

 <p>सत्यमेव जयते</p>	<p>भारत सरकार/ Government of India वित्त मंत्रालय/ Ministry of Finance आयुक्त सीमा शुल्क एनएस-II का कार्यालय, केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन न्हावा शेवा, तालुका-उरण, जिला -रायगढ़, महाराष्ट्र- 400 707 OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-II CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA, DIST- RAIGAD, MAHARASHTRA-400707</p>	
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फ़ा.सं./F. No.: S/10-120/2025-26/ADC/CEAC/NS-II/CAC/JNCH Date of Order: 24.12.2025  
Date of issue: 31.12.2025

द.प.सं./DIN NO: 20251278NT000000F7A4

SCN No. – 56(L)/2025-26/ADC/CEAC/NS-II/CAC/JNCH  
Dated 24.03.2025

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

मूल आदेश सं./Order-In-Original No.: 1362/2025-26/ADC/CEAC/NS-II/CAC/JNCH

निर्यातक का नाम/Exporter's Name: M/s. Swami Impex (IEC: AHUPT7616G)

### मूलआदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला – रायगढ़ – ४०० ७०७, महाराष्ट्र को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए.-1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 1.50 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 1.50 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

### ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal: Uran, Dist.: Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, item 6 of the Court Fee Act, 1970.
- Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

**BRIEF FACTS OF THE CASE**

On the basis of specific intelligence regarding the export of a suspicious consignment by M/s. Swami Impex (IEC: AHUPT7616G) covered under Shipping Bill No. 9116787 dated 15.04.2024 (RUD-I) (hereinafter referred to as the 'Shipping Bill') filed through their customs broker M/s. YSR Logistics (hereinafter referred to as the 'CB') from Nhava Sheva Port, the goods covered in the Shipping Bill No. 9116787 dated 15.04.2024 were declared as 'MENS SHORTS OF POLYESTER.' The goods covered under the said shipping bills was put on hold by SIIB(X), JNCH, vide Hold No. 04/2024-25/SIIB(X) dated 19.04.2024, issued via letter F. No. CUS/SIIB/ALT/208/2024-SIIB(E)/JNCH, for examination. The supply chain of the exporter appeared to be fake/manipulated, and the declared value of the goods appeared to be highly overvalued and mis-declared to avail illegitimate claims of drawback and other export incentives. Hence, the case was taken up by SIIB(X), JNCH for detailed investigation.

2. M/s. Swami Impex (IEC:- AHUPT7616G) having its office at House No. 514, Laxmi Tower, Naniwala Bagh, New Delhi, North-West Delhi, Delhi-110033 had filed the following Shipping Bill for Export of following items destined to UAE. The details are as under:

**Table-I**

SB No. & Date	Description	Quantity	FOB	DBK	RoSCTL	IGST
		(PCS)	(INR)	(INR)	(INR)	
9116787 dated 15.04.2024	Mens Shorts of Polyester	2340	₹ 10,43,733.60	₹ 36,530.68	₹ 56,465.99	LUT

3. Consequently, the subject goods covered under Shipping Bill No. 9116787 dated 15.04.2024 were examined 100% vide Panchanama dated 26.04.2024 (RUD-II) in the presence of two independent Panchas, Authorized Representatives of Exporter i.e., Shri Rajan A Sarang, G-card holder of Customs Broker M/s. YSR Logistics (CHA License No.11/2708), having Kardex No. 6493/2023. During the course of 100% examination, the quantity and marked description were found as declared. However, it appeared that the valuation of the goods covered in above said Shipping Bill is overvalued. Thereafter, Representative Sealed Samples (RSS) in triplicate were drawn randomly and were sealed for the purpose of testing of declared description and for valuation through market enquiry also.

4. In the meantime, an Alert was inserted against IEC to withhold the Export incentives. Further, letter dated 06.05.2024 was forwarded to DYCC, JNCH along with RSS for testing in order to determine exact characteristics, nature and composition of the subject goods. DYCC tested the RSS and forwarded the test Reports vide DYCC Report No. 350/SIIB(X) dated 27.05.2024 (RUD-III). The details of test report are as under:

Item No.	Item Description	RITC	Drawback Sr. No.	ROSCTL Sr. No.	DYCC Test Report
1	MENS SHORTS OF POLYESTER	62034290	62030102B	62030102B	The sample as received is in the form of readymade textile article (Mens Short). It is dyed woven fabric fitted with elastic at waist. Base fabric is wholly composed of polyester. Total weight of sample (Mens Short) = 66.0 gm. Wt. of base fabric = 57.0 gm. Wt. of elastic = balance GSM of base fabric = 66.64

4.1 The exporter had declared the subject goods i.e., “Mens Shorts of Polyester” as composed of polyester. As per the DYCC Test Report also, the subject goods were woven readymade garments composed of polyester. Despite the goods being composed of polyester, the exporter had classified the goods under CTH 62034290 which pertains to Shorts of cotton. The correct classification for the subject goods is **CTH 62034300**.

4.2 In view of the above, the declared CTH in respect of Item No. 1 was rejected and the CTH needs was re-determined along with the Drawback Serial Number and RoSCTL Serial number and the same is as below:

Table-II

Item No.	Item Description	Declared CTH, Drawback Sr. No. & ROSCTL Sr. No	Redetermined Drawback Sr. No. & RoSCTL Sr. No.
1	Mens Shorts of Polyester	CTH – 62034290 DBK Sl. No.– 62030102B @ 3.50% RoSCTL Sr. No. – 62080102 (State @ 3.1% & Central @2.28%)	CTH – 62034300 DBK Sl. No. – 62030403B @ 3.9% RoSCTL Sr. No. – 62030403 (State @ 2.1% & Central @1.7%)

5. To ascertain prevailing Market Value of the goods, the Market Enquiry of the goods covered under the subject Shipping Bill was required to be conducted, therefore SIIB(X), JNCH had requested to the Exporter to represent them during the said Market Enquiry. The Market Enquiry was conducted on 01.06.2024 (**RUD-IV**) along with Authorized Representative of the Exporter. As per the Market Enquiry the value of the goods had been re-determined and accordingly the Export incentives had been re-determined. On the basis of Panchanama dated 26.04.2024 and Market Enquiry Report dated 01.06.2024, it was observed that the subject goods had been mis-declared in terms of valuation. The re-determined FOB value of the goods and corresponding Export incentives under the Shipping Bills would be as below:

