exercising jurisdiction over respective Customs Ports, only those officers (and not SIIB) will be proper officers for the purpose of issuance of a Show Cause Notice under Section 28AAA of the Customs Act. It is further submitted that the SIIB officers did not have the jurisdiction to make assessment or reassessment under Section 51 of the Customs Act.

It is submitted that even after the amendment to Section 28 by insertion of sub-section (11), the proper officer for the purposes of section 28 will be only that proper officer who made assessment of Bills of Entry under section 17 or Shipping Bills under Section 51 of the Customs Act. It thus follows that for the purpose of *pari-materia* Section 28AAA, the proper officer for the purposes of Section 28AAA will be only that proper officer who made assessment of Shipping Bills under Section 51 of the Customs Act.

It is submitted that Section 28 of the Customs Act does not make a reference to 'a proper officer' or 'any proper officer'. the Noticee relies the judgment of The Hon'ble Supreme Court in the case of (i) ***Consolidated Coffee Ltd vs. Coffee Board,(1980) 3 SCC 358*** (ii) ***Ishar Alloys Steels Ltd vs.JayaswalsNeco Ltd.(2001) 3 SCC 609***

A-4 Exercise of jurisdiction by first officer would oust the jurisdiction of other officer having concurrent jurisdiction

In support of the above contention, the Noticees also rely on the legal principle that if concurrent jurisdiction is conferred on multiple officers, the officer who first exercises jurisdiction would oust the jurisdiction of other officers.It is submitted that in order to avoid the multiplicity and chaos, once a particular officer exercises jurisdiction, it would exclude the jurisdiction of all the other officers. This principle has been applied by the Hon'ble P&H High Court in the case of ***Kenapo Textiles Pvt. Ltd. and another vs. State of Haryana and Others,84 STC 88***. The Hon'ble Supreme Court in the case of ***V K Ashokan vs. Assistant Commissioner,(2009)14 SCC 85*** has observed that where two statutory authorities could exercise the same power and if the matter is heard by one, the other cannot exercise it. the Noticee relies the judgment of Hon'ble Supreme Court*in the case of* ***India Household and Healthcare Ltd vs. LG Household and Healthcare Ltd.,(2007) 5 SCC 510***

Thus, once the Shipping Bills filed by the Noticee have been assessed by the proper officers having jurisdiction over respective ports under Section 51, jurisdiction of all other officers including that of the SIIB officers to issue any notice for recovery of drawback and MEIS benefits in respect of those Shipping Bills would stand ousted.

The Noticee relies the judgment In the case of ***Sivaramakrishnan vs. State of Kerala and others,1995 (1) ILR 92***, and of the Hon'ble AP High Court in the case of ***Sri Balaji Rice Company vs. Commercial tax officer,1984 (55) STC 292.*** The Noticee also relies the judgment of Hon'ble Supreme Court in the case of **CANON INDIA PRIVATE LIMITED VERSUS COMMISSIONER OF CUSTOMS - 2021 (3) TMI 384 - SUPREME COURT**

In view of the above and especially as per the law laid down by the Hon'ble Supreme Court, the show cause notice issued by the Joint Commissioner of Customs (SIIB) is without jurisdiction and therefore liable to be set aside.

B. **Value of exported goods was found correctly declared during SIIB Investigation-Section 14 is not applicable:**

The notice contended that the market enquiry method of 41 chemiclas appears infeasible to contend that there is over-valuation of the export goods . The noticee submitted that before commenting upon the applicability of Rule-6, the main provision under which these rules have been framed i.e Section 14 of the Customs Act, itself is not applicable.
Since under section 14 refers to the term "export goods" the definition of export goods has been provided under Section 2(19) of the Customs Act, 1962 reading as under:

(19) "export goods" means any goods which are to be taken out of India to a place outside India".
The "export goods" means only those goods which are yet to be taken out of India to a place outside India. By no stretch of imagination, it cannot be extended to the goods which have already been taken out of India. So the goods covered under five shipping bills mentioned in Table 5 of the SCN, have already been taken out of India. Therefore, those are not "export goods". Consequently, Section 14 is not applicable, as result, the CVR, 2007 are not applicable.

The notice relies the judgment of Hon'ble Punjab and Hariyana High Court in the case of Jairath International V/s UOI-2019(370) E.L.T.116(P&H), Hon'ble Punjab and Hariyana High Court in the case of Zee Knits & Weaves Pvt.ltd., Anr., Worldwide Tradelinks&Anr. and M/s Famina Knit Fabs&Anr.V/S Union of India& Ors. Reported at 2019(10) TMI 803.

For this reasons the five shipping bills where the goods have already been taken out of India, Section 14 and the Rules made thereunder are not applicable. Consequently, the SCN is not sustainable and the entire demand of drawback as well as the MEIS benefit is liable to be dropped without prejudice to other submissions elsewhere in this reply.

Further the notice submitted that the value for the goods exported was prior contracted by the notice, with an entity of the Government of Iraq. The testing report of the Representative samples of the impugned goods found no mis-declaration. BRCs had admittedly been issued in respect of each of the six consignments. SIIB did not found anything wrong with the transaction value. The SCN proposes to anyway reject it and adopt an arbitrary "standard operating procedure" to determined the FOB value of the goods after adding 30% to the price at which the exporter had purchased the goods plus agency commission @12.5%. The said standard operating procedure has no legal sanctity whatsoever , neither under the Customs Act, 1962 nor the EVRs2007. This cannot be lawfully employed to determined the transaction value of export goods.

The notice relies the judgment of Hon'ble Supreme Court in the case of Kunhayammed Vs. State of Kerala-2001(129) E.L.T. 11(S.C.), and in the case of Akshay Exports & Indus Vs Commissioner of Customs(EP), Mumbai[2003(160)ELT 0663 Tri-Kol].

C. **<u>Shipping Bill is also an appeable order:</u>**
Shipping bill is filed under section 50 of the Customs Act, and clearance of goods for exportation is allowed under Section 51. If the proper officer of Assessment which is appealable by section 128 of the CA, 1962.The revenue as well as assessee may refer an appeal against order of assessment. The notice relies the following judgments:

i. Khemka Travels Vs. C.C.-1992(57)E.L.T.458
ii. C.C. Bombay Vs.Hari&Co-1997(92)E.L.T.518(T)
iii. Max India Ltd Vs. Commissioner-2005(192)E.L.T.246(Tribunal)
iv. Ashoosons Vs.Commissioner-2009(239)E.L.T.107(Tribunal)

v. Airport Authority of India Vs.CC-2005(192)E.L.T.179(Tri-Del.)
vi. J.M.Industries Vs.Commissioner-2003(156)E.L.T.977(Tribunal)
vii. Commissioner Vs.Videocon Appliances-2009(235) E.L.T.513(Tribunal)
viii. Hon'ble High Court of Bombay in the case of Karan Associates Vs.Commissioner-2009(236)E.L.T.23(Bom).
ix. Hon'ble High Court of Gauhati in the case of Commissioner Vs. Jellalpore Tea Estate-2011(268)E.L.T.14(Gau.)
x. Hon'ble Supreme Court in the case of Collector Vs.Cotspun Ltd-1999(113)E.L.T. 353(S.C.)
xi. Hon'ble Supreme Court in the case of Collector Vs. Flock (India) Pvt. Ltd.-200(120)E.L.T.285(S.C.)
xii. Hon'ble Supreme Court in the case of Priya Blue Industries Ltd Vs.Commissioner -2004(172)E.L.T.145(S.C.)
xiii. In the case of STI India Ltd. Vs. Commissioner -2008(222) E.L.T.112(Tribunal)
xiv. In the case of Wipro Ltd. Vs.Commissioner-2005(189)E.L.T.289(Tribunal)
xv. Hon'ble High Court of Madras in the case of Eveready Industries India Ltd Vs.CESTAT-2016-TIOL-676-HC-MAD-CX
xvi. Hon'ble Tribunal in the case of Axiom Cordages Ltd. Vs. Commissioner of Customs, Nhava Sheva-2020(9) TMI-CESTAT Mumbai.

D. **Section 28AAA is also not applicable otherwise:** Noticee submitted that Section 28AAA is not applicable with regard to recovery of MEIS benefits. Section 28AAA refers to an instrument issued to a persons obtained by him by means of collusion, wilful statement or suppression of fact.

There is no collusion, willful statement or suppression of facts inasmuch as the SCN nowhere disputes the contract value of export. it is admitted in the SCN that the invoice value declared in the Shipping Bill is the agreed transaction value between the noticees being exporter and the overseas buyers. Hence, there is no collusion, willful statement or suppression of facts. For this reason, Section 28AAA is not applicable.

