

	<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/10-127/2025-26/ADC/CEAC/NS-II/CAC/JNCH Date of Order: 24 .12.2025

द.प.सं./DIN: 20251278NT0000278E85

Date of Issue: 31.12.2025

SCN No. 1910/2023-24/ADC/CEAC/NS-II/CAC/JNCH

Date of SCN 20.11.2023

जारीकर्ता/Passed By: **Shri Raghu Kiran B.,**

Additional Commissioner of Customs,
CEAC, NS-II, JNCH, Nhava Sheva.

मूल आदेश सं./Order-In-Original No.: 1364/2025-26/ADC/CEAC/NS-II/CAC/JNCH

निर्यातक का नाम/Exporter's Name: M/s. G.N Trading (IEC-DVEPG9339C)

मूल आदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला – रायगढ़ – 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 from NCTC, it was observed that a consignment of goods declared as “Readymade garments and Assorted items” (hereinafter called as “the goods”) under CTH 6111, 6203, 3304, 4819 etc. pertaining to the Exporter M/s. G.N Trading (IEC-DVEPG9339C), having address at 2nd floor, 38.A, 31, Ahmed Building, AU Memon Street, Mandvi, Mumbai-400003 (hereinafter referred to as the “Exporter”) was being attempted to export the goods by over-invoicing their value to claim undue export benefits i.e. Drawback & RoSCTL/RoDTEP etc. vide 05 Shipping Bills no-4927873 dated 19.10.2022 and 5024801, 5019234, 5019992, 5019277 all dated 22.10.2022 filed through their Customs Broker M/s. Perfecto Logistics (hereinafter referred to as the “CB”) from Nhava Sheva port. Thereafter, the said consignment was put on hold vide Hold No. 39/2022-23-SIIB(X) vide letter F. No. SG/Misc-101/21-22 SIIB(X)/JNCH dated 31.10.2022. The details of the said Shipping Bill are tabulated as below:-

Table-I

SB NO. & DATE	ITE M SR NO.	DECLARED DESCRIPTION OF GOODS	QTY	DECLARED FOB(in Rs)
5024801	1	EMPTY BOX	480	84041.23
22-10-2022	2	KIDS TRACK MADE OF BLENDED MATERIAL	1145	206120.56
	3	MENS TRACK MADE OF BLENDED MATERIAL	1200	308743.19
	4	MENS T-SHIRT MADE OF BLENDED MATERIAL	900	203445.02
	5	OT TABLE	3	487034.93
	6	PLASTIC SPECTACLE CASES	3750	154125.00
	7	WALL CLOCK	200	51457.22
			4142	1494967.15
			8	
5019234	1	CAST IRON WEIGHT SET	24	19728.22
22-10-2022	2	PLASTIC COMB	3456	170449.59
	3	DUPATTA GHAGRA POLYESTER	46	18905.96
	4	POLYESTER DUPATTA 4 YARD	25	3863.64
	5	GENTS HOODI DRESS OF BLENDED MATERIAL	3	771.67
	6	GENTS JEEPER OF BLENDED MATERIAL	3	771.67

	7	MENS JOGGERS MADE OF BLENDED MATERIAL	50	10274.86
	8	LADIES TROUSERS MADE OF BLENDED MATERIAL	8	1439.90
	9	MENS FORMAL PANT OF BLENDED MATERIAL	50	15412.29
	10	MENS JEANS MADE OF BLENDED MATERIAL	174	62646.60
	11	MENS PANT OF COTTON LYCRA	480	177551.69
	12	MENS SHIRTS OF COTTON	9020	2780415.35
	13	MENS SHIRTS MADE OF BLENDED MATERIAL	1183	304369.36
	14	MENS TROUSER MADE OF BLENDED MATERIAL	27	8323.03
	15	MENS TROUSER PANT OF COTTON LYCRA	480	147960.12
	16	MENS T-SHIRT MADE OF BLENDED MATERIAL	3583	809937.38
	17	OPTICAL FRAME OF PLASTIC	1200	197279.90
	18	OPTICAL FRAME	1350	665819.77
	19	PLASTIC CARRY BAG	4000	739799.82
	20	SCALE MACHINE	44	133821.61
	21	SHAMPOO COLOR	1120	239366.21
	22	SHAVING CREAM	1872	153878.28
	23	STREAX HAIR COLOR	3072	656547.62
	24	SYNTHETIC LADIES CHAPPAL	291	44969.88
	25	SYNTHETIC MENS CHAPPAL	16	1643.77
	26	TOOTHBRUSH	1728	184653.78
			0	
			7996	7550601.97
			1	
5019992	1	AGARBATTI	35	1006.78
22-10-2022	2	SECRET CLAY AZTEC	36	14796.18
	3	BOYS TROUSER OF BLENDED MATERIAL	420	134643.33
	4	SCRUB CHARCOAL	72	7397.80
	5	PLASTIC COMB	1382	68180.14
			4	
	6	MENS CARGO MADE OF BLENDED MATERIAL	30	10800.98

	7	MENS PANT OF COTTON	216	79898.69
	8	MENS PANT OF COTTON LYCRA	360	133163.89
	9	MENS SHIRTS MADE OF BLENDED MATERIAL	8576	2206484.96
	10	MENS TRACK MADE OF BLENDED MATERIAL	150	38593.09
	11	MENS TRACK PANT MADE OF BLENDED MATERIAL	64	16466.46
	12	MENS T-SHIRT MADE OF BLENDED MATERIAL	1317 0	2977078.27
	13	SCRUB	120	64115.82
	14	SECRET CLAY	120	64115.82
	15	SYNTHETIC MENS CHAPPAL	150	15412.42
	16	SYNTHETIC SHOES MENS	296	76156.36
			3763 9	5908310.99
4927873	1	GIRLS 1 PCS MIDI OF POLYESTER WITH PURSE	1557 9	4714594.88
19-10-2022				
5019277	1	BIKE TWO WHEELER	2	219885.00
22-10-2022				