Table-III

Description of Goods	Mens Shorts of Polyester
Avg. Wholesale Price	₹291.7
PMV	₹490.6
Declared FOB	₹10,43,733.60
Re-determined FOB Value= Declared FOB * (Redetermined PMV /Declared PMV)	₹6,20,459.60
Drawback Rate	3.9%
Redetermined Drawback	₹24,197.92
State RoSCTL Rate	2.1%
Redetermined State RoSCTL	₹13,029.65
Central RoSCTL Rate	1.7%
Redetermined Central RoSCTL	₹10,547.81
Total Redetermined RoSCTL	₹23,577.46

Table-IV

Sl. No.	Shipping Bill No. & Date	Description of goods	Quantity (PCS)	Declared			Re-determined		
				FOB (INR)	Drawback (INR)	ROSCTL (INR)	FOB	Drawback	ROSCTL
1	9116787 dated 15.04.2024	Mens Shorts of Polyester	2340	₹10,43,733.60	₹36,530.68	₹56,465.99	₹6,20,459.60	₹24,197.92	₹23,577.46

**Table-V**

Re-determined FOB	Differential Drawback	Differential ROSCTL	Total excess Export benefits
₹ 6,20,459.60	₹ 12,332.76	₹ 32,888.53	₹ 45,221.29

6. As was evident from the Table above, based on the Report received by the DYCC, JNCH and Market Enquiry conducted on 01.06.2024, it appeared that the goods declared by the Exporter in the Shipping Bill No. 9116787 Dated 15.04.2024 had been mis-declared in terms of their value and CTH. The value of the goods had been re-determined on the basis of DYCC Reports and Market Enquiry Report dated 01.06.2024. The Export incentive such as drawback & RoSCTL therefore to be re-determined with respect to the Re-determined FOB of the goods as mentioned in the Table above. Hence, the declared value i.e., **₹10,43,733.60** appeared to be liable for rejection in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and the value needs to be re-determined as per the Provisions of the said Rules. For the purpose of Customs Tariff Act, 1975, valuation of Export goods is to be done in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of value of Export Goods) Rules, 2007 (CVR). As per the Provisions of Act/Rules, transaction value of the goods is to be accepted, subject to Rule 8 of Customs Valuation (Determination of value of Export Goods) Rules, 2007. Prima facie on Examination of the subject consignment, the declared value of the goods appeared to be on the higher side; the declared transaction value appeared liable for rejection under Rule 8 of the CVR and the said value required to be re-determined by sequentially proceeding in terms of Rule 4 to 6 of the Customs Valuation Rules, 2007. In the instant case, the Exporter is Merchant Exporter and hence, transaction value of the impugned goods under Export could not be determined under Rule 4 & 5 of the Customs Valuation Rules, 2007. Hence, the value of all the items could be ascertained from the wholesale Market.

#### 7. Re-determination of Valuation

7.1 Accordingly, as per Rule 3(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.

7.2 As the Export goods were not standard goods, the Export data in Export Commodity Data Base (ECDB) could not be used for comparing price of the goods of like kind and quality as required under Rule 4 of CVR, 2007. Further, the subject goods were not identified specifically with any brand, mark, style and other specifications, the goods of like kind and quality Exported could not be identified to compare their transaction value with the declared value of the subject goods. Hence, value of the subject goods could not be determined under the said Rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

7.3 The Exporter had 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. In absence of complete cost data details, value could not be determined as per Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

7.4 As the Provisions of Rule 4 & 5 *ibid*, are not applicable in the instant case, the value of the goods required to be determined under the Provisions of Rule 6 of the CVR 2007. Rule 6 of the said Rules reads as under: -

**RULE 6. Residual Method.** – “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”.

As per the Provisions of Rule 6 *ibid*, the assessable value of the goods was proposed to be re-determined under Rule 6 *ibid*, i.e., as per the Residual Method. Accordingly, Market Survey was conducted by the officers of SIIB (Export), JNCH on 01.06.2024. Value of the goods was taken from 3 different shops/dealers and average of their prices was taken as Market value of the same. The details of the determination of the value were summarized in the Market Survey Report dated 01.06.2024.

#### 8. Past Exports:

In order to investigate past consignments, the data was retrieved from the date of issuance of IEC i.e., 08.06.2023 till 31.12.2024 for Exporter M/s. Swami Impex (IE Code: AHUPT7616G). In further course of investigation, it was noticed that as per ICES data as on 31.12.2024, the Exporter had no past consignments. The above-mentioned consignment was first consignment in its kind.

9. Further, an alert to withhold the Export incentives against the Exporter M/s. Swami Impex (IE Code AHUPT7616G) was inserted during the investigation.

10. The Exporter vide their letter dated 31.05.2024 requested for Provisional Release of the goods for Export. The request of the Exporter was accepted by the Adjudicating Authority as per the Provisions of Board Circular No. 01/2011 dated 04.01.2011 and 30/2013 dated 05.08.2013 and the goods were released Provisionally for Export under Section 110A of the Customs Act, 1962 on execution of Bond equivalent to FOB value of the subject goods and on submission of Bank Guarantee amounting to ₹50,000 (Rupees Fifty Thousand only) on 13.06.2024 (RUD-V).

#### 11. GST VERIFICATION OF THE EXPORTER:

Further, letters dated 25.10.2024, 08.11.2024, 26.11.2024 and 16.12.2024 (RUD-VI) were also sent to jurisdictional AC/DC of CGST. In reply, vide letter F.No. DT&T/W-70/2024-25/668 dated 04.12.2024 informed that at the time of visit to the registered address, **no signboard was found existing** and door was found locked. It was also learnt from the caretaker of Laxmi Tower (Sh. Rajesh Jha) that the registered office No-514 was locked from approx. one year.

## 12. SUMMONS & STATEMENT:

**12.1** Further, in order to record the statement of the Exporter M/s. Swami Impex (IE Code AHUPT7616G), under section 108 of Customs Act, 1962, Summons(es) vide DIN-20241078NT000038083B dated 11.10.2024 to appear on 24.10.2024, DIN-20241278NT0000333F89 dated 02.12.2024 to appear on 30.12.2024, DIN-20241278NT000081388D dated 23.12.2024 to appear on 10.01.2025 and 20250178NT0000333EE2 dated 21.01.2025 to appear on 29.01.2025 had been dispatched and mailed in the name of M/s. Swami Impex (IE Code AHUPT7616G) to appear before the office of SIIB(X), 6th floor, C-604, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist: Raigad, Maharashtra-400707 u/s Section 108 of the Customs Act, 1962. However, the summons(es) sent via speed post returned to SIIB(X), JNCH with the remark that the 'Item returned No such person in the address'. Also, Summons(es) had been sent through the e-mail address provided by the exporter in their official correspondence with SIIB(X), JNCH. However, the exporter did not turn up for depositing their statement.

