

 <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/10-367/2024-25/ADC/CEAC/NS-II/CAC/JNCH Date of Order: 24.12.2025  
Date of Issue: 31.12.2025

द.प.सं./DIN: 20251278NT000000D3A4

SCN No. 778/2024-25/ADC/CEAC/NS-II/CAC/JNCH  
Date of SCN:- 25.07.2024

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

मूल आदेश सं./Order-In-Original No.: 1366/2025-26/ADC/CEAC/NS-II/CAC/JNCH

निर्यातक का नाम/Exporter's Name: **M/s. Phonix Overseas (IEC-GYLPK2678R)**

**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-I 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 suspected that the Exporter M/s. **Phonix Overseas (IEC-GYLPK2678R)**, having address at Jay Motors Works, Moradabad Road, Near Rampur Doraha, Moradabad, UP-244001 (hereinafter referred to as the “Exporter”) was attempting to export a consignment of goods declared as “Dupatta (Made of Man made fibre)” ( hereinafter called as “the goods”) under CTH 6214 by over-invoicing its value to claim undue export benefits i.e. Drawback & RoSCTL vide 03 Shipping Bills No.9924524, 9924531 & 9924538 all dated 10.05.2023 filed through their Customs Broker M/s. Thakker Clearing Agency Pvt. Ltd. (hereinafter referred to as the “CB”) from Nhava Sheva port. Thereafter, the said consignment was put on hold vide Hold No. 93/2022-23-SIIB(X) vide letter F. No. SG/Misc-101/21-22 SIIB(X)/JNCH dated 15.05.2023. The details of the said Shipping Bills are tabulated below:-

**Table-I**

Sr. No.	Shipping Bill No. & Date	Item description	Declared FOB Value (in Rs)	Drawback Claimed (in Rs)	RoSCTL Claimed (in Rs)
1	9924524 dated 10.05.23	Dupatta(Made of MMF)	36,98,887.50/-	99,870 -	1,75,698/-
2	9924531 dated 10.05.23	Dupatta(Made of MMF)	35,77,612.50/-	96,596 -	1,69,937/-
3	9924538 dated 10.05.23	Dupatta(Made of MMF)	36,38,250/-	98,233/-	1,72,817/-
		Total	1,09,14,750/-	2,94,699/-	5,18,452/-

2. Subsequently, the goods covered under the subject shipping bills were examined under Panchanama dated 24.05.2023 in presence of authorized representatives of Exporter i.e. CB of Shri Rajesh Laxman Thakare, of M/s Thakkar Clearing Agency Pvt. Ltd. During the course of 100% examination, the declared quantity the goods was found to be mis-declared i.e. total number of pieces of goods “Dupatta (Man made fibre)” was found to be 1,03,320 pcs against declared 1,08,000 pcs. Hence, 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.

3. Immediately, Alert dated 07.06.2023 was inserted against IEC to suspend IGST and other export incentives. Further, RSS of the goods were sent to DYCC, JNCH for testing on 09.06.2023. Further, a letter dated 07.06.2023 was also sent to jurisdictional DC/CGST Commissionerate to verify genuineness of the Exporter and its supplier to verify supply chain. In the meantime, as per Exporter’s request, the goods were allowed provisional release for export on execution of bond equivalent to FOB value of the subject goods and on submission of Bank Guarantee amounting to Rs. 3,00,000/-(Rupees Three Lakhs Only) vide letter dated 05.07.2023. Accordingly, the exporter has submitted Bond vide e-stamp certificate No. IN-UP56992279834498V dated 11.07.2023 and payment of security of Rs.3,00,000/- vide challan no. HCM-1291 dated 12.07.2023 and the subject goods were allowed provisional release for export on 15.07.2023.