2. Subsequently, the goods covered under the subject shipping bills were examined 100% under Panchanama dated 16.11.2022 in presence of authorized representatives of Exporter i.e. CB of M/s Perfecto Logistics namely Shri Pramod Kumar Jha. During the course of 100% examination, number of packages & quantity and description were found as declared in all 05 shipping bills **except Sr no-05 (OT Table) of Shipping bill no-5024801 dated 22.10.2022 which were found 01 pcs against declared 03 pcs quantity.** Further, the goods were found in conformity with the declared value except in case of 11 items as detailed at Table-II:

Sr no	Shipping bill	SB date	Item description
1	5019992	22.10.2022	Secret Clay Aztec
2	5019992	22.10.2022	Scrub Charcoal
3	5019992	22.10.2022	Scrub
4	5019992	22.10.2022	Secret Clay
5	5019234	22.10.2022	Optical Frame of Plastic
6	5019234	22.10.2022	Optical Frame
7	5019234	22.10.2022	Plastic carry Bag

8	5019234	22.10.2022	Shampoo Colour
9	5019234	22.10.2022	Shaving Cream
10	5019234	22.10.2022	Streak hair Colour
11	5024801	22.10.2022	Empty box

3. During 100% examination, out of total 05 shipping bills, in case of two shipping bills No. 4927873 dated 19.10.2022 & 5019277 dated 22.10.2022, goods were found as declared in terms of value, quantity and description. Thus, the investigation moved towards remaining 03 shipping bill no-5024801, 5019234 & 5019992 all dated 22.10.2022 wherein overvaluation angle was noticed in case of 11 items as mentioned at table-II and Item declared at Sr. no-05 (OT Table) of Shipping bill no-5024801 dated 22.10.2022 which were found 01 pcs against declared 03 pcs quantity, in order to avail undue export benefits and verification of genuineness of the Exporter from jurisdictional GST. Thereafter, Representative Sealed Samples (RSS) of these 11 items were drawn randomly and were sealed for the purpose of valuation etc. in case of said 03 shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 only.

4. Meanwhile, drawback section was requested to withhold the drawback claimed by the Exporter vide letter dated 25.11.2022 immediately. Further, a letter dated 20.12.2022 was also sent to jurisdictional DC/CGST Commissionerate to verify genuineness of the Exporter and its suppliers. In the meantime, as per Exporter's request, the goods were allowed to release provisionally for export on execution of bond equivalent to FOB value of the subject goods and on submission of Bank Guarantee amounting to RS 2,00,000/- (Rupees Two lakhs Only) vide letter dated 14.12.2022.

5. Re-determination of Valuation

5.1 During 100% examination, it was noticed that "*the goods appears to be mis-declared in terms of value in case of 11 items (as detailed at table-II)*". Further, the same is signed by the representative of the Exporter i.e. CB during his panchanama dated 16.11.2022. As the declared value of the goods appeared overvalued, thus, the declared value appears liable for rejection as per Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

5.2 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.

5.3 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 cannot be identified to compare their transaction value with the declared value of the subject goods. Hence, value of the subject goods cannot be determined under the said Rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

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

5.5 The value of the impugned goods is, therefore, proposed to be re-determined 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 i.e. through Market Enquiry conducted on 05.12.2022 in presence of authorized representative from the Exporter and accordingly, the average wholesale price(PMV) of the 11 items was re-determined as detailed at Table-III and accordingly in same proportionate, declared FOB value needs to be re-determined as detailed below:-

TABLE-III

Sr no	Shipping bill	SB date	Item description	Redetermined PMV as per market (in Rs) enquiry(Average wholesale price)
1	5019992	22.10.2022	Secret Clay Aztec	175
2	5019992	22.10.2022	Scrub Charcoal	25
3	5019992	22.10.2022	Scrub	230
4	5019992	22.10.2022	Secret Clay	230
5	5019234	22.10.2022	Optical Frame of Plastic	45
6	5019234	22.10.2022	Optical Frame	146.6667
7	5019234	22.10.2022	Plastic carry Bag	2.16667
8	5019234	22.10.2022	Shampoo Colour	13.3333
9	5019234	22.10.2022	Shaving Cream	26.6667
10	5019234	22.10.2022	Streak hair Colour	13.3333
11	5024801	22.10.2022	Empty box	11.66667

6. Hence, on the basis of the Market Enquiry report dated 05.12.2022 as detailed at Table-III, the re-determined FOB in case of 03 Shipping bills comes out to be **Rs 1,21,45,189/-** against declared FOB of Rs **1,49,53,880/-**. Therefore, redetermined drawback comes out to be 3,19,512/-

against claimed drawback of Rs 3,55,407/-. It appears that by inflating the FOB value especially in case of 11 items at table-II, the Exporter attempted to claim undue Drawback benefits of Rs 35,895/-. In this way, it appears that the goods covered under the said 03 Shipping Bills, the Exporter had inflated FOB value of the export goods to claim undue/excess export benefits i.e. differential drawback of Rs 35,895/- and differential RoDTeP amounting to Rs 18,544/-(as detailed at **Annexure-A**). However, the drawback is not disbursed so far as letter to Drawback Section has been addressed on 25.11.2022 to withhold all export benefits.

7. Recording of the Statement:

7. Statement of Shri Mohd Usman Gani, Proprietor of M/s G.N Trading was recorded under section 108 of the Customs Act, 1962 on 21.06.2023 wherein he inter-alia stated that the company address is 2nd floor, 38,A, 31, Ahmed Building, AU Memon Street, Mandvi, Mumbai-400003; that order for export in case of the 05 Shipping Bills No. 05 Shipping Bills no-4927873 dated 19.10.2022 and 5024801, 5019234, 5019992, 5019277 all dated 22.10.2022 was received from overseas buyer M/s Anaz Logistics & M/s Khalifa Abdullah Mohammad Nafe Import & Export, Sudan; that they are Merchant Exporter; that they purchased these goods from M/s SNJ Automobiles Pvt Ltd, M/s Lucky enterprises, M/s Unique Garments, M/s MR overseas & M/s Galaxy Trading and submitted copy of tax invoices as a proof of purchase; they also submitted copy of e-way bills containing vehicle movement; that terms of payment with buyer is 180days and they have four shipments prior to it and currently BRC, GSTR statement not available with them; he was not aware regarding non-existence of his suppliers viz M/s Lucky enterprises, M/s Nanshi Exports. On being asked about no buyer details in the current consignments & M/s Anaz logistics appeared to be logistics company only with no presence on open source & appears bogus entity; he replied that both the buyer & consignee of the subject goods are M/s Anaz Logistics and he would submit Bill of lading copy the next day as a proof. On being asked about that Proprietor appears frontman with meagre financial resources; he replied that being new exporter, he purchased goods on credit and submitted copy of Tax invoices as a proof of purchase goods for export.