**12.2** Further, on receipt of spot Summons CBIC-DIN-20250178NT000000DF38 dated 16.01.2025 to appear before Customs on 16.01.2025, Statement of Shri Rajan A Sarang G-card holder of M/s. YSR Logistics (CHA License No.11/2708) having Kardex No. 6493/2023 was recorded (**RUD-VIII**) under section 108 of the Customs Act, 1962 on 16.01.2025 in the office of the Special Investigation and Intelligence Branch (Exports), situated at Room No. 604, C-Wing, 6th Floor, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka - Uran, District Raigad, Maharashtra – 400707. Wherein he inter-alia stated that;

- On being asked about the reason being summoned; in reply he stated that he had appeared in response to the spot summons dated 16.01.2025. He confirmed that he was the authorized person, holding a G-Card on behalf of CB M/s. YSR Logistics, to provide the statement.
- On being asked about his job profile; in reply he stated that he was a Power of Attorney/G-Card Holder supervising all export-related work and was fully authorized to provide statements.
- On being asked about the documentation work in the firm, he replied that he along with his subordinate staff, handled all documentation work in the CB firm.
- On being asked about the procedure followed during the filing of a Shipping Bill, he clarified that exporters were guided to submit necessary documents via email, and it was confirmed whether they intended to claim export benefits. Checklists were prepared based on the documents, shared with the exporter for approval, and, upon receiving approval, the Shipping Bill was filed on ICEGATE. He further added that employee of the firm for two years, while the firm had been operational for eight years.
- On being asked about the Shipping Bill 9116787 dated 15.04.2024; he confirmed that the Shipping Bill was filed by his subordinates under his supervision.

- On being asked about the shipment, he explained that the order was received via the official email of M/s. Swami Impex. As the client was new, documents were thoroughly checked before filing.
- On being asked about the case booked against the exporter for misdeclaration, particularly regarding value, he acknowledged that he was aware, as the market enquiry revealed overvaluation.
- On being asked about the KYC of M/s. Swami Impex was verified, he confirmed that it was verified in compliance with CBLR 2018, including validation of IEC from the DGFT website. He further added that the address had been verified at the time of KYC.
- On being asked since when his firm had been handling the export clearance of M/s. Swami Impex, he stated that this was their first shipment.
- On being asked about KYC procedures for first-time exporters, he stated that these procedures were completed at CEAC for M/s. Swami Impex.
- On being asked if documentary evidence of KYC was available, he replied that it was not readily available.
- On being informed that the exporter's premises were found locked by the GST Commissionerate, he stated that he had no knowledge of the matter.
- On being asked about misclassification of goods, he stated that classification was based on the documents provided by the exporter, verified by them before filing.
- On being asked if he believed the exporter's company was still operational, he reiterated that he had no contact with them and filed documents per their instructions, without violating export policies.
- On being asked if he suspected the exporter to be a frontman for another entity, he denied any such suspicions, affirming that due diligence was followed as per CBLR 2018.
- On being asked about compliance with Regulation 10 of CBLR 2018, he stated that physical verification of the exporter's premises was conducted, and the goods were declared as procured locally.
- On being asked why he should not be considered aware of the misdeclaration, he responded that Shipping Bills were filed with proper KYC and supporting documents, and he had no knowledge of GST violations.
- On being asked if the CB firm or the exporter had been penalized, he replied that neither had been penalized to his knowledge.
- On being asked if he had anything further to add, he stated that the firm operated diligently and cooperated with customs authorities in all investigations.

### **13. RELEVANT LEGAL PROVISIONS**

#### **A. Customs Act, 1962**

**Section 2(30):** Market price in relation to any goods means the wholesale price of the goods in the ordinary course of trade in India.

**Section 50: Entry of goods for exportation:**

(1) The Exporter of any goods shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed]:

**Provided** that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system], allow an entry to be presented in any other manner.]

(2) The Exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The Exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:-

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

**SECTION 113(i):** any goods entered for Exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77, shall be liable to confiscation;

**Section 113(ia):** Any goods entered for Exportation under claim for drawback which do not correspond in any material particular with any information furnished by the Exporter or manufacturer under this Act in relation to the fixation of the rate of drawback under Section 75, shall be liable to confiscation; **Section**

**113(ja):** any goods entered for Exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the Provisions of this Act or any other law for the time being in force;

**Section 114(iii):** Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, 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;

**114AA. Penalty for use of false and incorrect material. -**

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

**Section 114AC: Penalty for fraudulent utilisation of input tax credit for claiming refund. -**

Where any person has obtained any invoice by fraud, collusion, wilful misstatement or suppression of facts to utilise input tax credit on the basis of such invoice for discharging any duty or tax on goods that are entered for Exportation under claim of refund of such duty or tax, such person shall be liable for penalty not exceeding five times the refund claimed. For the purposes of this section, the expression "input tax credit" shall have the same meaning as assigned to it in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017).

*[114AB. Penalty for obtaining instrument by fraud, etc.—Where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilized by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.*

*Explanation. —For the purposes of this section, the expression “instrument” shall have the same meaning as assigned to it in the Explanation 1 to section 28AAA.]*

**B. Customs Brokers Licensing Regulations, 2018:**

**10. Obligations of Customs Broker.** — A Customs Broker shall —

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

**C. Foreign Trade (Development and Regulation) Act, 1992.**

**Section 11:**(1) 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 foreign trade policy for the time being in force.