Section 28AAA refers to an instrument issued/obtained. In the entire SCN, nowhere has it been mentioned that MEIS instrument has been issued to/ obtained by the Noticees. it is specifically mentioned that it is not known whether the MEIS benefits was given by the DGFT after deducting the excess agency commission from FOB value. The SCN therefore, itself admits that it is not known to MEIS benefits are given by the DGFT. Noticees submit that an instrument is issued by the DGFT and that authority is the only authority that which either can modify, cancel, withdraw such instrument. When there is no mention in the SCN whether any instrument issued to the noticees in the MEIS scheme by DGFT has been cancelled or withdrawn, where is the question of applicability of Section 28AAA. Reliance is placed on the judgment by the Hon'ble Supreme Court in the case of **Titan Medical Systems Pvt. Ltd. Vs. Collector of Customs, New Delhi, - 2003 (151) ELT 254 (S.C.)** wherein it has been held that if the license issuing authority i.e. DGFT has not questioned the veracity of the transactions undertaken under the license, the customs authorities cannot refuse exemption on an allegation that there was any misrepresentation. Also see **Axiom Cordages Ltd. vs. Commissioner of Customs, Nhava Sheva- 2020 (9) TMI-CESTAT Mumbai.** For this reason also, the SCN invoking Section 28AAA is liable to be set aside.

E. **The goods exported are not liable to confiscation**

The impugned goods which were provisionally released for export, have been proposed to be confiscated u/s 113(i) of the CA, 1962. The goods exported earlier under the 5 S/Bs have been proposed to be held liable to confiscation u/s 113(i), 113(ia), read with S.50(2) of the CA,1962, and S.11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 11 of Foreign Trade (Regulation) Rules, 1993. It would, therefore, be appropriate to have a look at these provisions Customs and Foreign Trade law.

Section 113/CA*Confiscation of goods attempted to be improperly exported, etc* : *The following 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.

(ia) any goods entered for exportation under claim for drawback which do not correspond in anymaterial particular with any information furnished by the exporter or manufacturer under thisAct in relation to the fixation of the rate of drawback under S.75.

It would be noticed that S.50 of the CA, 1962 and S.11 of the FT(D&R) Act, 1992 read with Rule 11 of the FT(R) Rules, 1993 obligate an exporter to make a correct declaration, as to the value and other material particular of the goods, and sign this declaration in the Shipping Bill. S.113(i) and 113(ia) of the CA,1962 render any goods, in respect of which any declaration made in the Shipping Bill, as to their value or other material particular, turns out to be false.

In the SCN, these provisions have been invoked to hold all the goods, exported under the said 6 S/Bs, liable to confiscation for mis-declaration. This is intriguingly in total contradiction to the finding of the SIIB's own investigation, which have been summarized above. As a matter of fact, the investigation with reference to the impugned goods, which were seized and then provisionally released, concludes with the observations inter alia that:

(i) *the invoice value declared in the shipping bill is the **agreed transaction** value between the exporter and the overseas buyer;*

(ii) Upon test of their representative samples, *all the goods are found to be correctly declared*; and

(iii) the agreed consideration for the exported goods had been received in India and the bank had issued BRCs too.

The SIIB investigators found no evidence to attribute the foreign remittance received against the said BRCs to anything other than the goods exported by the noticee.

In view of these facts, any proposal to hold the goods exported by the noticee, vide any of the six S/Bs, liable to confiscation u/s 113(1) or S.113(ia) is totally inconsistent with the said provisions of law and, therefore, legally untenable. The goods are thus not liable to confiscation.

F. **Re-determination of FOB and part rejections of MEIS/DBK claims is legally unjustified**

The export incentives claimed by the noticee, both Drawback and MEIS, are proposed to be re-determined and partially rejected on the ground that the noticee had:

(i) mis-declared FOB value of the goods exported which is reckoned to calculate the said incentives; and

(ii) paid agency commission far in excess of what was includible in the FOB valueof the goods.

In this regard, it has been submitted that FOB value of the goods had not been mis-declared and that the SIIB's own findings had validated the correctness of noticee's declaration not only as to their value but also their description and other material particulars. Therefore, any proposal to still regard the declared FOB value as inflated and re-determine not only the said value but also the MEIS/Dbk amounts with reference thereto is nothing short of bizarre.

Another ground for re-determination of the FOB value, taken in the SCN, is that the noticee had contracted for agency commission to the Baghdad-based agent far in excess of the amount contemplated in the Circular No.64/2003-Cus dated 21.07.2003 read with RBI circular No. AD (MA Service) 17 dated 19.05.1999 and DGFT's Policy Circular No.55 (RE-98) dated 10.2.1998. In this context, it would be appropriate to have a look at relevant parts of the said circulars:

Customs Circular No. 64/2003-Cus dated 21.07.20023

1. xxxxx

" 2 . Customs field formations so far have been permitting agency commission to the extent of 12.5% of the f.o.b. value by following RBI's Circular No.AD (MA Service) 17, dated 19.5.1999.

3. xxxxx

4 . The issue has been examined in the Board. It is observed that RBI has not revised its earlier instructions as regards the limit of payment of agency commission. Therefore, it is clarified that the field formations may continue to permit export benefits on f.o.b. value without deducting agency commission if such commission is upto the limit of 12.5% of f.o.b. value. Agency commission exceeding this limit should be deducted from the f.o.b. value for granting export benefits under Drawback/ DEPB/ Advance Licences / DFRC Schemes.

DGFT Policy Circular No.55(RE-98) dated 10.12.1998 largely reiterated the contents of the above-noted Customs circular: *It has been observed that for drawback entitlement, the FOB value, inclusive of the foreign agents commission, is taken into account. It has therefore been decided that the total FOB value inclusive of foreign agents commission (upto the specified limit prescribed by RBI) be taken while calculating DEPB entitlement also.*

It needs to be noted that the RBI cap of 12.5% of the invoice value has not been prescribed for purposes of calculating the export incentives. It is in fact a direction to the authorized dealers, such as banks, of foreign exchange to allow remittance abroad towards agency commission to the extent of 12.5% of the invoice value. It has nothing to do with the determination of export benefits. As provided in para 3.04 of the FTP that provides for MEIS scrips "the *basis of calculation of reward would be the realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less*

Notification No.24/2015-Customs dated 08.04.2015 exempts any goods, when imported into India against an MEIS duty credit scrip, from whole of the:

(i) duty of Customs leviable under the First Schedule to the Customs Tariff Act,1975; and

(ii) additional duty leviable thereon under section 3 of the said Customs Tariff Act , 1975.

Neither para 3.04 of the FTP nor the Customs exemption notification No. 24/2015 contemplate any cap on the agency commission for calculating the export incentives. The only cap that has been placed is that under Rule 8A of Drawback Rules which provides "*The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product*". Similarly, another cap on admissible drawback (described therein as "maximum amount") had been contemplated under para 1(5) of Notifications No.110/2015-Cus (N.T.) dated 16.11.2015 as well as Notification No. 131/2016-Cus (N.T.) dated 31.10.2016 both of which notified the Drawback Schedule for the year 2015-16 and 2016-17. The maximum allowable amount of drawback was mentioned in Col. 5 & 7 of the said schedule. And in the noticee's case, none of the claims has exceeded that limit, as would be evident from data in the table. Therefore, any recalculation of the MEIS/Dbk entitlement by reworking the FOB value of the exported goods is not mandated by law and is thus not permissible.

Therefore, without prejudice to the noticee view that they are entitled to the MEIS/Dbk benefits without any deduction in the declared FOB value, for the purposes of calculating such benefits in accordance with the RBI circular, the FOB value of the exported goods must include agency commission to the extent of 12.5% of the invoice value. The calculation of the exports in terms of the Customs Circular No. 64/2003 is thus improper and unfair.

Shipping Bill No.	FOB value declared	Invoice value declared	Agency commission	Col 2 minus col.4	12.5% of Col.3	FOB value for calculating export benefits (Col. 5+Col.6)
1	2	3	4	5	6	7
1064508 06.08.2015	48527138	59923342	12583903	35943235	7490417.75	43433652.75
2895617 09.09.2015	11767883	14175734	2976904	8790979	1771966.75	10562945.75
3024595 15.09.2015	47577018	56345856	11958509	35618509	7043232	42661741
4645340 11.12.2015	54671541	63201970	13272412	41399129	7900246.25	49299375.25
4954534 24.03.2017	21674156	27549627	8815879	12858277	3443703.375	16301980.38
1629381 18.12.2017	21595535	28382406	9082346	12513189	3547800.75	16060989.75

G. **<u>Recovery of excess MEIS/DBK benefits</u>**

Without going into the merits of the case, it is submitted that demand for duty against MEIS duty credit scrip of Rs.2,23,138/- relating to the impugned goods is meaningless, for no MEIS scrip has been applied for or issued in respect thereof as yet. Further, the whole of remaining demand for Rs. 16,19,218/- towards Dbk and Rs.24,40,091/- (26,63,229/- less 2,23,138/-) is time-barred. The mechanism for recovery of such duty is laid down in S.28 of the Act which prescribes a maximum time limit of 5 years even in respect of fraudulent claims. Thus, the notice in respect of 4 S/Bs (sl. No. 1 to 4 in the table) above, whereunder goods were exported and drawback paid in the year 2015, is clearly time-barred.

