

 <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- 400707 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/10-117/2025-26/ADC/CEAC/NS-II/CAC/JNCH Date of Order: 28.01.2026
द.प.सं./DIN: 20260178NT000000AF67 Date of Issue: 28.01.2026
SCN No. 25/2025-26/ADC/CEAC/NS-II/CAC/JNCH
Date of SCN:- 01.04.2025

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

मूल आदेश सं./Order-In-Original No.: 1524/2025-26/ADC/CEAC/NS-II/CAC/JNCH

निर्यातक का नाम/Exporter's Name: **मेसर्स दिग्वी एंटरप्राइजेज(IEC : ATZPS8726K)**
M/s. Digvi Enterprises (IEC- AEXPN7935G)

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 संसूच ना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़ - 400 707, महाराष्ट्र को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमा शुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए.-1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फी स के रूप में 1.50 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जाये गी। 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 received, it was suspected that the Exporter M/s. Digvi Enterprises (IEC- AEXPN7935G) having address at Floor Grd, A/277, Shastri Nagar, Dharavi Main Road, Lazim Maidan, Dharavi, Koliwada, Dharavi, Mumbai, Maharashtra- 400017 (hereinafter referred to as the 'Exporter') was attempting to export goods declared as 'JCB Loadall 530-70 Agri Telehandler' (hereinafter called as 'the goods') vide Shipping Bills Nos. 3930589, 3936983 and 3936991, all dtd. 11.09.2024 (RUD-I), filed through their Customs Broker M/s. Pavithra Impex (CB License No:11/2580) (hereinafter referred to as the 'Customs Broker'), from Nhava Sheva port. However, Shipping Bill no.3930589 dtd. 11.09.2024 was not registered and purged thereafter, while the other two Shipping Bills nos. 3936983 and 3936991 both dtd. 11.09.2024 were registered. The details of the said Shipping Bills are tabulated as below:

Table- I

S/B No. & Date	Description of Goods	FOB (Rs.)	Drawback (Rs.)	RoDTEP (Rs.)	IGST (Rs.)
3936983/ 11.09.24	JCB Loadall 530-70 Agri Telehandler	33,15,065.78/-	NIL	NIL	6,09,538.50/-
3936991/ 11.09.24	JCB Loadall 530-70 Agri Telehandler	33,15,065.78/-	NIL	NIL	6,09,538.50/-
	Total	66,30,131.56	NIL	NIL	12,19,077/-

2. Examination and insertion of Alert:

The goods covered under both the Shipping Bills were put on hold by SIIB(X), JNCH vide letter 80/2024-25/SIIB(X) dtd. 24.09.2024 and examined 100% under Panchanama on 27.09.2024 (RUD-II) in the presence of authorized representative of the Customs Broker wherein it was found that in both the Shipping Bills, **the goods were found to be declared correctly in terms of quantity and description;** Also, an alert dated 16.10.2024 was inserted in ICES system suspending IGST and other export incentives of the Exporter.

3. Valuation of the goods:

The Exporter M/s. Digvi Enterprises has purchased the subject goods from M/s. Deep Enterprises, vide Tax Invoices Nos.118 & 119, both dtd. 12.09.2024 who in turn has purchased the goods from M/s. Virag Enterprises (GSTN- 27AAAFV1535H1ZB) vide Tax Invoices No. 045 & 046 both dtd. 08.09.2024 who further has purchased the goods from M/s. Indimo Tech Private Limited (GSTN- 27AAGCI0470B1Z0) who is an authorized dealer of the manufacturer M/s. JCB India Ltd.

As per Rule 3(1) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007, transaction value of the goods may be accepted as export value of the goods covered under Shipping Bills Nos.3936983 & 3936991, both dtd. 11.09.2024 and accordingly, declared value of the subject goods appears fair.

4. Provisional Release:

As requested by the Exporter, an NOC dated 21.01.2025 (**RUD-III**) for provisional release of the subject goods for Back to Town, was given by SIIB(X), JNCH to CEAC, JNCH. The goods were released provisionally for Back to town on submission of the Bond equivalent to value and bank guarantee/ cash surety of 3 lakh.