8.1 From the above, it appears that the Exporter has misdeclared the goods in terms of value to avail undue export benefits in case of 11 items detailed at Table-II which was unearthed only after examination and market enquiry conducted on 05.12.2022 in presence of representative of the Exporter.

8.2 Further, the Exporter has failed to submit evidence against allegation of non-existence of its Suppliers especially M/s Lucky Enterprises (GSTN-27PWAPS83848C1ZY), & M/s Nanshi Export Pvt Ltd(GSTN-27AADCN0694B2ZN) which were found non-existent during physical verification at their principal place of business which means the purchase tax invoices were fraudulently obtained. Thus, wrongful GST @5% amounting to **Rs 7,47,694/-** approximately on the declared FOB of Rs 1,49,53,880/- in case of said 03 current Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 appears questionable. This clearly shows the guilty

intention on part of the Proprietor of M/s G.N Trading and by this act & omission, he has rendered himself liable for penalty under Section 114AC of the Customs act 1962 also.

8.3 Past Exports :

During the further course of investigation, past exports of the Exporter M/s G.N Trading (IEC-DVEPG9339C) were retrieved from ICES wherein 04 shipping bills were found to be exported in past & their BRC/foreign remittance or sales proceeds has not been received/submitted till date having FOB value of USD 2,08,552/- (@USD=Rs 80.7) i.e. Rs 1,68,30,146/- in which the drawback amount claimed of Rs 4,21,330/- appears to be recoverable under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RoDTeP/RosCTL duty scrips amounting to Rs 7,29,222/- (as detailed at **Annexure-C**) appears recoverable in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 along with applicable interest under Section 28AA of Customs act 1962.

9. 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;

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).

Section 75A(2): Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made there under, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

B. Customs and Central Excise Duties Drawback Rules, 2017

Rule 17: 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.

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.

Para 5 of Notification-76/2021-Cus (N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023: Recovery of amount of duty credit where export proceeds are not realised.

- (1) Where an amount of duty credit has been allowed to an exporter but the sale proceeds in respect of such export goods have not been realized by the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), the exporter shall, himself or on demand by the proper officer, repay the amount of duty credit, along with interest, at the rate as fixed under section 28AA of the said act for the purposes of that section, within fifteen days of expiry of the said period.

(2) In case any extension of the said period for realisation of sale proceeds has been given by the Reserve Bank of India and the exporter produces evidence of such extension to the proper officer, and if the said sale proceeds are not realised in such extended period, the exporter shall repay the said amount of duty credit along with the said interest, within fifteen days of expiry of the said period.

(3) If a part of the sale proceeds has been realized, the amount of duty credit to be recovered shall be the amount equal to that portion of the amount of duty credit allowed which bears the same proportion as the portion of the sale proceeds not realized bears to the total amount of sale proceeds.

10. FINDINGS OF THE INVESTIGATION

10.1 From the facts, evidence and provisions discussed above, it appears that Exporter had misdeclared the goods in terms of value especially in case of 11 items detailed at table-II, in order to avail undue drawback, RoDTep/RosCTL benefits. The FOB value of said 03 shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 has been re-determined under Rule 6 of CVR, 2007 which comes to **Rs 1,21,45,189/-** against declared FOB of **Rs 1,49,53,880/-** (as detailed at **Annexure A**). Thus, it appears that by mis-declaring the value of the goods, the Exporter had inflated FOB value of the export goods (in case of 11 items at Table-II) to claim undue export

benefits i.e. differential drawback of Rs 35,895/- and differential RoDTeP amounting to Rs 18,544/- in case of said 03 shipping bills.

10.2 In this case, the Exporter has misdeclared grossly in terms of value and consequently claimed ineligible export benefits, with mala-fide intention to defraud the Govt. exchequer by claiming excess/undue export benefits i.e. differential drawback of Rs 35,895/- and differential RoDTeP amounting to Rs 18,544/- (as detailed at **Annexure-A**). The Exporters 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 read with Rule 11 of Foreign Trade (Regulations) Rules, 1993. Thus, it appears that the goods under 03 shipping bills are liable to be confiscated under the provisions of section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 and consequent penalty under Section 114(iii) of the Customs Act 1962.

10.3 During the further course of investigation, past exports of the Exporter M/s G.N Trading (IEC-DVEPG9339C) were retrieved from ICES wherein 04 shipping bills were found to be exported in past & their BRC/foreign remittance or sales proceeds has not received/submitted till date having FOB value of USD 2,08,552/- (@USD=Rs 80.7) i.e. Rs 1,68,30,146/- in which the drawback amount claimed of Rs 4,21,330/- appears to be recoverable under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RoDTeP/RosCTL duty scrips amounting to Rs 7,29,222/- (as detailed at **Annexure-C**) appears recoverable in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 along with applicable interest under Section 28AA of Customs act 1962 and the goods of the past shipments though not available for confiscation, appears liable to be confiscated under Section 113(ia) & 113(ja) of the Customs Act 1962.