**D. Foreign Trade (Regulation) Rules, 1993**

**Rule 11:** On the importation into, or Exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of Exportation of goods, 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 declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

**15. Whereas, from the investigation, the following facts emerge that:**

**15.1** From the facts, evidence and provisions discussed above, it appeared that Exporter had mis-declared the goods in terms of value to avail undue export incentive such as drawback & RoSCTL. Therefore, the FOB value of said Shipping Bill No. 9116787 dated 15.04.2024 had been re-determined under Rule 6 of CVR, 2007 which comes to ₹6,20,459.60 against declared FOB of ₹10,43,733.60. Thus, it appeared that by mis-declaring the value of the goods, the Exporter had attempted to claim undue/excess export benefit i.e., differential Drawback to the tune of ₹12,332.76 & differential RoSCTL amounting to ₹32,888.53 (as detailed at Table-V) in case of the said Shipping Bill No. 9116787 Dated 15.04.2024 and this shipping bill need to re-assess with re-determined Drawback & RoSCTL amounting to Rs.24,197.92 & ₹23,577.46 against declared drawback & RoSCTL of Rs.36,530.68 & Rs.56,465.99 respectively.

**15.2** As can be seen from the Table-IV above, based on the Market Enquiry conducted on 01.06.2024, it appeared that the goods declared by the Exporter in the Shipping Bill No. 9116787 Dated 15.04.2024 had been mis-declared in terms of their value. During the Market Enquiry it was found that the value of the goods filed under the said Shipping Bill were inflated and hence needed to be re-determined under Rule 6 of the Customs Valuation (Determination of Value of Export

Goods) Rules, 2007. The Export incentive such as Drawback & RoSCTL were therefore re-determined with respect to the re-determined FOB as mentioned in the Table-IV above. It was thus cogent and clear that the Exporter M/s. Swami Impex (IE Code AHUPT7616G) had mis-declared the impugned goods in terms of their value, attempted to defraud the Government by claiming undue higher amount of Drawback and ROSCTL and thereby acted in a manner which rendered the said goods under Table-I above liable for confiscation in terms of the Provisions of Section 113(i), 113(ia) and 113 (ja) of the Customs Act, 1962 respectively.

**15.3** The Exporter had 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 filed by them to the Customs Authorities.

**15.4** As the Exporter had not made declaration truthfully in the said Shipping Bill, they had violated the conditions of Section 50(2) of the Customs Act, 1962. Hence, it appeared that there was a deliberate mis-declaration, misstatement 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 declared the FOB value in the Shipping Bill as ₹10,43,733.60 whereas the redetermined FOB value after conducting the Market Survey was ₹6,20,459.60 only and hence higher Drawback & RoSCTL and other Export incentives were claimed. Thus, it appeared 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.

**15.5** As the goods were attempted to be exported by mis-declaration for which confiscation is proposed. However, Drawback & RoSCTL claim in the live Shipping Bills as mentioned in Table-I above is not to be demanded from the Exporter since the goods were cleared for Provisional Export without disbursing the Export incentives to the Exporter.

**15.6** The description of the goods found were not in consonance with the Exporter's declaration with respect to value, as the Exporter had overvalued the goods on the basis of fake invoices. Hence, the declared value appeared to be rejected as per Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

**15.7** Accordingly, as per Rule 3 (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.

**15.8** As the Export goods were not standard goods, the Export data in Export Commodity Data Base (ECDB) could not be used for comparing price of the goods of like kind and quality as required under Rule 4 of CVR, 2007. Further, the goods of like kind and quality Exported could not be identified to compare their transaction value with the declared value of the subject goods. Hence, value of the subject goods could not be determined under the said Rule 4 of the Customs Valuation

(Determination of Value of Export Goods) Rules, 2007.

**15.9** The Exporter had 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. In absence of complete cost data details, value could not be determined as per Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

**15.10** The value of the impugned goods is, therefore, proposed to be redetermined under the residual Rule 6 of CVR (Export) Rules, 2007. This Rule stipulates that subject to the Provisions of Rule 3, where the value of the Export goods cannot be determined under the Provisions of Rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general Provisions of these Rules. Therefore, in order to arrive at the correct value of the impugned goods the same was required to be done on the basis of Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Accordingly, the total value of the goods had been re-determined from ₹10,43,733.60 to ₹6,20,459.60 as per the Market Enquiry and DYCC Reports of the subject goods.

**15.11** With respect to the Exporter M/s. Swami Impex (GSTIN07AHUPT7616G1ZO), GST vide letter F.No. DT&T/W-70/2024-25/668 dated 04.12.2024 communicated that at the time of visit to the registered address, no signboard was found existing and door was found locked. It was also informed by the caretaker of Laxmi Tower (Mr. Rajesh Jha) that the registered office No. 514 had been locked for approximately one year. Hence, it appeared that the Exporter is **non-existent** at the PPOB. Also, the firm is suspended effective from 07.10.2024. Hence, from the above facts, it emerged that the Exporter is a paper-based firm and a fly by night operator and was established only to Export inferior goods to claim higher export incentives. Therefore, it appeared that the Exporter connived with their supplier to obtain invoice by fraud and collusion to utilize input tax credit on the basis of such invoice for discharging tax on goods which had been entered for exportation under the Shipping Bill filed by them. Also, Summonses to the Exporter had been dispatched to Exporter's address mentioned in the IEC by SIIB(X), JNCH. However, the summonses sent via speed post returned to SIIB(X), JNCH with the remark that the 'Item returned No such person in the address'. Also, Summonses had been sent through the e-mail address provided by the Exporter in their official correspondence with SIIB(X), JNCH. However, the exporter did not turn up for depositing their statement nor provided the details/documents for verification of Supply chain. The GST status of the Exporter was ascertained from the GST Portal that Exporter filed the GSTR-1 and GSTR-3B up to February-2024. The GST registration was obtained on 24.05.2023 and the same was **suspended** on 07.10.2024, hence, it appeared that the Exporter is non-genuine. Consequently, the Shipping Bill No. 9116787 dated 15.04.2024 filed by the said Exporter were put on hold by SIIB(X), JNCH, it appeared that the Exporter subsequently, the Exporter stopped filing the GSTR. Hence, from the above facts, it appeared that the Exporter is **non-genuine**. Hence, it appeared that the purchase tax invoices from domestic Supplier was manipulated & fraudulently obtained in collusion from the supplier with a malafide intention to utilize input tax credit on the basis of such invoice for

discharging any duty or tax on goods that are entered for Exportation under claim of refund of such duty or tax. Thus, the ITC claimed appeared wrongly claimed and claimed by fraud etc. since the FOB value of the said goods which were provisionally exported had been re-determined and also export incentives were re-determined, the IGST payable/the refund or ITC available to the exporter were also gets re-determined. Hence, the Exporter M/s. Swami Impex (IE Code AHUPT7616G) had rendered themselves liable to penalty in terms of Section 114AC of the Customs Act, 1962.