5. GST Supply chain:

(i) Exporter Verification:

As per reply dtd. 02.12.2024 (**RUD-IV**), received from the concerned GST Commissionerate, State Tax Office, Nodal Division-5, Shivaji Park-702, Maharashtra State GST; the exporter M/s. Digvi Enterprises was found to be a **suspicious entity**; During physical verification it was observed that the taxpayer M/s Digvi Enterprises having GTIN-27AEXPN7935G1ZP is registered w.e.f. 04/03/2022 and declared place of business located at 'Shastri Nagar, Floor Ground, Dharavi Main Road, Lezim Maidan, Dharavi Koliwada, Dharavi, Mumbai-400017'. As per the visit report, the taxpayer was not available at the declared place of business. Shri. Pankaj Shashikant Narayankar proprietor, has informed that he has shifted his business to "B-108, Building No.2, Maa Ashapura S.R.A. CHS, Sant Dayaneshwar Nagar Marg, Near Gurunanak Hospital, Bandra East, Mumbai-4000051. The taxpayer has not applied for amendment relevant to change in place of business; As per registration profile the taxpayer is service provider, providing labor supply services/ Contract staffing services. While verifying tax invoices, submitted by the taxpayer during the visit, it is seen that the taxpayer is also a trader dealing in "Excavators, skid steer loader etc. The taxpayer has not updated the said commodities on registration profile of the taxpayer under GST; The taxpayer M/s Digvi Enterprises GSTIN-27AEXPN7935G1ZP, has filed return regularly in form GSTR-3B & GSTR 1 up to month of September-2024 & the taxpayer has not claimed any refund till date; Further, As per data available on BO portal of this office, no transaction are shown by the taxpayer with M/s Deep Enterprises & the taxpayer has failed to attend & to submit requisite documents as invoice wise details of outward supply & inward supply during the period 2023-24 & Apr-2024 to Sep-2024 along with tax invoices & transportation proof & documents relevant to transactions with M/s Deep Enterprises; It is also stated that M/s Digvi Enterprises is a **suspicious entity** and found involved in **circular transaction** with various other entities.

(ii) Supplier Verification:

As per reply dtd. 20.11.2024 (**RUD-V**), received from the concerned GST Commissionerate i.e. Zone- Varanasi-II, Range-Varanasi (C), Jaunpur Sector-5, UP SGST; M/s. Deep Enterprises was found to be a non-genuine entity; during physical verification M/s Deep Enterprises was found at the registered place of business but no inventory was found at the said premises; who has consistently filed all GST returns; However, there is a case going on against M/s. Deep Enterprises regarding fraudulent utilization of Input Tax Credit (ITC).

Therefore, supply chain of the goods could not be verified and accordingly, a letter in this

regard has been forwarded to the GST office for further investigation (if any) at their end.

6. **Summons and Statements:**

Statement of Shri Binod Mishra, Authorized representative of the exporting firm M/s. Digvi Enterprises was recorded on 21.11.2024 (**RUD-VI**) wherein he inter-alia stated that the goods pertaining to Shipping Bill No.3930589 dtd. 11.09.2024 were in transit when he came to know about the hold of the goods covered under Shipping Bills Nos.3936983 & 3936991, both dtd. 11.09.2024, by SIIB(X), JNCH and thereby, he did not cart the goods of the Shipping Bill No.3930589 dtd. 11.09.2024 as his CHA informed him that it might get hold as well or even if the same does not get hold, still the export incentives will be put on hold till the time this case is closed; that due to withholding of the export incentives, the export shipment of goods pertaining to Shipping Bill no. 3930589 dtd. 11.09.2024 would not be that profitable; that thereby he sold the goods locally; that he had purchased the goods from M/s. Deep Enterprises, vide Tax Invoices Nos.118 & 119 dtd. 09.09.2024 (copy of the account statement as a payment proof submitted by the exporter); **that there is no Loan or Hypothecation on the goods** (No Objection Certificate, from the Authorized Dealer, submitted by the exporter).

7. **Past Exports:**

The past data of the Shipping Bills, filed by the exporter was retrieved from ICES 1.5 system and it was seen that the exporter has filed no Shipping Bills in the past from INNSA1.

8. **Financial status of the Exporter:**

Financial status of the Exporter could not be examined as the Exporter has not submitted copies of either ITR or Bank account statement.

9. **Relevant provisions of law applicable in this case:**

9.1 **Customs Act, 1962:**

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: Confiscation of goods attempted to be improperly exported, etc.-

(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: Penalty for attempt to export goods improperly, etc.-

(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 114AA: Penalty for use of false and incorrect material-

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

Section 114AC: Penalty for fraudulent utilisation of input tax credit for claiming refund- Where any person has obtained any invoice by fraud, collusion, willful 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.