Although Rule 16 of the Drawback Rules, provides for the repayment of erroneous or excess payment of drawback, it does not specify, unlike in S.28 of the Act, a time limit for issuing a notice of repayment to the claimant. Does that mean the time for notice under the said Rule 16 is limitless? If the Drawback Rules made under the mother Act do not provide for a time line, it makes sense to rely on S.28 of the mother Act which does provide for time limit for demand of duty not levied or not paid or erroneously refunded. Accordingly, the time line for issuing a notice of demand is:

(i) in cases involving no collusion, mis-statement or suppression of facts, one year from the relevant date ; and

(ii) in other cases which do involve collusion, mis-statement or suppression of facts, five year from the relevant date.

In terms of the Explanation 1 to S.28, the relevant date in the said two situations would be date of utilization of the MEIS scrip for payment of duty, and date of payment of Dbk respectively. the noticee had declared truthfully, in all the relevant S/Bs, everything that was required to be declared. There was no collusion, mis-statement or suppression of facts. In view of these facts, relevant date for demand of the said sums of duty and Dbk was no longer than one year. And by that standard, the entire demand in respect ofpast five S/Bs is time-barred. Taking cue from S.28 of the Act, Hon'ble Punjab & Haryana High Court had held, in the case **of Famina Knit Fabs vs Union of India[2020 (371) ELT 0097 P&H]**, that "*any notice issued under Rule 16 of the Drawback Rules, 1995 beyond* ***five years from the date of export*** *is bad in the eyes of law and barred by limitation.*" (emphasis supplied)

The MEIS was a Ministry of Commerce scheme for promoting exports and earning precious freely convertible foreign currency. The duty credit scrips, which were utilized to pay a part of the Customs duty on imports, were issued by the DGFT based on the exports actually made and foreign exchange actually received in India. The Customs could not demand and recover duty paid in terms of such scrips unless they were cancelled by the DGFT. As held by Principal Bench of Hon'ble Tribunal in **Hind Industries vs Commr of Customs, New Delhi,** reported as **2014 (314) ELT 342 (Tri. Del),** Customs authorities cannot demand duty from the exporters on any irregularity noticed by them and they should necessarily refer the matter to DGFT authorities for cancellation of such licences. Following the same ratio in **Gayson& Company (P) Ltd** case, reported in **2019 (370) ELT 1026 (Tri. Kolkata)**, Hon'ble Tribunal had reiterated the observation that proper authority to take action in case of any irregularity noticed in the DEPB **availment was DGFT and not Customs**.

Similarly, the case for recovery/repayment of excess payment of drawback is no better. The drawback, claimed and disbursed to the noticee, had been calculated with reference to the FOB value which was found to have been correctly declared and in respect of which the BRCs had also been issued. Such disbursement could in no way be regarded as erroneous or excess payment. The demand for its recovery/repayment is thus equally untenable.

Hon'ble Tribunal in the case of **Axiom Cordages Ltd. vs. Commissioner of Customs, Nhava Sheva- 2020 (9) TMI-CESTAT Mumbai** has held that the provisions contained in Section 28AAA of the Act therein for recovery of duties are applicable only in the eventuality where an instrument issued to a person has been obtained by him by means of 'collusion'; or 'willful misstatement' or 'suppression of facts'. The Hon'ble Tribunal set aside the demand in the absence of any communication addressed by the office of Development Commissioner functioning under the DGFT to hold that the appellant got the MEIS scrip issued by the said authority by means of collusion, willful misstatement or suppression of facts and in the absence of material evidence available on record to prove that the competent licensing authority under the Foreign Trade Policy had initiated any proceedings against the appellant alleging acquisition of the scrip(s) in a fraudulent manner. The Hon'ble Tribunal further held that the allegation with regard to MEIS benefits wrongly availed by the appellant does not have an independent nexus to the Customs Act, 1962 inasmuch as such scheme designed for the Merchant Exporter are dealt with under the Foreign Trade Policy (2015-2020) and Foreign Trade (Development & Regulation) Act, 1992. In the present case also, there is nothing on record to suggest that the competent licensing authority under the Foreign Trade Policy had initiated any proceedings against the Noticee alleging acquisition of the scrip(s) in a fraudulent manner. For this reason also, the show cause notice is liable to be dropped.

Without prejudice to these submissions, it is submitted that if agency commission over and above the prescribed RBI cap of 12.5% is to be excluded from the FOB value for calculating the export benefits, the 12.5% cap should be reckoned with reference to the invoice value and not FOB value. The FOB value should include 12.5% of the invoice value, as authorised by the above-noted RBI circular dated 19.5.1999, and not 12.5% of the FOB value as contemplated in the Customs circular No. 64/2003 dated 21.07.2003.

H. **Demand is time barred**

The noticee submit that demand with regard to drawback as well as MEIS benefits is time barred. With regard to drawback, it can be recovered back only within a reasonable period of time. Although Rule 16 of the Drawback Rules is silent with regard to limitation under which the drawback can be recovered, but it is a settled law that drawback can be recovered within a reasonable period of time. The Hon'ble Supreme Court in the case of **GOVERNMENT OF INDIA Versus CITEDAL FINE PHARMACEUTICALS - 1989 (42) E.L.T. 515 (S.C.) and Commissioner v. Raghuvar (India) Ltd. — 2000 (118) E.L.T. 311 (S.C.)** has held that where no specific time limit has been specified, the reasonable period of limitation will apply. With regard to the drawback specifically, the Hon'ble Gujarat High Court in the case of **Padmini Exports vs. Union of India- 2012 (284) ELT 490 (Guj)** has held that the drawback cannot be recovered beyond a period of 5 years. Reliance is also placed on the judgment of the Hon'ble High Court of Delhi in the case of **Medina (UZ) Impex vs. U.O.I.- 2019 (368) E.L.T. 555 (Del.)**.Similarly, the demand with regard to MEIS is also time barred.

I. **Drawback Rules of 1995 ceased to operate without saving clause**

Recovery of Drawback has been proposed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Noticee submits that these rules of 1995 ceased to operate on introduction of the Customs and Central Excise Duties Drawback Rules, 2017 issued under Notification No. 88/2017-Cus. (N.T.), dated 21-9-2017 and as per the said Notification, the same becomes operative with effect from 01.10.2017.

Perusal of the saving clause under Rule 20 of the new Rules reveals that no saving clause has been made for recovery of Drawback already sanctioned under erstwhile Rules of 1995.

Although Section 159A of the Customs Act, 1962 provides for saving clause for the Rules amended, repealed, superseded or rescinded, the same cannot come to the rescue of the Department inasmuch as Rule 20 specifically provide for saving clause which does not cover such recoveries of Drawback already sanctioned. Further, Rules of 1995 have not been repealed, amended, superseded or rescinded so as to attract Section 159A, these have been made inoperative. For this reason also, Section 159A cannot be applied.

Hon'ble High Court of Punjab & Haryana in the case of**M/s Famina Knit Fabs and Anr. V/s Union of India and Ors.** reported at **2019 (10) TMI 803-Punjab and Haryana High Court**has held that by saving few rights accrued under Drawback Rules, 1995 Government has expressed different intention so Section 159A of 1962 Act becomes inapplicable. Had there been intention to save all rights and liabilities arising from Drawback Rules, 1995, the Government would not have inserted Rule 20(2) in Drawback Rules, 2017 saving only few rights/acts. Had there not been Rule 20(2) in Drawback Rules, 2017 as is in present form and manner, Section 159A of 1962 Act would have come into play and saved all the rights and liabilities arising out of Drawback Rules, 1995.

In view of the fact that no saving clause has been provided under Rule 20 of the new Rules, proposed recovery of Drawback sanctioned under the erstwhile inoperative 1995 rules is beyond the jurisdiction and legal framework. For this reason also, the show cause notice is liable to be dropped.

J. **Payment of interest**

The SCN seeks to charge interest on the MEIS benefit availed of by the noticee under S.28AA read with S.28AAA(2) of the Act, i.e. on the MEIS benefit taken by means of collusion, mis-statement or suppression of facts. In this context it, has already been comprehensively explained that the noticee had not obtained any MEIS benefit by means of collusion, wilful mis-statement or suppression of facts. Every bit of information regarding the goods exported that was required to be furnished had been declared in the S/Bs. As a matter of fact, the SCN itself acknowledges it in a very unambiguous language.

Where the said S.28AAA(1) is not attracted for recovery of any MEIS, levy of interest in accordance with the provisions of S.28AAA(2) is untenable. Thus, the noticee is liable to pay neither the duty under S.28AAA(1) nor interest thereon u/s 28AAA(2).

K. **Penalty is not imposable under under section 114(iii),114(AA) and 114(AB)**

Section 113(1a) is not applicable inasmuch as there has been no question of fixation of drawback rate under Section 75. This provision has been mis-quoted. As regards Section 113(i) is concerned, as submitted earlier, as per Section 2(19), export goods are those goods which are to be taken out of India to a place outside India. The goods which have already been taken out of India are not export goods as held by the Hon'ble High Court of Punjab & Haryana referred supra. Further, value under Section 14 is not applicable to the goods which have already been taken out of India. Section 113(i) is therefore, not applicable. Consequently, Section 114(iii) is not applicable.