4. To ascertain the nature, composition and correct classification of the subject goods, the representative samples drawn at the time of Panchanama were forwarded to DYCC, JNCH for testing. The DYCC, JNCH forwarded Test Report No.389/SIIB(X) dated 09.06.2023. The details of the said DYCC report are tabulated as below:-

Table-II

Item Sr.No. of SB	Description Of Goods	Test results
1	Ladies Dupatta(MMF)	Dupatta of wholly polyester.

5. From the above Table No. II, the goods were found as declared in terms of composition and description, thereafter, the investigation moved towards overvaluation angle in order to ascertain undue export benefits claim, if any, and verification of genuineness of Exporter from jurisdictional GST.

**6. Re-determination of Valuation**

6.1 Whereas, during 100% examination, it was noticed that *“the goods appears to be mis-declared in terms of value & quantity”*. Further, the same is duly signed by the representative of the Exporter i.e. CB during his panchanama dated 24.05.2023. As the declared value appeared overvalued, thus, the same appears liable to be rejected as per Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

6.2 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.

6.3 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.

6.4 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.

6.5 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 in presence of authorized representative from the Exporter and accordingly market enquiry of the goods was conducted on dated 24.06.2023 in the presence of authorized representative of exporter Shri

Saurabh Rajendra Bhatt and the average wholesale price of the goods was re-determined to Rs 39.33/- per pcs for the shipping bills. thus as per Section 2(30) of Customs act 1962, the present market value(PMV) of the goods appears to be @Rs 39.33/- per pcs against declared PMV of @Rs.111.17/-per pcs and accordingly in same proportionate, declared FOB value needs to be re-determined.

6.6 Hence, on the basis of the Market Enquiry report dated 24.06.2023 as detailed above, the re-determined FOB of the said 03 Shipping bills comes out to **Rs 36,94,118/-** against declared FOB of Rs 1,09,14,750/-. It appears that by inflating the FOB value and mis-declaring the quantity of the goods the exporter attempted to claim drawback of Rs.2,94,699/- against the applicable re-determined Drawback (in Rs)= 99,741/-. Therefore, differential drawback comes out to be Rs.1,94,958/-. In this way, it appears that for the goods covered under Shipping Bills mentioned at **Annexure-A** of the SCN, the Exporter had inflated FOB value of the export goods to claim undue export benefits i.e. differential Drawback to the tune of Rs.1,94,958/- & differential RoSCTL amounting to Rs.3,42,981/- in excess. Meanwhile, the goods were provisionally released for **export** as per request of exporter with Bond and BG on 28.06.2023.

## 7. Recording of the Statement:

7.1 Statement of Shri Saurabh Rajendra Bhatt, Authorised representative, of M/s Phonix Overseas was recorded under section 108 of the Customs Act, 1962 on 04.07.2023 wherein he inter-alia stated that he had voluntarily presented himself before SIIB(X) wrt export attempted by M/s Phonix Overseas who had exported 03 past shipping bills in 2023 till that date & they had filed these 03 current shipping bills no-9924524, 9924531 & 9924538 all dated 10.05.2023 of RMG to Dubai; that they had purchased duppatta from supplier M/s Marijan Enterprises with address Shop no-90, Plot no-A-68, Sardar Diamond Mkt-2, Varachha Road, Surat; that their previous consignments to Dubai consisting of Boys two piece suits were also through CHA M/s Thakkar Clearing Agency on their behalf; that they had already submitted copy of tax invoice of supplier M/s Marijan Enterprises but they had not made any payments for the same to them till that date & he did not have any copy of Supplier's GST return/GSTN; he would provide purchase order of earlier consignment within week and their BRC not received yet; their only bank account details is 15550200001198 of Indian Overseas bank, Moradabad, UP & submitted cancelled cheque copy; that they did not have any other company other than M/s Phonix Overseas. Shri Ankit Kumar is proprietor of this company & his mobile is 7409158308; that he agreed with panchanama dated 24.05.2023, DYCC test report dated 09.06.2023 & market enquiry report dated 24.06.2023; that they are ready to pay whatever fine and penalty imposed & requested to take lenient view.