9.2 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.

9.3 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 The Exporter M/s. Digvi Enterprises(IEC- AEXPN7935G), having address as Floor Grd, A/277, Shastri Nagar, Dharavi Main Road, Lazim Maidan, Dharavi, Koliwada, Dharavi, Mumbai, Maharashtra- 400017, filed Shipping Bills Nos.3936983 and 3936991 both dtd. 11.09.2024, having declared FOB of Rs.66,30,132/- (Rupees Sixty-Six Lakh Thirty Thousand One Hundred Thirty-Two only) through their Customs Broker M/s. Pavithra Impex (CB License No:11/2580), for export of goods declared as “JCB LOADALL 530-70 AGRI TELEHANDLER”, under CTH-84279000, under Export Promotion Scheme Code 00(Free Shipping Bill).

10.2 The goods covered under Shipping Bills Nos. 3936983 and 3936991 both dtd. 11.09.2024, were examined under Panchanama dtd. 27.09.2024 wherein the goods were found to be declared correctly in terms of quantity, description, classification & value;

10.3 As per the reply received from the jurisdictional GST offices, both the Exporter and its supplier are found to be non-genuine as Exporter has changed his principle place of business without intimating the GST authorities; the Exporter is registered as service provider in the GST registration; that no transaction has been shown by M/s. Digvi Enterprises with M/s. Deep Enterprises & the Exporter has failed to attend & to submit requisite documents i.e. invoice wise details of outward supply & inward supply during the period 2023-24 & Apr-2024 to Sep-2024 along with tax invoices & transportation proof & documents relevant to transactions with M/s Deep Enterprises; M/s. Digvi Enterprises is a **suspicious entity** and found involved in **circular transaction** with various other entities and there is a case going on against M/s. Deep Enterprises regarding fraudulent utilization of Input Tax Credit (ITC).

Hence, the supply chain, in the matter appeared to be manipulated and dubious, rendering the goods liable for confiscation, under section 113(ja) of the Customs Act, 1962 and by this act and omission, the Exporter has rendered himself liable for penalty under Section 114AC of the Customs act 1962.

10.4 As requested by the Exporter, an NOC dated 21.01.2025 (**RUD-III**) for provisional release of the subject goods for Back to Town, was given by SIIB(X), JNCH to CEAC, JNCH. The goods were released provisionally for Back to town on submission of the Bond equivalent to value and bank guarantee/ cash surety of 3 lakh.

11. Now, therefore, the Exporter M/s. Digvi Enterprises(IEC- AEXPN7935G), having address as Floor Grd, A/277, Shastri Nagar, Dharavi Main Road, Lazim Maidan, Dharavi, Koliwada, Dharavi, Mumbai, Maharashtra- 400017, was hereby called upon to show cause in writing to the Addl. Commissioner of Customs, CEAC, NS-II, JNCH, Nhava-Sheva, Tal.-Uran, Dist.-Raigad, Maharashtra 400707 within 30 days of the receipt of this notice as to why:-

- i. The goods covered under Shipping Bills Nos. 3936983 and 3936991 both dtd. 11.09.2024, having total declared FOB value of Rs. 66,30,132/- (Rupees Sixty-Six Lakh Thirty Thousand One Hundred Thirty-Two only), should not be confiscated under Section 113(ja) of the Customs Act, 1962.

- ii. Penalty should not be imposed, under Section 114AC of the Customs Act 1962, for fraudulent utilization of Input Tax Credit for claiming refund which have rendered the export goods liable for confiscation under the aforesaid provisions of the Customs Act, 1962, as detailed in (i) above.
- iii. The Bond and Bank Guarantee submitted by the Exporter, at the time of provisional release of the goods, should not be appropriated towards recoverable dues, applicable fine and penalty.

WRITTEN SUBMISSIONS OF THE EXPORTER

12. Vide SCN dated 01.04.2025, 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 12.09.2025, 26.09.2025 & 14.10.2025 were issued by the Adjudicating Authority. However, neither the Exporter nor its authorized representative honored the said PH Memos and appeared before the Adjudicating Authority for PH.