**15.12** It further appeared that the Exporter M/s. Swami Impex (IE Code AHUPT7616G) had rendered themselves liable to penalty in terms of section 114(iii) of the Customs Act, 1962 on account of mis-declaration in CTH and value of the impugned goods. The Exporter had knowingly & intentionally caused to sign & used the documents to provide the undue advantage to the Exporter with malafide intent to avail undue/excess Export benefits in form of Drawback, RoSCTL and other Export benefits. Therefore, M/s. Swami Impex (IE Code AHUPT7616G) also liable for penalty in terms of Section 114 AA of Customs Act, 1962 for this intentional mis-declaration.

**15.13** From the above facts and RBI Master Circular No.14/2014-15 dated 01.07.2014, which states," it has been decided in consultation with the Government of India that the period of realization and repatriation of Export proceeds shall be **nine months** from the date of Export for all Exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs & BTPs until further notice. Accordingly, in case of live Shipping Bill mentioned in table-I, expected realization time period for FOB realization had been completed, but no Bank realization was not done yet. The Exporter had claimed Drawback & RoSCTL/RoDTEP by fraud, collusion, willful misstatement or suppression of facts without realizing the BRC for the live Shipping Bills mentioned in Table-I. Hence, it appeared that the M/s. Swami Impex (IE Code AHUPT7616G) had rendered themselves liable to penalty in terms of section 114AB of the Customs Act, 1962 since the export incentives had been claimed without receipt of the foreign remittance in live Shipping Bill filed by the Exporter that is cleared for Provisional Export.

**15.14** The Custom Broker M/s. YSR Logistics (CHA License No.11/2708) failed to ascertain the veracity and genuineness of the Exporter firm M/s. Swami Impex (IE Code AHUPT7616G). The regulation 10 (n) of the CBLR, 2018 had mandated that the CB has to verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. In the instant case, as stated by the CB, they had merely taken copies of the IEC and GST registration from the Exporter and started filing Shipping Bills on their behalf. The CB in his statement stated that exporters were verbally guided to submit the necessary documents via email and indicate whether they intended to claim export benefits. Based on the documents, a checklist was created, sent to the exporter for approval, and then the Shipping Bill was filed on ICEGATE after the exporter's confirmation. But no proof in this regard is submitted by the CB. Also, they had no contact with the exporter for a considerable period, and he was unaware of the reasons for non-compliance of the Summons issued to the Exporter. Though, the CB stated that they conducted verification of address of the Exporter but the documentary evidence in this

regard was not readily available with him and till date no document is submitted by the CB. Hence, no evidence had been produced in support of their claim. The CB has to verify the antecedents of the Exporter by using reliable, independent, authentic documents, data or information, which the CB had failed to do in this case. The CB in their voluntary statement has submitted that they had verified the address of the Exporter, but had furnished only photographs of the place. No evidence had been put forth by the CB to corroborate their claim of actually verifying the principal place of business of the Exporter as Jurisdictional GST communicated SIIB(X), JNCH about **non-existent** of the Exporter at PPOB. Had the CB confirmed the veracity and genuineness of the Exporter through their own independent and reliable sources, he could have easily known that the Exporter and their supply chain is dubious. The CB had thereby violated regulation 10(n) of the CBLR, 2018 and had rendered themselves liable for penalty under section 114(iii) and 114AA of the Customs Act, 1962.

16. Now, M/s. Swami Impex (IE Code AHUPT7616G) having its registered office at House No. 514, Laxmi Tower, Naniwala Bagh, New Delhi, North-West Delhi, Delhi-110033 were hereby called upon to Show Cause to the Additional/Joint Commissioner of Customs, CAC, NS-II, JNCH, having office at Jawaharlal Custom House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra, within 30 days of receipt of this notice as to why:

(i) The declared FOB value of ₹10,43,733.60 covered under the Shipping Bill No. 9116787 Dated 15.04.2024 should not be rejected and should not be redetermined to ₹6,20,459.60 under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

(ii) The drawback of ₹36,530.68 and RoSCTL of ₹56,465.99 claimed in the Shipping Bill No. 9116787 Dated 15.04.2024 should not be re-determined to ₹24,197.92 and ₹23,577.46 respectively since the FOB value has been re-determined as above.

(iii) The said impugned Export goods covered under the Shipping Bill No. 9116787 Dated 15.04.2024 having total declared FOB value of ₹10,43,733.60 which appear to be mis-declared in terms of value which includes the goods as detailed in Table-I which are liable to be reclassified, should not be confiscated under the Provisions of Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962.

(iv) Penalty should not be imposed on M/s. Swami Impex (IE Code AHUPT7616G) under Section 114(iii) and 114AA of the Customs Act, 1962 for the above violations.

(v) Penalty should not be imposed on M/s. Swami Impex (IE Code AHUPT7616G) under Section 114AC of the Customs Act, 1962 for the above violations.

(vi) Penalty should not be imposed on M/s. Swami Impex (IE Code AHUPT7616G) under Section 114AB of the Customs Act, 1962 on account of non-receipt of the foreign remittance in respect of live Shipping Bill.

(vii) The bond submitted at the time of provisional release of the goods for export should not be enforced, and the bank guarantee of ₹50,000/- (Rupees Fifty Thousand Only) submitted at the time of provisional release of the goods for export should not be appropriated against export incentives,

applicable interest, redemption fine, and penalty, etc.

17. Further, M/s. YSR Logistics (CHA License No.11/2708), Sahar Creado Chawl Suthar Pakhadi, Near Sai Hanuman mandir, Vile Parle (E), Mumbai400093 were hereby called upon to show cause to the Additional/Joint Commissioner of Customs, CAC, NS-II, JNCH, Nhava Sheva within 30 days of the receipt of this notice as to why penalty should not be imposed on them under Section 114(iii) and 114AA of the Customs Act, 1962 for violation of regulation 10(n) of CBLR, 2018.

18. **WRITTEN SUBMISSIONS OF THE EXPORTER**

Vide SCN dated 24.03.2025, the Exporter i.e M/s Swami Impex (IEC:- AHUPT7616G) and CHA i.e M/s YSR Logistics (CHA License No. 11/2708) was asked to submit written reply to the SCN within 30 days of receipt of the subject SCN, however, so far, neither Exporter nor CHA has submitted any reply to the SCN.