7.2 Further, the Statement of Shri Vipul T. Thakker, Director of CB firm M/s Thakker Clearing Agency Pvt. Ltd. was recorded on 03.04.2024 was recorded under section 108 of the Customs Act, 1962 wherein he inter-alia stated that he is working as F-Card Holder, having Card No- T-763 in M/s Thakkar clearing Agency since 1993 and authorized representative on behalf of CB firm & also handled all work pertaining to export with help of his staff; that they got order from Exporter M/s Phonix Overseas for 03 shipping bills no-9924524, 9924531 & 9924538 all dated 10.05.23 bills through marketing and coordinator Mr Ashok and they filed the shipping bills after verifying

credentials; that he himself alongwith staff handled the documentation work in his CB firm; they used to get Rs.1500 per container as agency charges; that they had filed the above said 03 Shipping Bills for Customs Clearance on behalf of the M/s Phonix Overseas but for the past consignments of this exporter, he had to check from his records; that through his employee Mr Rajesh Thakare, G-card of our CB firm who was present during examination, he came to know that a case had been booked against M/s Phonix Overseas for 03 shipping bills no-9924524, 9924531 & 9924538 all dated 10.05.23 for misdeclaration of value & quantity; On being asked whether their firm verified the KYC and other related documents of Shipping Bills and goods before filling above shipping bills; he replied that they verified KYC of the Customer before filing shipping bill through their aadhar card, authorization letter dated 09.05.2023 & valid IEC issued by DGFT and also from GST portal & DGFT online website as per CBLR 2018 & submitting their signed copy; that as per his knowledge, the Exporter already given his statement last year and company in existent at time of filing shipping bills and as a customs broker, they filed shipping bills as provided by exporter with KYC documents, invoice & packing list & filed documents accordingly with correct CTH & valid export policy; on being asked why not they had doubt that proprietor/Exporter might be front man and someone other was actual owner & from where they will finance; he replied in negative, but as a Customs Broker, they did KYC verification and due diligence properly & the Exporter's representative also gave his statement in July 2023 before Customs; On being asked why it should not be considered that CHA was aware of the mis-declaration by the exporter regarding dubious supply chain of Exporter; he replied that as per CBLR, they verified CTH, description and other details related to Customs angle, which were found to be as per declaration even during examination by CE also; that they didn't have any idea regarding supply chain or GST act violation angle; on being asked had their CB firm or the exporter been penalized by any Govt agency; as per my knowledge, neither CB firm M/s Thakkar Clearing Agency nor the Exporter had been penalized by any Govt agency; that they had nothing more to add.

**8.1** From the above, it appears that the Exporter has mis-declared the goods in terms of quantity as found in the examination and value which was unearthed only after market enquiry conducted on 24.06.2023 in presence of representative of the Exporter and the same was accepted by the authorized representative of the Exporter during his statement also. Thus, it is cardinal rule that "what is accepted need not be proved", thus it appears that the Exporter had knowingly declared higher price of the goods with malafide intention to claim undue/excess export benefits i.e. differential Drawback to the tune of Rs.1,94,958/- & differential RoSCTL amounting to Rs.3,42,981/-, which was not legitimately available to him, thereby attempted to cause loss to the Government Exchequer. This shows the guilty intention on the part of the Exporter. Thus, it appears that the goods under shipping bills no-9924524, 9924531 & 9924538 all dated 10.05.2023 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) & 114AA** of the Customs Act, 1962.

**8.2** Further, the Exporter has failed to submit relevant documents like e-ways, GSTR-2A of the said consignments vide 03 said shipping bills no-9924524, 9924531 & 9924538 all dated 10.05.2023 even when one of L1 supplier of the Exporter i.e. M/s Majiran Enterprises showing only outward supplies but no inward supplies which means that purchase tax invoice appears to be fake/non-

genuine and further goods found mis-declared in terms of quantity & value, thus the export invoice also appears manipulated. Thus, the wrongful ITC @5% amounting to Rs.5,45,738/-approximately on the declared FOB of Rs. 1,09,14,750/- in respect of the said 03 shipping bills appears questionable. This clearly shows the guilty intention on part of the Proprietor and thus, by this act & omission, he has rendered himself liable for penalty under **Section 114AC** of the Customs Act, 1962.