DISCUSSION AND FINDINGS

14. I have carefully examined the facts of the case, records of investigation, documentary evidence available on file. The Show Cause Notice alleges that the Exporter M/s Digvi Enterprises attempted to export goods under Shipping Bills Nos. 3936983 and 3936991 both dated 11.09.2024 with intent to fraudulently avail export incentives, particularly IGST refund, on the basis of a manipulated and non-genuine GST supply chain. It is noted that during investigation, the description, quantity, classification and declared value of the goods were found to be correct on physical examination under Panchanama dated 27.09.2024. The declared transaction value was also found acceptable under Rule 3(1) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. However, the investigation revealed serious irregularities in the GST supply chain forming the basis of the export transaction.

14.1 I further find that the Exporter has neither submitted any written reply to the SCN till date nor appeared for personal hearing despite service of hearing notices. Sufficient opportunities were afforded to the Exporter to defend the case, which were not availed. These acts amount to non-cooperation and an apparent attempt to delay adjudication proceedings. Since adjudication is a time-bound statutory function, I proceed to decide the case ex-parte on the basis of material available on record.

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

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

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

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

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

15.1. 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, but the Exporter did not honor the same. 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, but the Exporter has not responded at all to the Notices/Memos issued. 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.

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 01.04.2025 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]"

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 goods covered under Shipping Bills Nos. 3936983 and 3936991 both dated 11.09.2024, having total declared FOB value of Rs. 66,30,132/-, are liable to confiscation under Section 113(ja) of the Customs Act, 1962.

(ii) Whether the Exporter is liable to penalty under Section 114AC of the Customs Act, 1962.

(iii) Whether the Bond and Bank Guarantee/cash security furnished at the time of provisional release are liable to be appropriated.

16.1 Issue (i): Whether the goods covered under Shipping Bills Nos. 3936983 and 3936991 both dated 11.09.2024, having total declared FOB value of Rs. 66,30,132/-, are liable to confiscation under Section 113(ja) of the Customs Act, 1962.

16.1.1 I find that the Exporter filed the subject Shipping Bills for export of “JCB Loadall 530-70 Agri Telehandler” and intended to claim IGST refund on such exports. From the investigation records and replies received from the jurisdictional GST authorities, it is established that: the Exporter was not operating from the declared principal place of business and had shifted without amendment of GST registration; the Exporter was registered as a service provider but engaged in trading of heavy machinery without updating registration profile; no transactions with M/s Deep Enterprises were reflected in official GST/BO portal data; the Exporter failed to submit invoice-wise inward/outward supply details and transportation documents; the supplier M/s Deep Enterprises was found to be a non-genuine entity and under investigation for fraudulent ITC.

16.1.2 I find that the Exporter attempted to export goods under claim of refund of IGST on the strength of invoices forming part of a suspicious, unverifiable and fraudulent GST supply chain. The entitlement to refund was thus based on misrepresentation and suppression of material facts.

16.1.3 Section 113(ja) of the Customs Act, 1962 provides that any goods entered for exportation under claim of refund of any duty or tax to make a wrongful claim in contravention of law shall be liable to confiscation.

16.1.4 In the present case, although the goods were physically found correct, the claim of refund was founded upon fraudulent and non-genuine invoices. The wrongful claim of tax refund itself attracts confiscability under Section 113(ja), irrespective of correctness of physical description or valuation. Accordingly, I hold that the goods covered under Shipping Bills Nos. 3936983 and 3936991 both dated 11.09.2024, having total declared FOB value of Rs. 66,30,132/-, are liable for confiscation under Section 113(ja) of the Customs Act, 1962.

16.2 Issue (ii): Whether the Exporter is liable to penalty under Section 114AC of the Customs Act, 1962.

16.2.1 I find that the Exporter: relied upon invoices issued by a non-genuine supplier; failed to establish genuineness of inward supplies; failed to reconcile GST records or substantiate lawful availment of ITC; attempted to export goods for claiming IGST refund on the basis of such invoices. The above conduct clearly establishes conscious and deliberate involvement of the

Exporter in use of fraudulent invoices for the purpose of claiming refund of tax on export goods. Therefore, I hold that M/s Digvi Enterprises has rendered itself liable to penalty under Section 114AC of the Customs Act, 1962.

16.2.2 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. 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 for initiation of appropriate action, in accordance with law, for recovery of any inadmissible IGST refund and/or irregular input tax credit, if any, and for taking further action under the CGST Act, 2017 and the rules made thereunder, in case any discrepancies or violations are noticed in respect of the exporter or its suppliers.