Similarly, Shri Alok Sood had not made or signed any false declaration or statement, or used any false document or material, leave aside intentionally, in relation to export of the said goods. In fact, the SCN itself records the truthfulness of description of goods and the invoice value being the agreed transaction value of the goods. There is thus no reason why he should be penalized u/s 114AA.

As regards penalty u/s 114AB, this section, having been inserted in the Act and brought into operation only w.e.f. 01.08.2019, vide s.76 of the Finance (No.2) Act, 2019, cannot be applied retrospectively for exports made during 2015 to 2018.The noticee relies on the Hon'ble Supreme Court's decision in the case of **Commissioner of Central Excise Vs ElgiEquipements Ltd**, reported as **2001 (128) ELT 52 (SC)**, wherein a similar issue of retrospective application of mandatory penalty u/s 11AC of the Central Excise Act, 1994 had come up for consideration. It was held that section 11AC was "*prospective in operationand the illegality committed prior to insertion of section 11AC in the Act, cannot be the subject matter of penalty under the said provision*."This decision upholds the principle of *lexprospicit non respicit*, which means that a law looks forward and not backward.

a penalty u/s 114AB is attracted when a person has obtained an instrument, like an MEIS scrip, 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. It is not the Customs case that Shri Alok Sood had obtained any MEIS scrips by means of fraud, collusion, wilful misstatement or suppression of facts. In fact the Customs/SIIB case is quite the contrary. It has been categorically accepted that the noticee had correctly declared the goods and their invoice value was the agreed transaction value. Therefore, the MEIS scrips, the only instrument availed of by the noticee, were not tainted by fraud. Consequently, no penalty was imposable u/s 114AB on Shri Alok Sood, the proprietor (*sic* partner) of noticee'sfirm.

In the foregoing paragraphs, it has been submitted in detail that no duty is payable as the benefits have been rightly claimed by the Noticees. For the same reasons, no penalty proposal is sustainable. In the case of ***Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC),*** the Hon'ble Supreme Court held that the question of penalty would arise only if the department is able to sustain the demand. Similarly, in the case of ***Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC),*** the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.

RECORD OF PERSONAL HEARING

19 In adherence of the Principles of Natural Justice the Exporter was granted an opportunity to appear before the Adjudicating Authority for Personal Hearing (PH) for giving oral submissions in their defense. Accordingly, PH Memos dated 06.03.2025 was issued by the Adjudicating Authority fixing PH on 17.03.2025. Shri R.K. Hasija, Advocate attended personal hearing on 17.03.2025 on virtual mode. He reiterated earlier submission dated 01.08.2022 and further relied upon the Final Order dated 07.03.2025 of the Hon'ble Tribunal in identical facts and circumstances titled as JBN Apparels Pvt. Ltd Vs Commissioner of Customs-New Delhi ICD TKD-2025(3) TMI 514-CESTAT New Delhi in Customs Appeal No. 50127 of 2024 with C/50128/2024, C/50129/2024, C/50301/2024, C/50302/2024, C/50303/2024 wherein it has been held as under:

(i) FOB value is the transaction value, i.e. the price paid or to be paid for the goods as decided between the exporter and the overseas buyer.

(ii) No stranger to the contract, including any Customs Officer has any right to interfere with the FOB value of the goods.

(iii) The Customs Act does not empower any officer to modify the FOB value of goods.

(iv) Even if the transaction value is rejected under the Valuation Rules and the assessable value is determined following some other method, such re-determination of assessable value does not change the FOB value.

(v) The power to notify rates of Drawback is vested with the Central Government and if the rates of DBK are as a percentage of FOB value, DBK should be paid accordingly and no Customs officer has the power to ignore the FOB value and determine DBK based on any other value determined by him.

(vi) The incentive under MEIS and ROSL are part of the FTP framed by the Central Government under section 5 of the FT(D&R) Act, 1992 and all officers are bound to follow the FTP. No Customs Officer has the power to defy the FTP and say that MEIS and ROSL benefits should be paid, instead of FOB, based on some other values determined by him.

(vii) Thus the entire investigation and the subsequent SCN and the adjudication proceedings were on the wrong impression that the Customs officers have the right to modify the FOB value or the DBK, MEIS and ROSL which, as per the DBK schedule and the FTP which have to be paid as a percentage of FOB could, instead, be paid on some other value determined by the officers.

On scrutiny of the submission it is noticed that the date was not mentioned on the submission and the Adjudicating Authority issued a fresh PH Memo dated 16.09.2025 to the noticee and fixed the PH on 18.09.2025.Shri R.K. Hasija, Advocate (Authorised Representative) attended personal hearing on 18.09.2025 on behalf of M/s Shiv Dial Sud and Sons (IEC No. 0588013412) and Sh. Alok Sood, Prop on virtual mode and he reiterated the submission dated 01.08.2022 resubmitted with acknowledgement and submission made in earlier PH conducting on 17.03.2025.

Additional Submission He also reiterated the fresh submission dated 18.09.2025 of six case laws of the Hon'ble Tribunal as below:

(i) KRITIKA ENTERPRISES VERSUS COMMISSIONER OF CUSTOMS (APPEALS), NEW DELHI-2025 (4) TMI 528 - CESTAT NEW DELHI;

(ii) MAHAJAN FABRICS PRIVATE LIMITED VERSUS PRINCIPAL COMMISSIONER/COMMISSIONER OF CUSTOMS (EXPORT) -NEW DELHI (ICD TKD)-2025 (5) TMI 1376 - CESTAT NEW DELHI;

(iii) JAYANTAH TRADING CO AND SUNIL KUMAR Versus COMMISSIONER OF CUSTOMS (APPEALS) -NEW DELHI-2025 (6) TMI 1285 - CESTAT NEW DELHI'

(iv) MAHIR FASHIONS (P) LTD, M/s NAAZ IMPEX, M/s NAWAB AHMED ANSARI, M/s MEHRUDDIN ANSARI, M/s ALMAS CREATIONS, SARDAR AHMED Versus COMMISSIONER OF CUSTOMS- (ICD) NEW DELHI-2025 (7) TMI 1468 - CESTAT NEW DELHI

(v) FINAL ORDER NO. 51081/2025 dated 29.07.2025 in the case of Modak Dyeing & Printing Co. Pvt. Ltd. Vs. Commissioner of Customs, ICD, Tughlakabad, New Delhi.

The above case laws holding that FOB value of export goods being the transaction value cannot be interfered by the Customs Officer for the purpose of MEIS benefit as well as for DBK purpose and the Customs Act, 1962 does not empower any officer to modify the FOB value of goods in such cases. Therefore, the proceedings in the present matter being on the identical issue are to be dropped with consequential relief to the exporter/Noticees.

DISCUSSION AND FINDINGS

20. I have carefully gone through the entire records of the case and the case has been examined in the light of the evidences produced by the department, applicable laws/rules in the matter. I find that the subject Show Cause Notice was issued on 12.02.2021 under Section 124 of the Customs Act 1962 for alleged overvaluation of the goods to claim undue Drawback and MEIS benefit. Further, in compliance to the provisions of Section 28(8) and Section 122(b) of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions / contentions made by the Noticee.

21. Now, on a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

(i) Whether the declared FOB value of Rs. 2,15,95,535/- of goods covered under shipping Bills Number 1629381 dated 18.12.2017 should be rejected under Rule-8 of Customs Valuation (Determination of Value of Export Goods) Rules. 2007 (CVR) and re-determined to Rs. 55,83,854/- as per Rule-6 of the said Rules *ibid*, read with Section 14 of the Customs Act, 1962 and the declared FOB value of Rs. 18, 42, 27,736/-of goods covered under past five Shipping bills (Table-5) should be rejected under rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007(CVR) and re-determined to Rs. 9, 84, 74,733/- as per Rule-6 of the said Rules *ibid*, read with section 14 of the Customs Act, 1962.

(ii) whether the alleged overvaluation, if any, was done wilfully and deliberately with an intent to avail inadmissible MEIS and Drawback benefits.

(iii) Whether the export goods, covered under Shipping Bill No. 1629381 dated 18.12.2017 having total declared FOB value of Rs. 2,15,95,535/- found to be mis-declared in terms of value and fraudulent availment of MEIS benefit should be confiscated under the provisions of Section 113 (i) of the Customs Act, 1962 and the exported goods, covered under the past five Shipping Bills (Table-5) having total declared FOB Value of Rs. 18, 42, 27,736/-which were found to be mis-declared in terms of value, drawback claim and MEIS benefit, should be held liable for confiscation under the provisions of Section 113(i) and 113(i) (a) read with section 50(2) of Customs Act,1962, read with Rule 11 of the Foreign Trade (Regulations) Rulest1993, Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.