### **8.3 Past Exports:-**

In order to investigate past consignments, the data was retrieved from ICES from 01.01.2021 to 01.04.2024, it was noticed that there are 03 free past shipping bills no- 8207141/02.03.2023, 8355709/09.03.2023 & 8806780/27.03.2023 (under scheme-00 involving foreign remittance) having total FOB value of USD1849 (@81.95 i.e. Rs.1,51,526/-) wherein sale proceeds not submitted and foreign remittance not realized till date, therefore the IGST amount paid in these 03 shipping bills of Rs.27,263/- appears liable for rejection and recoverable as per Section 96B of GST act 2017 along with interest under Section 50 of GST Act, 2017. However, there was no data of shipping bills found in past consignments from ICES system wherein **identical** description item was exported.

## **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 thereunder, 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.

**Rule 96B of GST Act, 2017-**

**Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised :**

Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50.

**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.

**10. FINDINGS OF THE INVESTIGATION:-**

**10.1** From the facts, evidences and provisions discussed above, it appears that Exporter had mis-declared the goods in terms of quantity (Actually found 1,03,320pcs. against declared 1,08,000pcs. of Dupatta) and value to avail undue drawback benefits. The FOB value of said 03 live shipping bill has been re-determined under Rule 6 of CVR, 2007 which comes to Rs. 36,94,118/- against declared FOB of Rs. 1,09,14,750/-. Thus, it appears that by mis-declaring the value of the goods as well as quantity, the Exporter had inflated FOB value of the export goods to claim undue/excess export benefit i.e. differential Drawback to the tune of Rs.1,94,958/- & differential RoSCTL amounting to Rs.3,42,981/-(as detailed at Annexure-A), for the said 03 live shipping bills no-9924524, 9924531 & 9924538 all dated 10.05.2023.

**10.2** In this case the Exporter had mis-declared the value and quantity of the goods to claim undue export benefits i.e. Drawback & RoSCTL etc. 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 shipping bills no-9924524,

9924531 & 9924538 all dated 10.05.2023 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) & 114AA** of the Customs Act 1962.

**10.3** Further, the Exporter has failed to submit relevant documents like e-ways, GSTR-2A of the said consignments vide 03 said shipping bills no-9924524, 9924531 & 9924538 all dated 10.05.2023 even when one of LI supplier of the Exporter i.e. M/s Majiran Enterprises showing only outward supplies but no inward supplies which means that purchase tax invoice appears to be fake/non-genuine and further goods found misdeclared in terms of quantity & value, thus the export invoice also appears manipulated. Thus, the ITC@5% amounting to **Rs 5,45,738/-** approximately on the declared FOB of Rs.1,09,14,750/- in respect of the said 03 shipping bills appears questionable. This clearly shows the guilty intention on part of the Proprietor and thus, by this act & omission, he has rendered himself liable for penalty under Section 114AC of the Customs Act, 1962.

**10.4** In order to investigate **past consignments**, the data was retrieved from ICES from period 01.01.2021 to 01.04.2024, it was noticed that there are 03 **free** past shipping bills no-8207141/02.03.2023, 8355709/09.03.2023 & 8806780/27.03.2023 (under scheme-00 but involving foreign remittance) having total FOB value of USD1849 (@81.95 i.e. Rs.1,51,526/-) wherein sale proceeds not submitted and foreign remittance not realized till date, therefore the IGST amount paid in these 03 past shipping bills of Rs.27,263/- appears liable for rejection and appears recoverable alongwith interest under Section 96B and Section 50 of GST Act, 2017. Therefore, a letter has been addressed to GST Commissionerate for its recovery and/or investigation (if any) at their end.