19. **RECORD OF PERSONAL HEARING**

In adherence of the Principles of Natural Justice the Exporter and CHA was granted an opportunity to appear before the Adjudicating Authority for Personal Hearing (PH) for giving oral submissions in their defence. Accordingly, PH Memos dated 12.09.2025, 29.09.2025 & 14.10.2025 were issued by the Adjudicating Authority. However, neither the Exporter nor CHA honored the said PH Memos and appeared before the Adjudicating Authority for PH.

20. **DISCUSSION AND FINDINGS**

I find that in the instant case the Exporter and CHA did not participate in the present adjudication proceedings in spite of the servicing of PH Memos for Personal Hearings in terms of Section 153 of Customs Act, 1962 (as detailed in Paras 13 & 31.1 *supra*). Section 153 of the Customs Act, 1962 reads as under:

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

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

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

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

or uploading on the official website, if any.

**20.1.** Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly sent to the Exporter and CHA at their known addresses (as mentioned in the SCN and export documents) through Registered Post. Further, these PH letters were also displayed on the Notice Board of this Office in compliance to the provision of section 153 (1)(e) of the Customs Act, 1962 as mentioned above. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Exporter and CHA **but they had not responded at all to the Notices/Memos issued.** As the matter pertains to mis-classification and overvaluation of the export goods which allegedly resulted in claim of undue/excess export incentives, so even in absence of the Exporter from adjudication proceedings, I am compelled to decide the matter in time bound and logical manner.

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

*"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard" 2014 (312) E.L.T. 401 (Tri. - Mumbai)"*

**20.3.** Considering the aforesaid scenario and the fact that the Exporter and CHA has not participated in the adjudication proceedings, I take up this SCN dated 24.03.2025 for discussion on the merit of the case. With regard to proceeding to decide the case following the Principle of Natural Justice, reliance is placed on the decision of the *Hon'ble High Court of Allahabad in the case of M/s. Modipon Ltd. V/s. CCE, Meerut [reported in 2002 (144) ELT 267 (All)]* effectively dealing with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

*"Natural justice- Hearing- Adjournment- Adjudication- Principle of audi alteram partem does not make it imperative for the authorities to compel physical presence of the party for hearing and go on adjourning proceedings so long as party does not appear before them- What is imperative for the authorities to afford*

*the opportunity- If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.*

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

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

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

- (i) Whether the declared FOB value of ₹10,43,733.60 covered under the Shipping Bill No. 9116787 Dated 15.04.2024 should be rejected and should be redetermined to ₹6,20,459.60 under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 or not.
- (ii) Whether the drawback of ₹36,530.68 and RoSCTL of ₹56,465.99 claimed in the Shipping Bill No. 9116787 Dated 15.04.2024 should be re-determined to ₹24,197.92 and ₹23,577.46 or not.
- (iii) Whether the said impugned Export goods covered under the Shipping Bill No. 9116787 dated 15.04.2024 having total declared FOB value of ₹10,43,733.60 which appear to be mis-declared in terms of value which includes the goods as detailed in Table-I which are liable to be reclassified, should be confiscated under the Provisions of Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 or not.
- (iv) Whether the penalty should be imposed on M/s. Swami Impex (IE Code AHUPT7616G) under Section 114(iii) and 114AA of the Customs Act, 1962 for the above violations or not.
- (v) Whether the penalty should be imposed on M/s. Swami Impex (IE Code AHUPT7616G) under Section 114AC of the Customs Act, 1962 for the above violations or not.
- (vi) Whether the penalty should be imposed on M/s. Swami Impex (IE Code AHUPT7616G) under Section 114AB of the Customs Act, 1962 on account of non-receipt of the foreign remittance in respect of live Shipping Bill or not.
- (vii) Whether The bond submitted at the time of provisional release of the goods for export should be enforced, and the bank guarantee of ₹50,000/- (Rupees Fifty Thousand Only) submitted at the

time of provisional release of the goods for export should be appropriated against export incentives, applicable interest, redemption fine, and penalty or not.

(viii) Whether the penalty should be imposed on M/s. YSR Logistics (CHA License No.11/2708) under Section 114(iii) and 114AA of the Customs Act, 1962 for violation of regulation 10(n) of CBLR, 2018 or not.

**22.** I find that the goods were examined under Panchanama dated 26.04.2024, wherein though the quantity and description were found as declared, the officers recorded that the declared value appeared abnormally high. The DYCC Test Report dated 27.05.2024 confirms that the goods are ordinary woven readymade garments wholly composed of polyester, with no special features or superior quality which could justify such high valuation. Further, the Market Enquiry conducted on 01.06.2024 collected wholesale prices of identical goods from three independent dealers and, based on the average, arrived at a much lower market value. I also note that the exporter, being a merchant exporter, has not produced any contemporaneous export data of identical or similar goods, nor any documentary evidence regarding cost of procurement, manufacturing, transport, profit margin or any other factor to substantiate the declared value. In such circumstances, the declared transaction value cannot be accepted as genuine. Accordingly, I hold that the FOB value is correctly re-determined at ₹6,20,459.60.

**22.2** I find that export incentives such as Drawback and RoSCTL are directly linked to the FOB value and the correct classification of the goods. Once the declared FOB value has been rejected and re-determined to ₹6,20,459.60 and the goods have been re-classified under the appropriate CTH, the incentives originally claimed by the exporter cannot survive. The re-determined FOB value and the applicable serial numbers, the admissible Drawback works out to ₹24,197.92 and admissible RoSCTL works out to ₹23,577.46, as against the originally claimed amounts of ₹36,530.68 and ₹56,465.99 respectively. Therefore, I hold that the Drawback and RoSCTL claimed in the Shipping Bill are liable to be re-determined as above and the excess claims of ₹12,332.76 towards Drawback and ₹32,888.53 towards RoSCTL are not admissible.