(iv) Whether the MEIS benefit of Rs. 300955/- for Shipping Bill No. 1629381 dated 18.12.2017, attempted to be availed should be rejected and re-determined to Rs. 77,817/- and the MEIS benefit amounting to Rs. 53,10,091/-claimed for the past five Shipping Bills as specified in Table-5 should be rejected and re-determined as Rs. 28, 70,001/-. The excess MEIS benefit of Rs. 2,23,138/- in respect of Shipping Bill 1629381 dated 18.12.2017 and of Rs. 24,40,090/ in respect of past five Shipping Bills should be recovered from them along with interest due thereupon under Section 28AAA & section 28AA of the Customs Act, 1962 for mis-declared in terms of value of the goods under the provisions of Chapter 3 of Foreign Trade policy 2015-20, Public Notice 02/2015-20 dated 01.04.2015 issued by DGFT and CBIC Notification 24/2015-Customs dated 08.04.2015.

(v) Whether the claimed Drawback amount of Rs. 32,96,981/- for the past five Shipping Bills (Table-5) should be rejected and re-determined to Rs. 16,77,763.5/- and the excess drawback amount of Rs. 16,19,217.50/-along with interest should be demanded from M/s. Shiv Dial Sud and Sons (IEC 0588013412) towards the ineligible drawback availed by them in respect of the past five Shipping Bills (Table-5), in terms of Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.

(vi) Whether Penalty should be imposed on M/s Shiv Dial Sud and Sons (IEC 0588013412) under section 114 (iii) of the Customs Act, 1962.

(vii) Whether Penalty should be imposed on Shri Alok Sood, proprietor of M/s Shiv Dial Sud and Sons (IEC 0588013412) under section 114 (AA) of the Customs Act, 1962.

(viii) Whether Penalty should be imposed on Shri Alok Sood, proprietor of M/s Shiv Dial Sud and Sons (IEC 0588013412) under section 114 (AB) of the Customs Act, 1962.

RELEVENT PROVISIONS OF LAW APPLICABLE IN THIS CASE

22. 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) Rules, 1993, Drawback Rules, 1995 and Customs Valuation Rules- 2007 are summarized as under:

i. **Section 2(30) of the Customs Act, 1962:** Market price. in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India.
ii. **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".

(iii) SECTION [28AAA. 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) wilful 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 thereunder, 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.

(iv) The relevant provisions of the Customs, Central Excise Duties & Service Tax

Drawback Rules, 1995 are reproduced as follows:

Rule16. 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).

(v) Foreign Trade Policy 2015-20.

POINT - 3.19 Risk Management System- (a) A Risk Management System shall be In operation whereby every month Computer system in DGFT Headquarters, on random basis and on the basis of guidelines issued by the DGFT from time to time, will select 10% of applications for each RA where scrips and Status Holder Certificates have already been issued, under each scheme. RA in turn may call for original documents in all such selected cases for further examination in detail. In case any discrepancy and/ or over claim is found on such examination, the applicant shall be under obligation to rectify such discrepancy and/or refund over claim in cash with interest at the rate prescribed under section 28 AA of the Customs Act 1962, from the date of Issue of scrip in the relevant Head of Account of Customs within one month. The original holder of scrip, however. may refund such over claim by surrendering the same scrip whether partially utilized or fully unutilized, without interest.

(vi) Section 50 (2) of the Customs Act, 1962: "The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents".

(vii) Section 113 (i) of the Customs Act, 1962: Confiscation of goods attempted to be improperly exported, etc.- The following export goods shall be liable to confiscation- 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.

(viii) Section 113 (i)a of the Customs Act, 1962: 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 thls Act tn relation to the fixation of the rate of drawback under section 75.

(ix) 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.

(x) Section 114AA in the Customs Act, 1962

[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.]

(xi) Section 114AB in the Customs Act, 1962

Section-114AB - Where any person of has obtained any Instrument by fraud, collusion, willful misstatement or suppression of facts and such instruments 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) Rule11 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 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 specification 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.

(xiii) RULE 3. Determination of the method of Valuation, under Customs Valuation Rule-2007

(1) Subject to rule 8, the value of export goods shall be the transaction value.
(2) The transaction value shall be accepted even where the buyer and seller are related, .provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub- rule (4), the value shall be determined by proceeding sequentially through rules 4 to 6.

(xiv) RULE 4. Determination of export value by comparison-

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

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

(i) Difference in the dates of exportation,

(ii) Difference in commercial levels and quantity levels,

(iii) Difference In composition, quality and design between the goods to be assessed and the goads with which they are being compared,

(iv) Difference in domestic freight and insurance charges depending on the place of exportation.

(xv) RULE 5. Computed value method, - if the value cannot be determined underRule 4, it shall be based on a computed value, which shall include the following:

(a) cost of production, manufacture or processing of export goods;

(b) charges, if any, for the design or brand;

(c) an amount towards profit.

(xvi) RULE 6. Residual Method. - (1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and the general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

(xvii) RULE 7. Declaration by the exporter.— The exporter Shan furnish a declaration relating to the value of export goods in the manner specified in this behalf.

(xviii) RULE 8. Rejection of declared value—

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

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

23. After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962, as well as Noticee' written submissions and documents / evidences available on record.

24. I find that the Exporter, M/s Shiv Dial Sud and Sons(IEC-0588013412), had filed a Shipping Bill number 1629381 dated 18.12.2017 through Customs Broker M/s Ajay Jivaram Gupta for export of '41 different chemical material items' which were destined for Iraq. The declared FOB value of the goods was Rs.2,15,95,535/- and declared invoice value was Rs.2,83,82,406/-. The exporter attempted to claim MEIS benefit of Rs. 3,00,955/- (@ 1.3936% of FOB value).

25. I find that as per Tax invoices, the goods were locally purchased from M/s. Loba Chemie Pvt. Ltd. and M/s. Oxford Lab Chem. Further, the goods were examined by the officer of the SIIB(X) and it was observed that labels were pasted on the pallets/boxes declaring M/s Shiv Dial Sud & Sons as the manufacturer and chemical materials were packed in plastic bottles with name 'Supertek'.

26 I find that the exporter vide letter no BX/2804 dated 29.12.2017 provided the cost detail of the shipment for Invoice No. 1861BX/2086 dated 16.10.2017 stating that the purchase price of the impugned goods were Rs.38,18,021/- and submitted Tax Invoices issued by their suppliers M/s. Loba Chemie Pvt. Ltd and M/s. Oxford Lab Chem. Since the declared FOB value was Rs.2,15,95,535/- included commission amount of Rs.90,83,000/-, **it appeared to be overvalued at 5.66 times of the market value.** On verifying the shipping bill, it was observed that the exporter had declared an amount of. US$ 142580.38 (i.e.Rs. 90,82,370/-) as 'Commission' in the shipping bill no. 1629381/18.12.2017, 'which is 42% of FOB value.

27 I find that the exporter vide letter No. BX/2805 dated 29.12.2017 stated that as their overseas buyer, Ministry of Health under Government of Iraq, had put a condition in the contract that the order should only be placed through a 'manufacturer exporter', though they were not a manufacturer, they had signed the contract with the buyer as 'manufacturer exporter', so as not to lose the contract. Though they were not actual manufacturer. Further the exporter vide letter BX/2924 dated 04.01.2018 informed that they had received the order No. 34/2017/18 dated 21.09.2017 between the State Company for Marketing Drug and Medicai Appliances, Baghdad, Iraq and themselves. they were paying commission to

the commission agent which amounts to 32% of the contract value and the commission payable would be to the extent of Rs. 90,83,000/- against the contract of Rs. 2,84,00,000/- approx. the details mentioned in the said Order were same as mentioned in the Export Invoice 186/BX/2086 dated 16.10.17. Hence it appears that the invoice value declared in the shipping bill is the agreed transaction value between the exporter and the overseas buyer.

28 I find that statement of Shri Alok sood, proprietor of M/S Shiv Dial Sud & sons was recorded on 19.01.2018 wherein he interalia stated that:They are not the manufacturer of the goods. The conditions of the contract with the overseas buyer was that the supplier should be the manufacturer and hence to comply with this condition, they had knowingly mentioned themselves as manufacturer on the packages of the goods. the purchase cost of the goods was only Rs.38,18,021/-(purchased from M/s Loba Chemie Pvt. Ltd. And M/s Oxford Lab Chem) and the FOB value was Rs. 2,15,95,535/- because It included commission amount of Rs. 90,82,370/-and the remaining amount of Rs. 86,95,144/- was their profit.

29 I find that Statement of Shri Alpesh Prajapati, employee of M/S Loba Chemie Pvt. Ltd., one of the suppliers of the exporter M/s Shiv Dial Sud& Sons, was recorded on 22.06.2018 and Statement of Shri Tushar Rajnikant Shah, propriotor of M/S Oxford Lab Chem, the other supplier of the exporter M/S. Shiv Dial Sud& Sons, was rocorded on 28.06.2018 and they accepted that the impugned goods were supplied by them to M/S Shiv Dial Sud and Sons and they had purchased the said material from other buyer and they were not the manufacturer of the goods.