**10.5** Further, as per GST online portal, the Exporter is filing GSTR regularly till 19.03.2024 & have valid IEC to do export. Further, the CHA during his statement dated 03.04.2024 stated that they have verified credentials such as KYC of the Exporter & submitted relevant documents such as Aadhar card, IEC copy, GST filing etc. Hence, there appears no violation of CBLR Regulations, 2018 on the part of CB in the instant case.

**11.** In view of above contraventions of the provisions, an Investigating Authority has proposed summarizing contraventions as well as the following violation of the Customs Act, 1962 for SCN and/or adjudication by the competent authority: -

- (i) The total declared FOB value of 03 live Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023 of Rs.1,09,14,750/- as mentioned at Annexure-A to the SCN, should 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.36,94,118/- (Rupees Thirty Six Lakh Ninety Four Thousand One Hundred and Eighteen only) under Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007.
- (ii) The 03 live Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023 should be **re-assessed** with re-determined FOB value of Rs.36,94,118/- (Rupees Thirty Six Lakh Ninety Four Thousand One Hundred and Eighteen only) & with re-determined

drawback and RoSCTL of Rs.99,741/- and Rs.1,75,485/- (as detailed at Annexure-A of the SCN with IGST under LUT) respectively.

- (iii) The goods vide 03 live Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023 having declared FOB of Rs.1,09,14,750/-, should be confiscated under Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 and the Bond & BG submitted at the time of provisional release for export should not be enforced.
- (iv) Penalty should be imposed upon the Exporter M/s Phonix Overseas (IEC-GYLPK2678R) under Section 114(iii) & 114AA of the Customs Act, 1962 for omission and commission on the part of the Exporter for attempting to claim undue/excess export benefit i.e. differential Drawback to the tune of Rs.1,94,958/- & differential RoSCTL amounting to Rs.3,42,981/-, which have rendered the export goods liable for confiscation Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962.
- (v) Penalty should be imposed upon the Proprietor M/s Phonix Overseas (IEC-GYLPK2678R) under Section 114AC of the Customs Act, 1962 for attempting to claim ineligible refund of ITC under LUT vide said 03 live shipping bills.

#### **WRITTEN SUBMISSIONS OF THE EXPORTER**

12. Vide SCN dated 25.07.2024, 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 then Adjudicating Authority for Personal Hearing (PH) for giving oral submissions in their defence. Accordingly, PH Memos dated 28.10.2024, 12.11.2024, 04.12.2024, 10.12.2024, 09.01.2025, 14.01.2025, 26.03.2025, 04.07.2025 were issued by the then Adjudicating Authority. However, neither the Exporter nor its authorized representative honored the said PH Memos and appeared before the then Adjudicating Authority for PH.

13.2. As, Adjudicating Authority has been changed, fresh opportunity of PH was granted to the Exporter by the undersigned under the Principles of Natural Justice. Accordingly, To appear before undersigned PH Memos dated 01.08.2025, 25.08.2025, 10.09.2025 were issued to the Exporter. However, this time also neither the Exporter nor their authorized representative appeared for PH on the scheduled dates and time.

#### **DISCUSSION AND FINDINGS**

14. 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.*

**14.1.** 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.

**14.2.** 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)"*

**14.3.** 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]"*

**14.4.** 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.

I have carefully gone through the facts of the case, statements, evidences put forth by the Department, relevant legal provisions and proceed to decide the case.

**15.** I find that following issues to be decided in this case:-

- (i) Whether the total declared FOB value of 03 Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023 of Rs.1,09,14,750/-as mentioned at Annexure-A to the SCN, should be rejected under Rule 8 of the Customs Valuation (Determination of value of export goods) Rules, 2007, and should be re-determined at Rs.36,94,118/- (RupeesThirty SixLakh Ninety Four Thousand One Hundred and Eighteen only) under Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007 or not.