10.4 Further, the suppliers of the Exporter i.e M/s Lucky Enterprises (GSTN-27PWAPS83848C1ZY), & M/s Nanshi Export Pvt Ltd (GSTN-27AADCN0694B2ZN) were found non-existent during physical verification at their principle place of business which means the purchase tax invoices were fraudulently obtained. Thus, wrongful GST @5% amounting to **Rs 7,47,694/-** approximately on the declared FOB of Rs 1,49,53,880/- in the said shipping bill appears fraudulent in case of said 03 Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 appears questionable. This clearly shows the guilty intention on part of the Proprietor of M/s G.N Trading and by this act & omission, he has rendered himself for penalty under Section 114AC of the Customs act 1962 also.

11. ISSUANCE OF SCN: On completion of investigation, the Investigating Agency, viz. SIIB (X) had forwarded an Investigation Report depicting the above fact for issuance of SCN to the Exporter. Accordingly on the basis of said Investigation Report a SCN No. 1910/2023-24/ADC/CEAC/NS-II/CAC/JNCH dtd. 20.11.2023 was issued to the Exporter, M/s G.N Trading (IEC-DVEPG9339C) called upon to explain in writing to the Addl./Joint Commissioner of Customs, NS-II, JNCH, Nhava-Sheva, Tal.-Uran, Dist-Raigad, Maharashtra 400707 (the Adjudicating Authority in this case), within 30 days of the issue of this notice as to why: -

- (i) The total declared FOB value of 03 Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 of Rs **1,49,53,880/-** as detailed at Annexure-A, should not be rejected under Rule 8 of the Customs Valuation (Determination of value of export goods) Rules, 2007, and should not be re-determined at **Rs 1,21,45,189/-** under Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007.
- (ii) The said 03 current Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 should not be **re-assessed** with re-determined FOB value of Rs **1,21,45,189/-(One Crore Twenty One lakh Forty Five Thousand One hundred and Eighty Nine)** as detailed at Annexure-A.
- (iii) The goods vide 03 current Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 having declared FOB value of Rs **1,49,53,880/-** should not be confiscated under Section 113(i),113(ia) and 113(ja) of the Customs Act, 1962 and the Bond and BG submitted at the time of provisional release for export should not be enforced.
- (iv) Drawback of said 03 current shipping bills no-5024801, 5019234 & 5019992 all dated 22.10.2022 should not be re-determined to Rs 3,19,512/- against claimed drawback of Rs 3,55,407/- under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 and RoDTeP amount should not be redetermined to Rs 12,680/- against claimed RoDTeP of Rs 31,224/-.
- (v) the goods exported vide past 04 shipping bills wherein foreign remittance has not been received as detailed at **Annexure-C** having declared FOB of Rs 1,68,30,146/-, though not available for confiscation, should not be held liable to be confiscated under Section 113(ia) & 113(ja) of the Customs Act 1962.
- (vi) Further, Drawback amounting to **Rs. 4,21,330/- (Rs Four Lakh Twenty One Thousand Three hundred and Thirty only)** claimed against 04 past shipping bills (Annexure-C) wherein foreign remittance has not been realized, for the goods covered under past shipments should not be recovered under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RosCTL duty scrips amounting to **Rs 7,29,222/- (Rs Seven lakh Twenty Nine Thousand Two hundred and Twenty Two only)** should not be recovered in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 along with applicable interest under Section 28AA of Customs act 1962.
- (vii) Penalty should not be imposed upon the exporter M/s. G.N Trading (IEC-DVEPG9339C), under Section 114(iii) of the Customs Act 1962 for omission on the part of the Exporter which have rendered the export goods liable for confiscation under section 113(i),113(ia) and 113(ja) of the Customs Act, 1962.
- (viii) Penalty should not be imposed upon the Proprietor of M/s. G.N Trading (IEC-DVEPG9339C), under Section 114AC of the Customs Act 1962.

WRITTEN SUBMISSIONS OF THE EXPORTER

12. Vide SCN dated 20.11.2023, the Exporter was asked to submit written reply to the SCN within 30 days of receipt of the subject SCN, however, so far, the Exporter has not submitted any reply to the SCN.

RECORD OF PERSONAL HEARING

13. 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 defence. Accordingly, PH Memos dated 01.08.2025, 25.08.2025 & 10.09.2025 were issued to the Exporter intimating them about fixing date of PH on 08.08.2025, 04.09.2025 & 18.09.2025. However, neither the Exporter nor its authorized representative honored the said PH Memos and appeared before the then Adjudicating Authority for PH.

DISCUSSION AND FINDINGS

14. I have carefully gone through the facts of the case and evidences available on records. I find that instant SCN dtd 20.11.2023 alleges the exporter of misdeclaration of the goods in terms of value especially in case of 11 items detailed at table-II, in order to avail undue drawback, RoDTep/IGST Refund benefits. I find that the Exporter neither submitted written reply to the SCN till now nor appeared for PH on the scheduled dates and time. I find that ample opportunities have been given to the Exporter for submission of written reply and appearance for PH, which they failed to avail. These acts on the part of the Exporter amounts to non-co-operation and tactic used to delay adjudication proceedings. However, adjudication being a time bound proceeding, cannot be kept pending indefinitely. Therefore, I am constrained to proceed with the adjudication proceedings *ex-parte*, on the basis of available facts and evidences on record.

15. I find that in the instant case the Proprietor of the Exporting firm participated in investigating proceedings. However, the Exporter did not participate in the present adjudication proceedings in spite of the servicing of PH Memos for Personal Hearings in terms of Section 153 of Customs Act, 1962 (as detailed in Paras 13 & 13.1 *supra*). Section 153 of the Customs Act, 1962 reads as under:

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

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

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

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not

practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

15.1. Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly sent to the Exporter at their known addresses (as mentioned in the SCN and export documents) through Registered Post. Further, these PH letters were also displayed on the Notice Board of this Office in compliance to the provision of section 153 (1)(e) of the Customs Act, 1962 as mentioned above. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Exporter but they chose not to join the adjudication proceedings. As the matter pertains to export of RMGs by resorting to mis-declaration of value of the goods as well as overvaluation of the goods which resulted in claim of undue/excess export incentives and subsequent imposition of fines and penalties on the Exporter, so even in absence of the Exporter from adjudication proceedings, I am compelled to decide the matter in time bound and logical manner.