30 I find that **further statement of Shri Alok Sood, Proprietor of M/s Shiv Dial Sud and Sons was recorded on 08.08.2018 wherein he interalia stated that:** In the past, exports made to Ministry of Health, Iraq, they had paid commission @ 32% of invoice value. He stated that the prices provided by their supplier were factory price for sale in India which does not include any other expenses and market risks. He further stated that in addition to the high agency commission, the other factors which have led to the high costing of the product were: that their investment remained blocked for years as it takes lot of time to receive the full payment and hence this cost was added in the product cost. Penalty for delay was 10% of contract value and provision to cover such penalties was made by increasing the cost. The transportation cost in Iraq was high as it was a disturbed country. The Iraqi Embassy charges were high which increased the cost price. As per the contract, all the bank charges had to be borne by them which they have added in the cost price. Iraq being an unstable market, the risk involved was high and therefore the margins are higher. He further stated that due to the above explained high risk and high investment cost involved, the prices for Iraq remains higher than other countries.

31. I find that in addition to the present consignment filed under shipping bill no. 1629381/18.12.17, the exporter had exported 05 consignments (Table-2) to Ministry of Health, Iraq earlier and in all the cases, they had declared the commission amount which ranges from 24% to 42% of the FOB value and the exporter had claimed total Drawback benefit of Rs. 32,96,981/- and MEIS benefit of Rs. 53,10,091/- in past 05 consignments (viz. in shipping bill no.1064508/08.06.15, 2895617/09.09.15, 3024595/15.09.15. 4645340/11.12.15 & 4954534/24.03.17).

32. I find that As per Policy Circular no. 55(RE-98) dated 10.12.1998 and Policy Circular no. 24(RE-2004)/2004-07 dated 14.01.2004 issued by DGFT in case of calculation

of DEPB entitlement, it is clarified that *"the agency commission would be allowed for the DEPB benefit if such commission is upto the limit of 12.5% of FOB value. Agency commission exceeding this limit should be deducted from the FOB value for granting benefit under DEPB Scheme."*

In this regard, reference is invited to Para 4 of Board Circular no. 64/2003-Cus dated 21.07.2003 wherein it is stated that "*....it is clarified that the field formations may continue to pemit export benefits on f.o.b. value without deducting agency commission if such commission is upto the limit of 12.5% of f.o.b. value. Agency commission exceeding this limit should be deducted from the f.o.b. value for granting export benefits under Drawback /DEPB/Advance Licences/DFRC Schemes.*"

33. On perusal of 'Table— 2' above, I find that the exporter has declared commission amount at 42% of the FOB value in the present consignment filed under shipping bill No. 1629381/18.12.17 and at 24% to 40% of FOB value in the remaining 05 past exports. Hence the commission declared in all the above 06 shipments exceeds the limit of 12.5% Of the FOB value. Further, it appears that the drawback amount had been disbursed to the exporter without deducting the excess agency commission from the FOB value. I find that the value of goods did not appear to be congruent with the declared value, as the exporter had overvalued the goods with mala-fide intention to claim undue export benefits. Hence, the declared value appeared to be rejected as per Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

REJECTION OF DECLARED VALUE:

Now I proceed to re-determine the value, As per Rule3(3) ibid, since the value of the impugned goods could not be determined under the provisions of Sub Rule(1), the value was to be re-determined by proceeding sequentially through Rule 4 to Rule 6 of the Customs Valuation (Determination of value of Export Goods) Rules, 2007, As the export.

33. I find that goods do not have any specific brand, mark & other parameters and price of the goods may vary depending upon the quality of the goods, hence, value of the goods could not be determined based on the transaction value of goods of like kind and quality exported at or about the same time under Rule 4 of CVR, 2007.

3 4 I find that the exporter is not manufacturer exporter and has neither produced any cost of production details, manufacturing or processing of export details and correct transport details nor produced cost design or brand or an amount towards profit etc. to derive computed value of the goods. Hence, transaction value of the impugned goods under export could not be determined under Rule 5 of the Customs Valuation Rules, 2007. Hence the value of all the items could be ascertained from the market value as per the residual Rule 6 of CVR (Export) Rules, 2007.

RE-DETERMINATION OF VALUE:

35 I find that to ascertain prevailing market value of the goods as per the residual Rule 6 of CVR (Export) Rules, 2007, As the market enquiry method of 41 Chemicals appears Infeasible, online price quotations of the suppliers M/s Oxford Lab Fine Chem LLP and M/s Loba Chemie Pvt. Ltd.2017-18 have been downloaded. The declared FOB prices of the Chemicals are compared with prices quoted in the Price-list of the suppliers i.e. M/s Oxford Lab Fine Chem LLP and M/s Loba Chemie Pvt. Ltd (Table-4).

From the Table-4 it is clear that exporter's declared prices in the tax-invoices are lower (Except item No. 28, 30) than the values quoted in the price-lists of the Suppliers. So, values declared in the Tax-invoices may be taken as the domestic market prices.

As it is a standard operating procedure in the valuation to load 30% extra value on domestic market prices to compensate the exporter for associated miscellaneous expenses and allowing a responsible profit margin. Further exporter during his statement dated 19.01.2018 has submitted that due to high risk Iraqi market, they have to pay high commission to the Agent. The market commissions given by exporter range from 21% to 41% . The exporter has also declared the agent's commission in their Shipping bills. The relevant Para of the Circular No. 64/2003-Cus dated 21.07.2003 is quoted below:

"The field formations may continue to permit export benefits on FOB value without deducting agency commission is up to the limit of 12.5% of FOB value. Agency Commission exceeding this limit should be deducted from the FOB value for granting export benefit under Drawback/DEPB/Advance Licenses/DERC scheme".

Taking the standard operating procedure into account, the New FOB and Export benefits are calculated as per the **Table 5. The Summary of Re-determined FOB Value, Drawback and MEIS benefit for the past five Shipping Bills as well Shipping Bill no. 1629381 dated 18.12.2017 areas under:-**

In respect of Shipping Bill no. 1629381 dated 18.12.2017

Declared FOB	**: Rs. 2,15,95,535/-**
Re-determined FOB	**: Rs. 55,83,854/-**
MEIS Claimed	**: Rs. 3,00,955/-**
Eligible MEIS	**: Rs. 77,817/-**
Diff. MEIS to be recovered	**: Rs. 2,23,138/-(To be recovered)**

Thus, it appears that by mis-declaring the value of the goods, the Exporter had inflated FOB value of the export goods by Rs. 1,60,11,681/- and thereby illegally attempted to avail excess/undue MEIS benefits of Rs. 2,23,138/-.

In respect of past five Shipping Bills

Total Declared FOB Value	**: Rs.18, 42, 27,736/-**
Total Re-determined FOB	**: Rs 9, 84, 74,733/-**
Total Drawback Claimed	**: Rs. 32, 96,981/-**
Total eligible Drawback	**: Rs. 16, 77,763.5/-**
Total Difference in drawback	**: Rs 16, 19,217.5 (To be recovered)**
Total MEIS Claimed	**: Rs 53, 10,091/-**
Total eligible MEIS	**: Rs 28, 70,001/-**
Total difference in MEIS	**: Rs 24, 40,090/-(To be recovered)**
Total excess amount received	**: Rs 40, 59,308/-(Total to be recovered)**

36 Thus, I find that the total FOB value of the goods covered under past 5 Shipping Bills appears liable to be re-determined to Rs 9, 84, 74,733/- under Rule 6 of CVR 2007 as against declared FOB value of Rs. 18,42, 27,736/-. This clearly shows that the exporter appears to have attempted to claim undue Drawback and MEIS benefit collectively amounting to Rs. 40, 59,308/- with mala-fide intention and suppression of facts intentionally and deliberately by over invoicing the goods and deliberately caused revenue loss to the Government exchequer and the same is thus liable to be recovered along with interest. As the above said undue drawback and MEIS benefit have been availed by the Exporter by willful mis-statement and suppression of facts by the way of fraudulently mis-declaring the value of subject goods, the same is liable to be demanded and recovered

alongwith interest under Section 28AAA of the Customs Act, 1962 read with Section 28AA of ibid and in terms of Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section Customs Act, 1962 read with Para 3.19 of Foreign Trade Policy 2015-20. .

3 7 I find that the exporter was allowed to provisionally release the subject goods for export on execution of Bond equivalent to FOB value of the subject goods under Shipping Bills 1629381 dated 18.12.2017 and on production of Bank Guarantee and are not physically available for confiscation.

3 8 I hold that the Exporter has violated the provisions of Rule 11 of the Foreign Trade (Regulations), 1993 in as much, as they did not make a correct declaration of value of goods, in the Shipping Bills submitted by them to the Customs authorities. As the Exporter had not made declaration truthfully in the present Shipping Bills, they have violated the conditions of Section 50(2) of the Customs Act, 1962. Hence, I am of the view that there was a deliberate mis-declaration, mis-statement and suppression of facts regarding the actual value of the impugned goods, on the part of the Exporter with mala-fide intention to claim undue export benefits not legitimately payable to them. The exporter had inflated FOB value, which is not the correct transaction value and the declared value of export goods is completely false with the sole intention to defraud the exchequer to avail higher DBK and MEIS benefits. Thus, I hold that the said goods were attempted to be exported in violation of Section 50(2) of the Customs Act, 1962 read with Section 11(1) of Foreign Trade (Development &Regulation) Act 1992 & Rules 11 of Foreign Trade Rules 1993, as exporter had furnished wrong declaration to the Custom Authorities.