- (ii) Whether the 03 Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023 should be **re-assessed** with re-determined FOB value of Rs.36,94,118/- (Rupees Thirty Six Lakh Ninety Four Thousand One Hundred and Eighteen only) & with re-determined drawback and RoSCTL of Rs.99,741/- and Rs.1,75,485/- (as detailed at **Annexure-A** of the SCN with IGST under LUT) respectively or not.
- (iii) Whether the goods vide 03 Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023 having declared FOB of Rs.1,09,14,750/-, should be confiscated under Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 and the Bond & BG submitted at the time of provisional release for export should be enforced or not.
- (iv) Whether the Penalty should be imposed upon the Exporter M/s Phonix Overseas (IEC-GYLPK2678R) under **Section 114(iii) & 114AA** of the Customs Act, 1962 for omission and commission on the part of the Exporter for attempting to claim undue/excess export benefit i.e. differential Drawback to the tune of Rs.1,94,958/- & differential RoSCTL amounting to Rs.3,42,981/-, which have rendered the export goods liable for confiscation Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 or not.
- (v) Whether the Penalty should be imposed upon the Proprietor M/s Phonix Overseas (IEC-GYLPK2678R) under Section 114AC of the Customs Act, 1962 for attempting to claim ineligible refund of ITC under LUT vide said 03 shipping bills or not.

15. I find that the present case originated on the basis of specific intelligence from NCTC, which indicated that the exporter was attempting to export goods at inflated FOB values so as to claim higher export incentives. Acting upon the said intelligence, three Shipping Bills bearing Nos. **9924524, 9924531 and 9924538 all dated 10.05.2023** were intercepted and put on hold by SIIB(X), JNCH. The exporter had declared export of "Dupatta (Made of Man-Made Fibre)" with an aggregate declared FOB value of ₹1,09,14,750/-, and had claimed export incentives amounting to ₹2,94,699/- as Drawback and ₹5,18,452/- as RoSCTL.

16. I find that the goods covered under the subject Shipping Bills were examined 100% under Panchanama dated 24.05.2023 in the presence of the authorized representative of the exporter. During the course of such examination, it was noticed that while the description of goods broadly matched the declaration, there was a clear mis-declaration in terms of quantity, inasmuch as the exporter had declared 1,08,000 pieces, whereas only 1,03,320 pieces were physically found. This shortfall of quantity establishes that the exporter failed to make a true and correct declaration as mandated under Section 50(2) of the Customs Act, 1962, thereby vitiating the self-assessment made by the exporter.

17. I further find that representative sealed samples were drawn and forwarded to DYCC, JNCH for testing. The Test Report dated 09.06.2023 confirmed that the goods were dupattas made of wholly polyester, thereby establishing that the goods were correctly described and classified. Accordingly, I find that there is no dispute with regard to the composition or classification of the

goods, and the investigation correctly proceeded to examine the valuation aspect, which formed the core issue in the present case.

18. I find that the declared FOB value appeared prima facie abnormally high when compared with the nature of goods, their non-branded character, and prevailing market conditions. The exporter was repeatedly called upon to substantiate the declared FOB value by producing documents such as cost of production, purchase invoices with genuine supply chain, manufacturing or processing details, brand or design charges, transportation costs, and profit margins. However, the exporter failed to furnish any cogent documentary evidence to justify the declared value. In the absence of such substantiation, the declared value could not be accepted as the transaction value and therefore became liable to rejection under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

19. I find that after rejection of the declared value, the Investigating Agency correctly followed the sequential valuation methodology prescribed under Rule 3 of the Valuation Rules. Since the goods were not standardised or branded goods and no comparable export data of like kind and quality was available, valuation under Rule 4 could not be applied. Further, the exporter failed to provide cost construction data, rendering valuation under Rule 5 also impossible. Consequently, the Investigating Agency rightly resorted to valuation under Rule 6 (Residual Method) by conducting a market enquiry on 24.06.2023 in the presence of the exporter's authorized representative.