**23.** I find that the exporter declared the goods as “Mens Shorts of Polyester” but classified them under CTH 62034290, which pertains to cotton garments. The DYCC Test Report categorically establishes that the goods are wholly composed of polyester and therefore classifiable under CTH 62034300. Further, as discussed in para 16.1, the exporter has grossly over-declared the FOB value with the intention of claiming higher export benefits. Such mis-declaration in respect of value and classification amounts to furnishing incorrect and false particulars in the Shipping Bill, in contravention of Section 50(2) of the Customs Act, 1962 read with Rule 11 of the Foreign Trade (Regulation) Rules, 1993. I therefore find that the goods do not correspond in respect of value and material particulars with the declaration made and were entered for export under claim of export incentives to which the exporter was not entitled. Accordingly, the impugned goods are liable to confiscation under Sections 113(i), 113(ia) and 113(ja) of the Customs Act, 1962.

**24.** I find that by mis-declaring the value and mis-classifying the goods, M/s. Swami Impex

rendered the goods liable to confiscation under Section 113 of the Customs Act. In terms of Section 114(iii) of the Act, any person who, by any act or omission, renders the goods liable to confiscation, is liable to penalty. Therefore, the exporter is clearly liable for penalty under Section 114(iii).

25. I further find that the exporter knowingly and intentionally made and used declarations and documents which were false and incorrect in material particulars with respect to both the classification and value of the export goods, with a clear intent to claim undue export incentives. Such conduct squarely attracts the provisions of Section 114AA of the Customs Act, 1962. Accordingly, I hold that M/s. Swami Impex is liable to penalty under Section 114AA of the Customs Act, 1962.

26. I note from the GST verification report and the investigation findings brought out in the Show Cause Notice that the exporter was found non-existent at the declared principal place of business, that the GST registration was suspended, and that the exporter failed to appear in response to repeated summons or furnish any documents relating to procurement or supply chain. These facts, read with the gross overvaluation of the export goods and the absence of any credible evidence of genuine procurement, clearly establish that the exporter had obtained and used invoices by fraud, collusion and wilful misstatement for the purpose of utilising input tax credit in relation to the export of the impugned goods under claim of refund. I therefore hold that M/s. Swami Impex has fraudulently utilised input tax credit in connection with the export of the subject goods and has rendered itself liable to penalty under Section 114AC of the Customs Act, 1962.

27. I find that, as per the Reserve Bank of India Master Circular No. 14/2014-15 dated 01.07.2014 (as amended from time to time), export proceeds are required to be realised and repatriated within the stipulated period from the date of export. In the present case, it is on record that no foreign remittance has been received in respect of the live Shipping Bill even after expiry of the prescribed period, yet the exporter attempted to claim export incentives. Such attempt to obtain or utilise export incentives without realisation of export proceeds amounts to misuse of the export incentive instruments. Therefore, I hold that the exporter has rendered himself liable to penalty under Section 114AB of the Customs Act, 1962. The issue at Sl. No. (vi) is decided accordingly.

28. I find that the goods were provisionally released under Section 110A of the Customs Act, 1962 on execution of a bond equivalent to the declared FOB value and furnishing of a Bank Guarantee of ₹50,000. In view of the findings of mis-classification, overvaluation and re-determination of export incentives, I find that the bond is liable to be enforced and the Bank Guarantee of ₹50,000 is liable to be appropriated towards the dues arising out of this adjudication.

29. I find that Regulation 10(n) of the CBLR, 2018 casts a clear obligation on the Customs Broker to verify the identity, IEC, GSTIN and functioning of his client at the declared address using reliable and independent documents. In the present case, the GST authorities have reported that the exporter was non-existent at the declared premises. The Customs Broker has also failed to produce any credible documentary evidence to establish that such verification was actually carried out. By

merely relying on copies of IEC and GST registration and without proper verification of the functioning of the exporter, the Customs Broker failed to discharge the statutory obligation cast upon him. This failure facilitated the exporter in filing the Shipping Bill with mis-declared value and classification.

I therefore hold that M/s. YSR Logistics has violated Regulation 10(n) of the CBLR, 2018 and, having abetted acts which rendered the goods liable to confiscation, is liable to penalty under Sections 114(iii) and 114AA of the Customs Act, 1962.

**30.** I find that the GST Circular No. 31/05/2018-GST dated 09.02.2018 assigns the Central Tax officers (Principal Commissioner/Commissioner of Central Tax, Additional/Joint Commissioner of Central Tax, Deputy/Assistant Commissioner of Central Tax, Superintendent and Inspector of Central Tax) to function as the Proper Officers in relation to the issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), up to the monetary limits as mentioned in the said circulars. Thus, the proper officer as defined under section 2 (91) of the CGST Act 2017 and assigned functions vide Circular No. 31/05/2018-GST dated 09.02.2018 are to exercise powers under section 73 and 74 of the CGST Act 2017 and can issue notices and orders under the said Sections/Acts. Accordingly, this Order shall be forwarded to the concerned Central GST Unit for initiation of suitable action at their end for mala fide intention of the Exporter to avail undue/excess IGST Refund on the basis of overvaluation of the goods, which is legitimately not due to them. Therefore, it is required to refer this case to Jurisdictional CGST Authorities to make thorough enquiry into the GST payments of the exporter and their suppliers and verify whether they have had made any GST Payment against the Invoices pertaining to exports and take necessary action in case any discrepancies or violations of CGST Act/Rules is found.

**31.** I find that, on the basis of the facts and circumstances mentioned herein above, the Exporter have knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to Shipping Bills mentioned in SCN, with an intent to violate the provisions of Custom Act by their aforesaid acts of omission and commission have rendered the impugned goods liable for confiscation under Section 113 (i), 113 (ia) & 113 (ja) of the Customs Act, 1962. I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

*"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from*

*getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (i)."*

**31.2** 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.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly exported as provided in any sub-section of Section 113 of the Customs Act, 1962 are liable to confiscation and merely because the exporter was not caught at the time of clearance of the exported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.

**31.3** In view of the above, I find that the present case also merits imposition of Redemption Fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

### **ORDER**

In view of the above discussions and findings, I pass the following order,

- (i) I deny and reject the declared FOB value of ₹10,43,733.60 in respect of the goods covered under Shipping Bill No. 9116787 dated 15.04.2024 in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, and order that the same be re-determined at ₹6,20,459.60 under Rule 6 of the said Rules.
- (ii) I order that the impugned goods declared as "Mens Shorts of Polyester" be re-classified under CTH 62034300 in place of the declared CTH 62034290.
- (iii) I order confiscation of the goods covered under Shipping Bill No. 9116787 dated 15.04.2024, having declared FOB value of ₹10,43,733.60, as detailed in Table-I, under Sections 113(i), 113(ia)

and 113(ja) of the Customs Act, 1962. However, as the goods have already been provisionally released, I impose a redemption fine of ₹50,000/- (Rupees Fifty Thousand only) under Section 125 of the Customs Act, 1962, in lieu of confiscation.