3 9 I find that the declaration under section 50 (2) of the Customs Act, 1962 made by the exporter at the time of filing Shipping Bill is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 113 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

i. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
ii. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
iii. M/s Saccha Saudha Pedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);

iv. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:
"if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine."

v. Commissioner of Customs, Chennal Vs. M/s Madras Petrochem Ltd. As reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

"We find from the aforesaid observation of the Learned Tribunal as quoted above that the

Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components."

40. I find that however, the goods exported vide the Shipping Bills mentioned in Table-5 of the SCN, 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. We accordingly answer question No. (iii)."

41. I further 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.).

42. 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.) and 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.) have not been challenged by any of the parties and are in operation.

43. In view of above, I find that any goods improperly exported as provided in any sub section of the Section 113 of the Customs Act, 1962, the impugned goods become liable for confiscation.

44. Hon'ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held RF imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods liable for confiscation under other sub sections of Section 113 too as the goods committing equal offense are to be treated equally. I opine that merely because the exporter was not caught at the time of clearance of the export goods, can't be given differential treatment.

45. In view of the above, I 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.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. Accordingly, I observe that the present case is also merits imposition of Redemption Fine.

46. It is cogent and clear that the Exporter, **M/s. Shiv Dial Sud and Sons** had mis-declared the impugned goods in past five Shipping Bills and Shipping Bill no. 1629381 dated 18.12.2017 (detailed as per Table-5) in terms of their value and attempted to defraud the Government by claiming undue higher amount of Drawback and MEIS benefits thereby acted in a manner which rendered the said goods liable for confiscation in terms of the provisions of Section 113(i) and 113(ia) of the Customs Act, 1962. Therefore, I hold that the exporter, **M/s. Shiv Dial Sud and Sons** have rendered themselves liable to penalty in terms of Section 114(iii) of the Customs Act, 1962 on account of mis-declaration of value of the impugned goods and attempting to export improperly as their omission and commission has rendered the goods liable for confiscation u/s. 113 of the Customs Act, 1962.

47. I find that the exporter had mis-declared the value of the goods in their Shipping Bills to avail excess Drawback and MEIS benefit. By no stretch of imagination, such misdeclaration and mis-statement can be regarded as without the exporter's will and intention, especially when such mis-declaration leads to availment of inadmissible benefit of Drawback and MEIS by them. As already observed that the exporter had over invoicing the impugned goods to claim inadmissible Drawback and MEIS benefits. This shows that the decision to overvalue the export product was taken to avail higher Drawback and MEIS benefit, which clearly indicate that it is not due to lack of knowledge or unintentional mistake, but it is a wilful "decision" to overvalued the goods with the intention to wrongfully avail undue Drawback and MEIS benefit and as such it constitutes wilful misstatement fit for invoking provisions of Section 28AAA of the Customs Act, 1962.

48. I find that MEIS benefits, covered by customs Notification No.24/2015-Customs dated 08/04/2015, as amended, is a custom duty exemption by way of debit through MEIS Scrips. The power to exempt will include within its ambit the power to demand duty in the event such exemption is wrongly claimed/mis-used. Since the MEIS scrips, have been obtained by the Noticees by over invoicing of the export goods as discussed in the foregoing paras, they are liable for suspension/cancellation/restriction. Hence the exemptions claimed by the Noticee are not admissible and duty at the appropriate value is leviable on the imports to the extent of duty credit denied and same is required to be recovered from M/s. Shiv Dial Sud and Sons. The excess MEIS benefit of Rs. 2,23,138/- in respect of Shipping Bill 1629381 dated 18.12.2017 and of Rs. 24,40,090/ in respect of past five Shipping Bills (Table-5) is recoverable as per section 28AAA of the Customs Act, 1962, as applicable along with the applicable interest as per section 28AA.

49. I find that the Recovery of Customs Duty under section 28 of the Customs Act, 1962, from 'a person chargeable to duty' has been affirmed by Hon'ble Bombay High Court in the case of Jupiter Exports. Accordingly, I find that the duty forgone should be recovered from the importers as detailed in Table-5 of the Show Cause.

50. I find that Shri Alok Sood, proprietor of M/s Shiv Dial Sud and Sons (IEC 0588013412), has knowingly made causes by which the declaration, documents which are

false & incorrect with respect to value of the goods have been used with malafide intent to avail undue/excess export benefits in form of Drawback & MEIS. Therefore, I hold that Shri Alok Sood, proprietor of M/s Shiv Dial Sud and Sons (IEC 0588013412), is also liable for penalty under section 114 AA & 114 AB of the Customs Act, 1962 for causes to be made for this intentional mis-declaration.

51. Now, before proceeding to the final order, I will deal with the contentions raised by the Noticee submitted in their written submissions through their legal representatives. As observed in the preceding paras, the Noticee had accepted in his statement that they are not the Manufacturer and the purchase cost of the goods under Shipping Bill No. 1629381/18.12.2017 was only Rs.38,18,021/- and the FOB value was Rs. 2,15,95,535/- because It included commission amount of Rs. 90,82,370/- 'which is 42% of FOB value and the remaining amount of Rs. 86,95,144/- was their profit. Further, the Noticee had also exported the identical goods to the Ministry of Health, Iraq by declaring the commission at 24% to 40% of FOB value in the 05 past exports Hence the commission declared in all the above 06 shipments exceeds the limit of 12.5% of the FOB value.

52. Further, I find that noticee has placed reliance on various judgments of Tribunals, High Court and Apex Court, however, I find that the Hon'ble Supreme Court of India in case of Ambica Quarry Works vs. State of Gujarat & Others [1987(l) S.C. C. 213] observed that "the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it." The case laws referred to by the noticees are not squarely applicable to the present case.

i. Further in the case of Bhavnagar University vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111, the Hon'ble Apex Court observed "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

ii. One other reference on the situation I have found in the decision of the Hon'ble Supreme Court in Ispat Industries vs. Commissioner of Customs, Mumbai [2004 (202) ELT 56C (SC)], wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

52.1 I find that the Noticee have contended that the **Officers of SIIB are not proper officers to issue SCN.** I have found in the decision of the Hon'ble Supreme Court of India in Review Petition No. 400 of 2021 in CIVIL APPEAL No. 1827 of 2018 in the case of Commissioner of Customs Vs M/s Canon India Pvt. Ltd, wherein, the Hon'ble Court has ordered as under:

Para (F)(vi) ***"Subject to the observations made in this judgment, the officers of Directorate of Revenue Intelligence, Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence and Commissionerates of Central Excise and other similarly situated officers are proper officers for the purpose of Section 28 and are competent to issue show cause notice thereunder".***

In view of the above order of the Hon'ble Supreme Court of India, I find that the contention raised by the Noticee regarding issuance of SCN by the SIIB officer does not have any merit.

52.2 I find that the Noticee have contended that the Value of exported goods was found correctly declared during SIIB Investigation-Section 14 is not applicable which has been discussed at length in the preceding paras.

52.3 I find that the Noticee have contended that the Shipping Bill is also an appeable order: Shipping bill is filed under section 50 of the Customs Act, and clearance of goods for exportation is allowed under Section 51. If the proper officer of Assessment which is appealable by section 128 of the CA, 1962.

52.3.1 In this regard, I find that in the instant matter the Noticee had overvalued the impugned goods with the wilful misstatement and suppression of facts to avail inadmissible Drawback and MEIS benefits which has been discussed at length in the preceding paras. Hence, the recovery of the Drawback and MEIS benefits are liable to be recovered as per the provisions of Section 28AAA of the Customs Act, 1962. I find that **Hon'ble Supreme Court of India in the case of Union of India & Ors. Vs Jain Shudh Vanaspati Ltd. &Anr held that-**

"A clearance order under Section 47 obtained by fraudulent means such as this (if it, in fact, be so) cannot debar the issuance of a show-cause notice for confiscation of goods under Section 124. Fraud, if established, unravels all. An order under Section 47 obtained by the employment of fraudulent methods does not have to be set aside by the exercise of revisional powers under Section 130 before the ill-effects of the fraud can be set right by initiation of the process of confiscation of the fraudulently cleared goods under Section 124.

It is relevant to bear in mind that the issuance of the show-cause notice under Section 124 contemplates that the respondents' response shall be considered and only thereafter will the matter be decided. The respondents shall, therefore, have full opportunity to satisfy the authorities that there was no importation of banned goods which makes them liable to confiscation."