20. I find that the market enquiry determined the average wholesale market price (PMV) at ₹39.33 per piece, whereas the exporter had declared a PMV of ₹111.17 per piece, which is nearly three times the market value. Based on this market-determined PMV, the re-determined FOB value of all three Shipping Bills works out to ₹36,94,118/-, as against the declared FOB value of ₹1,09,14,750/-. I further find that the authorized representative of the exporter, in his statement recorded under Section 108 of the Customs Act, 1962, has categorically accepted the Panchanama, DYCC Test Report, and the Market Enquiry Report, and has not raised any objection to the re-determined value. It is a settled principle of law that facts admitted need not be proved, and therefore the re-determination of FOB value stands conclusively established.

21. I therefore hold that the rejection of the declared FOB value and its re-determination at ₹36,94,118/- under Rule 6 of the Customs Valuation Rules, 2007 is legal, proper, and justified, and warrants confirmation. Consequentially, the export incentives claimed on the basis of inflated FOB value also become inadmissible. On recalculation, the eligible Drawback works out to ₹99,741/- as against ₹2,94,699/- claimed, and the eligible RoSCTL works out to ₹1,75,471/- as against ₹5,18,452/- claimed.

22. I find that by inflating the FOB value and mis-declaring the quantity of goods, the exporter attempted to claim excess Drawback of ₹1,94,958/- and excess RoSCTL of ₹3,42,981/-, which were not legally admissible. Such excess claims are liable to recovery under Section 75A(2) of the Customs Act, 1962 read with Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017, along with applicable interest. I find that the attempt itself, irrespective of whether the benefit was actually disbursed or not, constitutes a serious violation of the Customs law.

23. I further find that the exporter mis-declared the goods in terms of quantity and value while filing the Shipping Bills under self-assessment. Such mis-declaration directly violates Section 50 of the Customs Act, 1962 read with Rule 11 of the Foreign Trade (Regulation) Rules, 1993. The acts of the exporter clearly establish an intention to export goods under claim of wrongful export incentives, rendering the goods liable to confiscation under Sections 113(i), 113(ia) and 113(ja) of the Customs Act, 1962. Although the goods were provisionally released and are no longer physically available, their liability to confiscation is clearly established in law.

24. I also find that the investigation revealed serious discrepancies in the GST compliance and supply chain of the exporter. The exporter failed to submit essential documents such as GSTR-2A, e-way bills, and payment proofs, and one of the suppliers, M/s Majiran Enterprises, was found to be showing only outward supplies without any inward supplies, thereby indicating non-genuine or fake purchase invoices. This establishes that the exporter attempted to avail wrongful ITC @ 5% amounting to approximately ₹5,45,738/- in respect of the subject exports under LUT.

25. I find that such fraudulent utilisation of ITC squarely attracts penal provisions under Section 114AC of the Customs Act, 1962. The conduct of the exporter demonstrates mens rea, as the over-valuation, quantity mis-declaration, and non-genuine supply chain cannot be attributed to mere error or negligence. Accordingly, I hold that the proprietor of M/s Phonix Overseas has rendered himself liable for penalty under the said provision.

26. I further find that the investigation into past exports revealed that in respect of three shipping bills, the exporter failed to realise foreign remittance within the prescribed period, resulting in ineligible IGST refund amounting to ₹27,263/-. Such refund is clearly recoverable under Rule 96B of the CGST Rules, 2017 read with Section 50 of the CGST Act, 2017, and the action initiated for recovery through the jurisdictional GST authorities is legally sustainable.

27. I also find that the goods were provisionally released against execution of Bond equivalent to FOB value and furnishing of Bank Guarantee of ₹3,00,000/-. Since the violations alleged in the Show Cause Notice stand established, and recoveries, penalties, and interest are warranted, the Bond is enforceable and the Bank Guarantee is liable to appropriation towards Government dues.