16.3 Issue (iii): Whether the Bond and Bank Guarantee/cash security furnished at the time of provisional release are liable to be appropriated.

16.3.1 I find that the goods were provisionally released for "Back to Town" on execution of bond equivalent to the value of goods and submission of bank guarantee/cash security of Rs. 3,00,000/-. Since the goods are held liable to confiscation and the Exporter is liable to penalty, the security furnished at the time of provisional release is required to be enforced to safeguard government revenue. Accordingly, I hold that the Bond executed and Bank Guarantee/cash security furnished by the Exporter are liable to be appropriated towards recovery of fine in lieu of confiscation and penalty imposed.

17. 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)."

17.1. 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.

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

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

ORDER

(i) I order that the goods covered under Shipping Bills Nos. 3936983 and 3936991 both dated 11.09.2024, having total declared FOB value of Rs. 66,30,132/- (Rupees Sixty-Six Lakh Thirty Thousand One Hundred Thirty-Two only), are confiscated under Section 113(ja) of the

Customs Act, 1962.

- (ii) I order that the jurisdictional CGST authorities, , The Dy. Commissioner of GST, Mumbai Central Commissionerate, New GST Building, Bandra Kurla Complex (BKC), Bandra(East), Mumbai-400051, be requested to initiate suitable action for recovery of inadmissible IGST / input tax credit, and to take necessary action against over M/s Digvi Enterprises (IEC-AEXPN7935G, in accordance with the provisions of the CGST Act, 2017 and the rules made thereunder, in case any discrepancies or violations are found.
- (iii) I impose a redemption fine of **Rs. 5,00,000 (Rupees Five Lakhs only)** under Section 125 of the Customs Act, 1962, in lieu of confiscation.
- (iv) I impose a penalty of **Rs. 5,00,000 (Rupees Five Lakhs only)** upon M/s Digvi Enterprises under Section 114AC of the Customs Act, 1962 for fraudulent utilisation of invoices / input tax credit for claiming refund of tax on export goods.
- (v) I order that the Bond and the Bank Guarantee/cash surety amounting to Rs. 3,00,000/- (Rupees Three Lakh only) furnished by the Exporter at the time of provisional release of the subject goods for Back-to-Town shall be invoked, enforced and appropriated towards the recovery of the redemption fine, penalties and other recoverable amounts, as ordered hereinabove.
19. 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.


28/01/26

(RAGHU KIRAN B.)
Commissioner of Customs (In-situ),
CEAC, NS-II, JNCH

To,

M/s. Digvi Enterprises(IEC- AEXPN7935G) at
Floor Grd, A/277, Shastri Nagar, Dharavi Main Road,
Lazim Maidan, Dharavi, Koliwada, Dharavi,
Mumbai, Maharashtra- 400017

Copy to:

1. The Commissioner of Customs, NS-II, JNCH, Nhava Sheva.
2. The Dy. Commissioner of GST, Mumbai Central Commissionerate, New GST Building, Bandra Kurla Complex(BKC), Bandra(East), Mumbai-400051.

3. The Dy. Commissioner of Customs, SIIB (Export), JNCH, Nhava Sheva.
4. The Dy. Commissioner of Customs, CRAC, JNCH, Nhava Sheva.
5. The Dy. Commissioner of Customs, CRRC, JNCH, Nhava Sheva.
6. The Dy. Commissioner of Customs, Centralized Adjudication Cell (CAC) NS-V, JNCH, Nhava Sheva.
7. The Dy. Commissioner of Customs, EDI, JNCH, Nhava Sheva.
8. Supdt. (P), CHS, JNCH for display on Notice Board.
9. Office copy.


(RAGHU KURAN B.)
Commissioner of Customs (in-charge)
CEAC NS-II, JNCH

To:
M/s. Dignit Enterprises (H.C. ALXP/202501) at
Floor Gnd. A/277, Shanti Nagar, Dhanu Main Road,
1st Cross Madhav, Dhanu, Koliwada, Dhanu,
Mumbai, Maharashtra - 400017

1. The Commissioner of Customs, NS-II, JNCH, Nhava Sheva.
2. The Dy. Commissioner of GST, Mumbai Central Commissioner, New GST Building,
Bandra Kurla Complex (BKC), Bandra (East), Mumbai - 400021