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

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

15.3. Considering the aforesaid scenario and the fact that the Exporter has not participated in the adjudication proceedings, I take up this SCN dated 23.10.2023 for discussion on the merit of the case. With regard to proceeding to decide the case following the Principle of Natural Justice, reliance is placed on the decision of the *Hon'ble High Court of Allahabad in the case of M/s. Modipon Ltd. V/s. CCE, Meerut [reported in 2002 (144) ELT 267 (All)]* effectively dealing with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

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

safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.

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

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

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

- (i) Whether the total declared FOB value of 03 Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 of Rs **1,49,53,880/-** as detailed at Annexure-A, should not be rejected under Rule 8 of the Customs Valuation (Determination of value of export goods) Rules, 2007, and should not be re-determined at **Rs 1,21,45,189/-** under Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007.
- (ii) Whether the said 03 current Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 should not be **re-assessed** with re-determined FOB value of Rs **1,21,45,189/- (One Crore Twenty One lakh Forty Five Thousand One hundred and Eighty Nine)** as detailed at Annexure-A.
- (iii) Whether the goods vide 03 current Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 having declared FOB value of Rs **1,49,53,880/-** should not be confiscated under Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 and the Bond and BG submitted at the time of provisional release for export should not be enforced.
- (iv) Whether Drawback of said 03 current shipping bills no-5024801, 5019234 & 5019992 all dated 22.10.2022 should not be re-determined to Rs 3,19,512/- against claimed drawback of Rs 3,55,407/- under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 and RoDTeP amount should not be redetermined to Rs 12,680/- against claimed RoDTeP of Rs 31,224/-.
- (v) Whether the goods exported vide past 04 shipping bills wherein foreign remittance has not been received as detailed at **Annexure-C** having declared FOB of Rs 1,68,30,146/-, though not available for confiscation, should not be held liable to be confiscated under Section 113(ia) & 113(ja) of the Customs Act 1962.
- (vi) Whether Further, Drawback amounting to **Rs. 4,21,330/- (Rs Four Lakh Twenty One Thousand Three hundred and Thirty only)** claimed against 04 past shipping bills (Annexure-C) wherein foreign remittance has not been realized, for the goods covered

under past shipments should not be recovered under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RosCTL duty scrips amounting to **Rs 7,29,222/- (Rs Seven lakh Twenty Nine Thousand Two hundred and Twenty Two only)** should not be recovered in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 along with applicable interest under Section 28AA of Customs act 1962.

- (vii) Whether Penalty should not be imposed upon the exporter M/s. G.N Trading (IEC-DVEPG9339C), under Section 114(iii) of the Customs Act 1962 for omission on the part of the Exporter which have rendered the export goods liable for confiscation under section 113(i),113(ia) and 113(ja) of the Customs Act, 1962.
- (viii) Whether Penalty should not be imposed upon the Proprietor of M/s. G.N Trading (IEC-DVEPG9339C), under Section 114AC of the Customs Act 1962.

17. I find that in the instant case, the Exporter, M/s. G.N Trading (IEC-DVEPG9339C), has filed 05 Shipping Bills no-4927873 dated 19.10.2022 and 5024801, 5019234, 5019992, 5019277 all dated 22.10.2022 through their Customs Broker M/s. Perfecto Logistics for export of **Ready made garments and Assorted items.**

17.1. I find that on the basis of specific intelligence from NCTC, it was suspected that the Exporter was attempting to export a risky consignment of goods and suspected mis-declaration of, value and availment of undue/excess export incentives thereof. Accordingly, the subject goods were kept on hold by the Officers of SIIB (X), JNCH for thorough examination of the same. I find that the goods were examined 100% under Panchanama dated 16.11.2022 in the presence of 'authorized representatives of Exporter i.e. CB of M/s Perfecto Logistics namely Shri Pramod Kumar Jha . During the course of examination, number of packages & quantity and description were found as declared in all 05 shipping bills **except Sr no-05 of Table 1 (OT Table) of Shipping bill no-5024801 dated 22.10.2022 which were found 01 pcs against declared 03 pcs quantity.** I also found that out of total 05 shipping bills, in case of two shipping bills no-4927873 dated 19.10.2022 & 5019277 dated 22.10.2022, goods were found as declared in terms of value, quantity and description and the investigation moved towards remaining 03 shipping bill no-5024801, 5019234 & 5019992 all dated 22.10.2022 wherein overvaluation angle was noticed in case of 11 items as mentioned at table-II and Item declared at Sr. no-05 of Table 1 (OT Table) of Shipping bill no-5024801 dated 22.10.2022 which were found 01 pcs against declared 03 pcs quantity, in order to avail undue export benefits. Thereafter, Representative Sealed Samples (RSS) of these 11 items were drawn randomly and were sealed for the purpose of valuation etc. in case of said 03 shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 only.

17.2. I find that at the request of the Exporter, the Competent Authority has granted permission for provisional release of goods for export after execution of Bond equivalent to the declared FOB

Value of the subject export goods and on submission of Bank Guarantee amounting to RS 2,00,000/-(Rupees Two lakhs Only) vide letter dated 14.12.2022.

17.3. I find that during the course of investigation letter dated 25.11.2022 was forwarded to jurisdictional DC/CGST Commissionerate to verify genuineness of the Exporter and its suppliers.