28. In view of the foregoing discussion, facts, evidences, statutory provisions, and settled legal principles, I hold that the allegations made in the Show Cause Notice against M/s Phonix Overseas are substantiated and proved. The proposals for rejection and re-determination of FOB value, re-assessment of export incentives, confiscation of goods, recovery of excess benefits, enforcement of bond and bank guarantee, and imposition of penalties under Sections 114(iii), 114AA and 114AC of the Customs Act, 1962 are found to be legally sustainable and liable for confirmation.

29. 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.

**30.** 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)."*

**30.1.** 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 Fertilchem 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

### ORDER

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

- i. I deny and reject the declared value of Rs. 1,09,14,750/- of goods covered under Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023 in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determined to Rs. 36,94,118/- under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962.
- ii. I order confiscation of goods covered under above said 03 shipping bills having total FOB value of Rs. 1,09,14,750/- detailed as per Table-1 above, under the provisions of Sections 113(i), 113(ia) & 113(ja) of the Customs Act, 1962. However, as the goods are provisionally released, I impose a Redemption Fine of **Rs. 8,00,000/-** under Section 125 of the Customs Act, 1962, in lieu of confiscation.
- iii. I deny and reject the export incentives to the tune of Rs. 8,13,151/- (Drawback Rs. 2,94,699/- and RoSCTL Rs. 5,18,452/-) in respect of Shipping Bills No. 9924524, 9924531 & 9924538 all dated 10.05.2023, under Rules 17 of the Customs, Central Excise Duties and Service Tax Drawback Rule, 2017, read with the Section 75 of the Customs Act, 1962 & 75A (2) of the Customs Act, 1962 read with Section 28AA and Section 28AAA. The re-determined Drawback amount is Rs. **99,741/-** and RoSCTL amount is Rs **1,75,471/-**
- iv. The jurisdictional CGST Authorities, Vikas Colony, Buddhi Vihar, Moradabad, Uttar Pradesh 244103 requested for initiation of suitable action for IGST/ITC recovery and take necessary action against **M/s Phonix Overseas (IEC-GYLPK2678R)**, in case any discrepancies or violations of CGST Act/Rules found.
- v. I impose a penalty of **Rs. 3,00,000/-** (Rupees Three Lakh Only) under Section 114(iii) of the Customs Act, 1962 on the exporter M/s. Phonix Overseas (IEC: GYLPK2678R) for their acts of omission and commission to fraudulently claim ineligible export benefits by deliberate mis-classification and overvaluation of subject goods and thus rendering the subject goods liable for confiscation.

- vi. I impose the penalty of **Rs. 3,00,000/-** (Rupees Three Lakh Only) under Sections 114AA of the Customs Act, 1962 on Shri Ankit Kumar, Proprietor of **M/s Phonix Overseas (IEC-GYLPK2678R)** for the acts of omission and commission to avail undue/excess export benefits in form of Drawback & Rosctl.
- vii. I impose the penalty of **Rs. 2,00,000/-** (Rupees Three Lakh Only) under Sections 114AC of the Customs Act, 1962 on Shri Ankit Kumar, Proprietor of **M/s Phonix Overseas (IEC-GYLPK2678R)** for the willfull misstatement and supression of fact for claiming the input tax credit against above mentioned three export consignments.
- viii. 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 **₹3,00,000/-** (Rupees Three Lakh 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.

  
(RAGHU KIRAN B.)

**ADDL COMMISSIONER OF CUSTOMS  
CEAC,NS-II,JNCH**

**To,**

**M/s. Phonix Overseas (IEC-GYLPK2678R),**  
Jay Motors Works, Moradabad Road,  
Near Rampur Doraha, Moradabad, UP-244001.

**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. 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.
10. Office Copy.
11. DC/CGST Central Excise & Service Tax Division Office Vikas Colony, Buddhi Vihar, Moradabad, Uttar Pradesh 244103 for necessary action wrt IGST/ITC recovery.