52.3.2 **Further in the case of M/s S. V. Technologies Hon'ble CESTAT has held that**

"The short point to be decided is whether the First Appellate Authority was correct in holding that the lower authority cannot raise a demand under Section 28 of the Customs Act without first challenging the assessment done in the bill of entry relying on the judgment of Priya Blue (supra) and Flock India (supra). We find that the judgment of Priya Blue and Flock India of the Hon'ble Apex Court are on the point of refund claim by the assessee without challenging the assessment order in the bill of entry. The present case is different. It is a case where after assessment and clearance of the goods is completed by issue of order under Section 47 of the Customs Act, 1962, within the normal period of limitation, the Deputy Commissioner has raised a demand under Section 28. While raising

the demand he issued a show cause notice proposing reclassification of the imported goods and gave an opportunity to the respondent to present their case and considered their submissions. Thereafter, he confirmed the demand The First Appellate Authority also agrees with the re-classification done by the Deputy Commissioner on merits. He, however, held that the Deputy Commissioner again raised the demand withoutfirst challenging or asking the Commissioner to review his own assessment of the bill of entry. This is not the ratio laid down by the Hon'ble Apex Court in the case of Priya Blue (supra) or Flock India (supra). ***Cases pertaining to issue of demand under Section 28 after clearance of the case under Section 47 are covered by the judgment of the Hon'ble Apex Court in the case of Jain ShudhVanaspati Ltd., (supra) which clearly held that a demand can be raised under Section 28 even after clearance of the case under Section 47."***

52.3.3 The above-mentioned judgement has been followed in a series of judgments by the Tribunal and Courts and it is well settled matter that a demand can be raised for not levied, not paid, short levied or short paid duty under Section 28 after clearance of goods under Section 47 of the Customs Act, 1962.

5 2 . 4 I find that the Noticee have contended that the **Section 28AAA is also not applicable otherwise** which has been discussed at length in the preceding paras. Further, Noticees submit that an instrument is issued by the DGFT and that authority is the only authority that which either can modify, cancel, withdraw such instrument.

I find that the issue involved in the instant SCN is not concerned with the interpretation of the FTP. In the instant matter, the core issue is that of the correct valuation of the impugned export goods for export benefits. Therefore, I find that illegitimately availed MEIS benefits in respect of to the subject goods are recoverable under the provisions of the Customs Act, 1962. With regard to the context of the case laws relied upon by the Noticees, I find that the ratios of the decisions therein are distinguishable to subject case as there is no interpretation of FTP involved in this case and the MEIS is different to other Schemes like Advance Authorization, DEPB, FMS, EPCG etc., of the DGFT in many ways.

52.5 I find that the Noticee have contended that **The goods exported are not liable to confiscation** which has been discussed at length in the preceding Para's.

52.6 I find that the Noticee have contended that **Re-determination of FOB and part rejections of MEIS/DBK claims is legally unjustified** which has been discussed at length in the preceding Para's.

52.7 I find that the Noticee have contended that **Recovery of excess MEIS/DBK benefits is time barred**

The noticee submitted that the mechanism for recovery of such duty is laid down in S.28 of the Act which prescribes a maximum time limit of 5 years even in respect of fraudulent claims. Thus, the notice in respect of 4 S/Bs (sl. No. 1 to 4 in the table) above, where under goods were exported and drawback paid in the year 2015, is clearly time-barred.

In this regard, I find that the said SCN has been issued under section 28AAA and not under section 28(4) of the Customs Act, 1962 and no time limit for issuance of SCN/recovery has been prescribed under Section 28AAA of the Customs Act, 1962. Further, I find that the Rule 16 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 is silent with regard to limitation under which the drawback can be recovered.

52.8 I find that the Noticee have contended that **Payment of interest under section 28 AA is not invokable in this case where Section 28 AAA(1) is not attracted for recovery of any MEIS** which has been discussed at length in the preceding Para's.

52.9 I find that the Noticee have contended that **Penalty is not imposable under under section 114(iii),114(AA) and 114(AB)** which has been discussed at length in the preceding Para's.

53. In view of the above, I pass the following order

ORDER

(i) I confiscate the impugned export goods covered under the Shipping Bill No. 1629381 dated 18.12.2017 having total declared FOB value of Rs.2,15,95,535/- under the provisions of Section 113(i) of the Customs Act, 1962. though not available for confiscation However, I impose redemption fine of Rs. 20,00,000/- (Rupees Twenty Lakh Only) in lieu of confiscation of the goods under section 125 of the Customs Act, 1962

(ii) I reject the declared FOB value of Rs. 2,15,95,535/- covered under the Shipping Bill No. 1629381 dated 18.12.2017, as per Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determine the same to Rs.55,83,854 /-.under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with section 14 of the Customs Act, 1962.

(iii) I deny the claimed MEIS benefit of Rs. 3,00,955/- covered under the Shipping Bill No. 1629381 dated 18.12.2017 and re-determined to Rs. 77,817/- on the basis of re-determined FOB value i.e Rs. 55,83,854 and I order to recover the excess MEIS of Rs. 2,23,138/- be demanded from M/s. Shiv Dial Sud and Sons (IEC 0588013412) under Section 28 AAA alongwith the applicable interest under Section 28AA of the Customs Act, 1962. towards the ineligible MEIS availed by them.

(iv) I reject the declared FOB value of Rs. 18,42,27,736/- covered under the past five Shipping Bills(Table-5) , as per Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determine the same to Rs.9,84,74,733/-.under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with section 14 of the Customs Act, 1962.

(v) I deny the claimed Drawback amount of Rs. 32,96,981/- covered under the past five Shipping Bills as specified in Table-5 and re-determined to Rs.16,77,763.50/- on the basis of re-determined FOB value i.e Rs.9,84,74,733/- and I order to recover the excess drawback of Rs. 16,19,217.50/- be demanded from M/s. Shiv Dial Sud and Sons (IEC 0588013412) towards the ineligible drawback availed by them, in terms of Rule 16 of

Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.

(vi) I deny the claimed MEIS benefit of Rs. 53,10,091/-covered under the past five Shipping Bills as specified in Table-5 and re-determined to Rs. 28,70,001/- on the basis of re-determined FOB value i.e Rs. 9,84,74,733/- and I order to recover the excess MEIS benefit of Rs. 24,40,090/- be demanded from M/s. Shiv Dial Sud and Sons (IEC 0588013412) under Section 28 AAA alongwith the applicable interest under Section 28AA of the Customs Act, 1962 towards the ineligible MEIS availed by them.

(vii) I confiscate the impugned export goods covered under the the past five Shipping Bills as specified in Table-5 having total declared FOB value of Rs. 18,42,27,736/- under the provisions of Section 113(i) and 113(i)(a) read with section 50(2) of the Customs Act, 1962, read with Rule 11 of the Foreign Trade(Regulations) Rule, 1993, Section 11(1) of the Foreign Trade(Development and Regulation) Act, 1992. though not available for confiscation However, I impose redemption fine of Rs. 1,80,00,000/- (Rupees - One Crore Eighty Lakh Only) in lieu of confiscation of the goods under section 125 of the Customs Act, 1962.

(viii) I impose Penalty of Rs. 40,00,000/- (Rupees Forty Lakh only) on M/s Shiv Dial Sud and Sons (IEC 0588013412) under section 114 (iii) of the Customs Act, 1962.

(ix) I impose a personal penalty of Rs. 40,00,000/ (Rupees Forty Lakh only) on Shri Alok Sood, Proprietor of **M/s.** Shiv Dial Sud and Sons (IEC 0588013412), under section 114 AA of the Customs Act 1962.

(x) I impose a personal penalty of Rs. 40,00,000/ (Rupees Forty Lakh only) on Shri Alok Sood, Proprietor of **M/s.** Shiv Dial Sud and Sons (IEC 0588013412), under section 114 AB of the Customs Act 1962.

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

Digitally signed by
Wagh Chittaranjan Prakash
Date: 15-10-2025 16:09:52

(Dr. Chittaranjan Prakash Wagh)
Addl. Commissioner of Customs
NS-II, JNCH, Nhava Sheva.

To,

1.M/s Shiv Dial Sud and Sons (IEC 0588013412)
23, Industrial Estate, Jagadhri Road,
Ambala Cantt, Haryana 133 006. EM714258070IN

2. Shri Alok Sood,
5361/4, Punjabi Mohalla,
Ambala Cantt. Haryana EM714254066IN

Copy to :

1. The Commissioner of Customs, NS-II, JNCH, Zone-II.
2. The Addl. Director General of Foreign Trade, CGO Office, Churchgate, Mumbai-400020. EM714254083IN
3. The Asst./Deputy Commissioner of Customs, SIIB(X), JNCH.
4. The Asst./Deputy Commissioner of Customs, CRRC, JNCH.
5. The Asst./Deputy Commissioner of Customs, Review Cell
6.
7. The Asst./Deputy Commissioner of Customs, CEAC 17.10.2025 EO/CEAC
8. The Asst./Deputy Commissioner of Customs,EDI, JNCH for uploading on website
9. CHS Section for display on notice board.
10. Master File