17.4. I find that during the course of investigation, the statement of Shri Mohd Usman Gani, Proprietor of M/s G.N. Trading, was recorded u/s 108 of the Customs Act, 1962 on 21.06.2023, wherein he inter alia stated that the registered address of the firm is 2nd Floor, 38A, 31, Ahmed Building, AU Memon Street, Mandvi, Mumbai-400003; that the orders for export under the five Shipping Bills Nos. 4927873 dated 19.10.2022 and 5024801, 5019234, 5019992 & 5019277 all dated 22.10.2022 were received from overseas buyers M/s Anaz Logistics and M/s Khalifa Abdullah Mohammad Nafe Import & Export, Sudan; that the firm is a Merchant Exporter; and that the goods were purchased from M/s SNJ Automobiles Pvt Ltd, M/s Lucky Enterprises, M/s Unique Garments, M/s MR Overseas & M/s Galaxy Trading. He further stated that copies of tax invoices were submitted as proof of purchase along with e-way bills evidencing vehicle movement of goods. Shri Gani also stated that the terms of payment with the overseas buyers are 180 days, and that the firm had undertaken four prior shipments. He submitted that the BRC and GSTR statements for the current shipments were not available with him at the time. On being questioned regarding the non-existence of certain suppliers, namely M/s Lucky Enterprises and M/s Nanshi Exports, he stated that he was not aware of any such issue. When asked about the absence of buyer details in the current consignments and that M/s Anaz Logistics appeared to be merely a logistics company with no verifiable presence in the public domain, he replied that both the buyer and consignee of the subject goods are M/s Anaz Logistics and assured to submit the Bill of Lading the following day as proof. On being asked about his apparent status as a frontman with meagre financial resources, Shri Gani stated that, being a new exporter, he purchased goods on credit and relied on the tax invoices submitted as proof of purchase for export.

17.5. I find that the the Exporter has failed to submit evidence against allegation of non-existence of its Suppliers especially M/s Lucky Enterprises (GSTN-27PWAPS83848C1ZY), & M/s Nanshi Export Pvt Ltd (GSTN-27AADCN0694B2ZN) which were found non-existent during physical verification at their principal place of business which means the purchase tax invoices were fraudulently obtained.

18. I find that being the goods are found to be of not properly declared in the export documents as found to be mis-declared in terms of value of 11 items as mentioned at table-II and Item declared at Sr. no-05 of Table-I (OT Table) of Shipping bill no-5024801 dated 22.10.2022 which were found 01 pcs against declared 03 pcs quantity. which could have been resulted in availment of undue & excess Drawback, RoDTeP & IGST Refund, however, timely interception of consignments, the export incentives against said 03 S/Bills are withheld/suspended. Further, the Exporter has failed to submit evidence against allegation of non-existence of its Suppliers especially M/s Lucky Enterprises (GSTN-27PWAPS83848C1ZY), & M/s Nanshi Export Pvt Ltd (GSTN-27AADCN0694B2ZN) which were found non-existent during physical verification at

their principal place of business which means the purchase tax invoices were fraudulently obtained. Therefore, the Investigating Agency proposed rejection of value of the impugned goods under the provisions of Rule 8 of CVR (X), 2007. I find that the Investigating Agency is right to re-determine the value of the goods conducted a Market Inquiry in presence of authorized representative of the Exporter. Accordingly, the Investigating Agency has obtained average wholesale price of the goods (as detailed in Table-IV above). Accordingly, the Investigating Agency proposed re-determined value of the goods covered under subject three (03) S/Bills at **Rs. Rs 1,21,45,189/-** against declared FOB of Rs **1,49,53,880/-**. I agree with the method adopted by the Investigating Agency to re-determine the value of the goods and subsequent proposal thereof. The valuation aspect has been discussed at length at Paras Nos. 5.1 to 5.5 *supra*.

19. I find that on the basis of re-determined value, the said export incentives were also proposed to be re-determined as Drawback at **Rs. Rs 3,19,512/-** (Rupees Three Lakhs Ninteen Thousand Five Hunderd Twelve Two) and RoDTeP at **Rs. Rs 12,680/-** (Rupees Twelve Thousand six Hundred Eighty only).

20. I find that the SCN proposed confiscation of the goods covered under subject three (03) S/Bills Nos. 5024801, 5019234 & 5019992 all dated 22.10.2022, whereby the Exporter attempted to avail higher export incentives in the form of Drawback/ RoDTeP /IGST Refund on the basis of mis-declared value of the goods. I find that the Exporter failed to submit evidence against allegation of non-existence of its Suppliers to substantiate the declared value in the S/Bills, which was found to be over-invoiced during the course of Market Inquiry. Therefore, it appeared that the Exporter has deliberately misdeclared grossly in terms of value and consequently claimed ineligible export benefits, with mala-fide intention to defraud the Govt. exchequer by claiming excess/undue export benefits.

20.1 I also find that during the investigation, past exports of the Exporter M/s G.N Trading (IEC-DVEPG9339C) were retrieved from ICES wherein 04 shipping bills were found to be exported in past & their BRC/foreign remittance or sales proceeds has not received/submitted till date having FOB value of USD 2,08,552/- (@USD=Rs 80.7) i.e. Rs 1,68,30,146/- in which the drawback amount claimed of Rs 4,21,330/- appears to be recoverable under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RosCTL duty scrips amounting to Rs 7,29,222/- (as detailed at **Annexure-C to SCN**) appears recoverable in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 alongwith applicable interest under Section 28AA of Customs act 1962 and the goods of the past shipments though not available for confiscation, appears liable to be confiscated under Section 113(ia) & 113(ja) of the Customs Act 1962.

21. I find that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of export incentives on exported

goods by the exporter himself by filing a S/Bill, in the electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make entry for the export goods by presenting a S/Bill electronically to the Proper Officer. Thus, under self-assessment, it is the exporter who has to ensure that he declares the correct RITC, applicable export incentives, value in respect of the export goods while presenting the S/Bill. Self-Assessment can result in assured facilitation for compliant exporters. However, delinquent exporters would face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied Acts. In the instant case, the facts as stated above appear to reveal that the exporter has mis-declared value of the goods (by inflating it). It appeared that the Exporter with *mala fide* intention to avail more and undue export incentives resorted to the said mis-declaration. Therefore, the goods can be confiscated for the said acts of omission and commission on the part of the Exporter under the provisions of Section 113 (i), 113 (ia) & 113 (ja) of the Customs Act, 1962 read with Section 11 of Foreign Trade (Development & Regulation) Act, 1992 & Rule 11 of Foreign Trade (Regulation) Rules, 1993. Further, being the goods already released for export provisionally against a Bond equivalent to FOB Value and Bank Guarantee of Rs. 2,00,000/-, a Redemption Fine u/s. 125 of the Customs Act, 1962 is imposable on the Exporter in lieu of confiscation.