(iv) I deny and reject the export incentives claimed, namely Drawback of ₹36,530.68 and RoSCTL of ₹56,465.99, in respect of the said Shipping Bill. I further order that the admissible incentives be re-determined as Drawback of ₹24,197.92 and RoSCTL of ₹23,577.46. Accordingly, the excess amounts of ₹12,332.76 (Drawback) and ₹32,889 (RoSCTL) are held to be inadmissible.

(v) I order recovery of the excess Drawback amount of ₹12,332.76 under Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017 read with Sections 75 and 75A(2) of the Customs Act, 1962, along with applicable interest, and recovery of the excess RoSCTL amount of ₹32,889/- in terms of Para 5 of Notification No. 76/2021-Cus (N.T.) dated 23.09.2021 as amended, along with applicable interest under Section 28AA of the Customs Act, 1962. If the said excess amounts have not been disbursed, the same shall not be sanctioned or released to the exporter.

(vi) The Regional Authority, DGFT, Delhi is requested to take necessary action for recovering the RoSCTL amount of ₹32,889/- (Rupees Thirty-two thousand eight hundred and eighty Nine only) from the exporter M/s Swami Impex (IEC: AHUPT7616G) in respect of the aforesaid past Shipping Bills, wherein foreign remittance has not been realised.

(vii) The jurisdictional CGST Authorities, Vyapar Bhawan, Indraprashta Marg, IP Estate, Delhi, 110002. requested for initiation of suitable action for IGST/ITC recovery and take necessary action against M/s Swami Impex (IEC: AHUPT7616G), in case any discrepancies or violations of CGST Act/Rules found.

(viii) I impose a penalty of ₹ 50,000/- (Rupees Fifty Thousand only) under Section 114(iii) of the Customs Act, 1962 on the exporter M/s Swami Impex (IEC: AHUPT7616G) for acts of omission and commission in mis-classification and overvaluation of the subject goods, thereby rendering the goods liable to confiscation.

(ix) I impose a penalty of ₹50,000/- (Rupees Fifty Thousand only) under Section 114AC of the Customs Act, 1962 on M/s Swami Impex (IEC: AHUPT7616G) for the acts and omissions leading to availment/attempted availment of undue export benefits in the form of Drawback and RoSCTL.

(x) I further impose a penalty of ₹50,000/- (Rupees Fifty Thousand only) under Section 114AB of the Customs Act, 1962 on M/s Swami Impex (IEC: AHUPT7616G) on account of non-receipt of foreign remittance in respect of the said Shipping Bill.

(xi) I impose a penalty of ₹50,000/- (Rupees Fifty Thousand only) on the exporter M/s. Swami Impex (IEC: AHUPT7616G) under Section 114AA of the Customs Act, 1962, for knowingly and intentionally making and using declarations and documents which were false and incorrect in

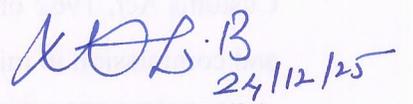
material particulars with regard to the classification and value of the export goods, with intent to avail undue export incentives.

(xii) I impose a penalty of ₹25,000/- (Rupees Twenty Five Thousand only) on the Customs Broker M/s. YSR Logistics (CHA License No. 11/2708) under Section 114(iii) of the Customs Act, 1962, for acts of omission and commission in failing to verify the identity and functioning of the exporter in violation of Regulation 10(n) of the CBLR, 2018, thereby abetting the acts which rendered the export goods liable to confiscation.

(xiii) I further impose a penalty of ₹25,000/- (Rupees Twenty Five Thousand only) on the Customs Broker M/s. YSR Logistics (CHA License No. 11/2708) under Section 114AA of the Customs Act, 1962, for knowingly facilitating the filing of Shipping Bill on the basis of declarations and documents which were false and incorrect in material particulars, by failing to exercise due diligence as mandated under Regulation 10(n) of the CBLR, 2018

(xiv) I order that the Redemption Fine and Penalties imposed under this Order shall be paid by the exporter into the Customs Treasury within the prescribed period. In the event of failure to make such payment, I further order that the bond executed at the time of provisional release of the goods shall be enforced and the Bank Guarantee of ₹50,000/- (Rupees Fifty Thousand only) furnished by the exporter shall be encashed and appropriated towards the dues arising out of this Order, including excess export incentives, applicable interest, redemption fine and penalties.

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

  
24/12/25

(RAGHU KIRAN B.)

Additional Commissioner of Customs,  
CEAC, NS-II, JNCH

To,

1. M/s. Swami Impex (IE Code AHUPT7616G)  
House No. 514, Laxmi Tower, Naniwala Bagh,  
New Delhi, North West Delhi, Delhi-110033.
2. M/s. YSR Logistics (CHA License No.11/2708),  
Sahar Creado Chawl Suthar Pakhadi, Near Sai Hanuman mandir,  
Vile Parle (E), Mumbai- 400093.

Copy to:

1. The Commissioner of Customs, NS II, JNCH, Nhava Sheva.
2. The Dy./Asstt. Commissioner of Customs, SIIB (X), JNCH, Nhava Sheva
3. The Dy./Asstt. Commissioner of Customs, CRAC (X), JNCH, Nhava Sheva.
4. The Dy./Asstt. Commissioner of Customs, CRRC Cell, JNCH, Nhava Sheva.

5. The Dy. Commissioner of Customs, Centralized Adjudication Cell (CAC) NS-V, JNCH, Nhava Sheva.
6. The Dy. Commissioner of Customs, EDI, JNCH, Nhava Sheva.
7. Supdt. (P), CHS, JNCH for display on Notice Board.
8. The Dy./Asstt. Commissioner of Customs, Drawback Section, JNCH, Nhava Sheva.
9. DC, CGST & Central Excise Vyapar Bhawan, Indraprashta Marg, IP Estate, Delhi, 110002 for necessary action wrt IGST/ITC recovery.
10. The Regional Authority, DGFT, Delhi Vanijya Bhawan, 'A' Wing, 16 Akbar Road, New Delhi - 110011 – for necessary action for recovery of excess RoDTEP and RoSCTL as ordered above.
11. Office Copy