21.1. Therefore, I agree with the proposal of SCN for confiscation of goods covered under subject three S/Bills under the provisions of Section 113 (i), 113 (ia) & 113 (ja) of the Customs Act, 1962 read with Section 11 of Foreign Trade (Development & Regulation) Act, 1992 & Rule 11 of Foreign Trade (Regulation) Rules, 1993 as well as imposition of Redemption Fine on the Exporter under the provisions of Section 125 *ibid*.

22. I also agree with the findings of the investigation that the past export consignments covered under the four shipping bills of M/s G.N. Trading (IEC: DVEPG9339C), for which export proceeds have not been realised or submitted, attract recovery of the inadmissible drawback and RoDTEP/RoSCTL benefits in terms of Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017 read with Section 75 of the Customs Act, 1962, and Para 5 of Notification No. 76/2021-Cus (N.T.) dated 23.09.2021 and Notification No. 25/2023-Cus (N.T.) dated 01.04.2023. I further agree that the said past export goods, though not available for seizure, are liable to confiscation under the provisions of Sections 113(ia) & 113(ja) of the Customs Act, 1962, read with Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 11 of the Foreign Trade (Regulation) Rules, 1993, and that the recovery of ineligible export incentives along with applicable interest under Sections 75A and 28AA of the Customs Act, 1962 is warranted.

23. I find that the exporter was found non-existent during the physical verification conducted at their declared principal place of business, which indicates that the purchase tax invoices relied upon for the exports were fraudulently obtained. Consequently, the wrongful availment of GST @ 5% amounting to approximately Rs. 7,47,694/- on the declared FOB value of Rs. 1,49,53,880/- in respect of the three current shipping bills No. 5024801, 5019234 and 5019992, all dated

22.10.2022, appears highly questionable. This clearly establishes the guilty intention on the part of the Proprietor of M/s G.N. Trading, and by such acts and omissions, he has rendered himself liable to penalty under Section 114AC of the Customs Act, 1962.

24. In this regard, 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 M/s. G.N Trading (IEC-DVEPG9339C) and their suppliers and verify whether they have had made any GST Payment against the raised Invoices pertaining to exports of RMGs vide three S/Bills Nos. 5024801, 5019234 & 5019992 all dated 22.10.2022 and past exports under 04 S/Bills as per Annexure -C filed at JNPT and take necessary action in case any discrepancies or violations of CGST Act/Rules found.

25. I find that SCN proposed penal action against the Exporting firm and its Proprietor under the provisions of Section 114 (iii) and 114AC of the Customs Act, 1962 respectively. In this regard, I find that during the course of investigation and during the course of recording of statement of Mohd Usman Gani, Proprietor of M/s G.N Trading, Exporter has failed to submit evidence against allegation of non-existence of its Suppliers especially M/s Lucky Enterprises (GSTN-27PWAPS83848C1ZY), & M/s Nanshi Export Pvt Ltd (GSTN-27AADCN0694B2ZN) which were found non-existent during physical verification at their principal place of business which means the purchase tax invoices were fraudulently obtained. Therefore, it is apparent that the Exporter is indulged in fraudulent activities of exporting RMGs by mis-declaring the value of good. and overvaluing the same and attempted to obtain export incentives in form of Drawback, RoSCTL/RoDTEp and IGST Refund. However, timely action by the Officers of SIIB (X), JNCH foiled the attempt of the Exporter.

26. I find that, on the basis of the facts and circumstances mentioned herein above, it appears that the Exporter have knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to Shipping Bills mentioned in SCN, with an intent to violate the provisions of Custom Act by their aforesaid acts of omission and commission appears to have rendered the impugned goods liable for confiscation under Section 113 (i) & 113 (ia) of the Customs Act, 1962. I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon

Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (i)."

26.1 I find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly exported as provided in any sub-section of Section 113 of the Customs Act, 1962 are liable to confiscation and merely because the exporter was not caught at the time of clearance of the exported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.

27. On perusal of the facts of the case it is apparent that the Investigating Agency during examination of goods found that the goods were mis-declared in terms of value and the same are grossly overvalued. I find that the SCN proposed confiscation of the goods u/s. 113 (i), 113 (ia) & 113 (ja) of the Customs Act, 1962 and proposed penal action on the Exporting firm u/s. 114 (iii) and penalty on the Proprietor of the Exporting firm u/s. 114AC of the said Act *ibid*. I find that Mohd Usman Gani, Proprietor of M/s G.N Trading was instrumental in making the declarations in the export documents, wherein, he suppressed the facts w.r.t. the value of goods. and the

purchase tax invoices were also fraudulently obtained. Therefore, he rendered himself liable for penal action u/s. 114AC *ibid*.

27.1 I find that the SCN proposed confiscation of the goods exported in past vide 4 shipping bills u/s. 113 (ia) & 113 (ja) of the Customs Act, 1962 and proposed penal action on the Exporting firm u/s. 114 (iii). I also find that during the investigation, past exports of M/s G.N. Trading (IEC-DVEPG9339C) were retrieved from ICES, revealing four (04) Shipping Bills with total FOB value of USD 2,08,552/- (Rs. 1,68,30,146/-). The Exporter has not received/submitted the BRC/foreign remittance or sales proceeds for these shipments. Consequently, the drawback claimed of Rs. 4,21,330/- appears recoverable under Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017 read with Section 75 of the Customs Act, 1962, along with interest under the second proviso to Section 75A. The claimed RoSCTL scrips of Rs. 7,29,222/- (Annexure-C) are similarly recoverable under Para 5 of Notification Nos. 76/2021-Cus(N.T) dated 23.09.2021 and 25/2023-Cus(N.T) dated 01.04.2023, along with interest under Section 28AA.

27.2 I find that the acts of omission and commission on the part of the Exporting Firm, M/s. Rudra International rendered the goods liable for confiscation u/s. 113 (i), 113 (ia) & 113 (ja) of the Customs Act, 1962 and subsequently rendered themselves and their Partner liable for penal action u/s. 114 (iii) and 114AC of the said Act *ibid*. I agree with the proposal of SCN w.r.t. confiscation of goods and penal action on the Exporting firm and its Proprietor, Shri Sanjeev Arora.

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

ORDER

(i) I reject the total declared FOB value of 03 Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 of Rs 1,49,53,880/- under Rule 8 of the Customs Valuation (Determination of value of export goods) Rules, 2007, and order to re-determined the same at Rs 1,21,45,189/- (Rupees One Crore Twenty One Lakhs Forty Five Thousand One Hundred Eighty Nine) under Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007 in terms of Market Inquiry Report.

(ii) I order confiscation of the goods vide 03 current Shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022 having declared FOB value of Rs 1,49,53,880/- under Section 113(i),113(ia) and 113(ja) of the Customs Act, 1962. However, being the goods has already been Exported provisionally, I impose Redemption Fine of **Rs. 5,00,000/-** on the Exporter, M/s G.N Trading (IEC-DVEPG9339C) under the provisions of Section 125 of the Customs Act, 1962, in lieu of confiscation.

(iii) I order to re-determine the Drawback to Rs 3,19,512/- (Rs. Three Lakh Nineteen Thousand Five Hundred Twelve only) against claimed drawback of Rs 3,55,407/- and RoDTeP amount to Rs 12,680/- (Rs. Twelve Thousand Six Hundred Eighty only) against claimed RoDTeP of Rs 31,224/- of said 03 current shipping bills no-5024801, 5019234 & 5019992 all dated 22.10.2022.

I order to recover the differential RoDTeP of Rs. 18544/- (Rupees Eighteen Thousand Five Hundred Forty-Four only) from the exporter M/s. G.N Trading (IEC-DVEPG9339C)

(iv) The Regional Authority, DGFT, Mumbai is requested to take necessary action for recovering the differential RoDTeP of Rs. 18544/- (Rupees Eighteen Thousand Five Hundred Forty-Four only) from the exporter M/s. G.N Trading (IEC-DVEPG9339C) for 03 current shipping bills no- 5024801, 5019234 & 5019992 all dated 22.10.2022.

(v) I order confiscation of the goods exported vide past 04 shipping bills wherein foreign remittance has not been received as detailed having declared FOB of Rs 1,68,30,146/-, under Section 113(ia) & 113(ja) of the Customs Act 1962. However, being the goods has already been Exported, I impose Redemption Fine of **Rs. 1,50,000/-** on the Exporter, M/s G.N Trading (IEC-DVEPG9339C) under the provisions of Section 125 of the Customs Act, 1962

(vi) I deny and reject export incentives of Drawback amounting to Rs. 4,21,330/- (Rs Four Lakh Twenty One Thousand Three hundred and Thirty only) and RosCTL duty scrips amounting to Rs 7,29,222/- (Rs Seven lakh Twenty Nine Thousand Two hundred and Twenty Two only) claimed against 04 past shipping bills wherein foreign remittance has not been realized. I order to recover the Drawback amounting to Rs. 4,21,330/- (Rs Four Lakh Twenty One Thousand Three hundred and Thirty only) under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and RosCTL amounting to Rs 7,29,222/- (Rs Seven lakh Twenty Nine Thousand Two hundred and Twenty Two only) in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 along with applicable interest under Section 28AA of Customs act 1962.

(vii) The Regional Authority, DGFT, Mumbai is requested to take necessary action for recovering RosCTL amounting to Rs 7,29,222/- (Rs Seven lakh Twenty-Nine Thousand Two hundred and twenty-two only) from the exporter M/s. G.N Trading (IEC-DVEPG9339C) against 04 past shipping bills wherein foreign remittance has not been realized.

(viii) The jurisdictional CGST Authorities, Anti-Evasion/Enforcement Wing, Mumbai Central Commissionerate, GST Bhavan, 115 Maharshi Karve Marg, Churchgate, Mumbai-400020 requested for initiation of suitable action for IGST/ITC recovery and take necessary action against M/s G.N Trading (IEC-DVEPG9339C), in case any discrepancies or violations of CGST Act/Rules found.

(ix) I impose Penalty of **Rs.2,00,000/-** on the Exporter, M/s. G.N Trading (IEC-DVEPG9339C), under Section 114(iii) of the Customs Act 1962

(x) I impose Penalty of **Rs.2,00,000/-** on Shri Mohd Usman Gani Proprietor of M/s. G.N Trading (IEC-DVEPG9339C), under Section 114AC of the Customs Act 1962

(xi) 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 ₹2,00,000/- (Rupees Two Lakhs 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.

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



(Raghu Kiran B.)

Addl. Commissioner of Customs,
CEAC (NS-II), JNCH.

To,

M/s. G.N Trading (IEC-DVEPG9339C)
2nd floor, 38,A, 31, Ahmed Building,
AU Memon Street, Mandvi,
Mumbai-400003.

Copy to:

1. The Commissioner of Customs, NS-II, JNCH, Nhava Sheva.
2. The Dy. Director, DGFT, CGO Building, 48, Vithaldas Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400020, – for necessary action w.r.t. disbursal of export benefit under RoSCTL & RoDTEP Scheme.
3. The Dy. Commissioner of GST, Anti Evasion Cell, Mumbai Central (To take Necessary action against Exporter for IGST Refund under the provision of CGST Act, 2017)
4. The Dy. Commissioner of Customs, SIIB (Export), JNCH, Nhava Sheva.
5. The Dy. Commissioner of Customs, CRAC, JNCH, Nhava Sheva.
6. The Dy. Commissioner of Customs, CRRC, JNCH, Nhava Sheva.
7. The Dy. Commissioner of Customs, EDI, JNCH, Nhava Sheva.
8. Supdt. (P), CHS, JNCH for display on Notice Board.
9. The Dy. Commissioner of Customs, Centralized Adjudication Cell (CAC) NS-V, JNCH, Nhava Sheva.
10. Office copy.