

 <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/10-124/2025-26/ADC/CEAC/NS-II/CAC/JNCH Date of Order: 28.01.2026
द.प.सं./DIN: 20260178NT0000999DAC Date of Issue: 28.01.2026
SCN No. 1592/2023-24/ADC/CEAC/NS-II/CAC/JNCH
Date of SCN:- 09.10.2023

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.: 1525/2025-26/ADC/CEAC/NS-II/CAC/JNCH

निर्यातक का नाम/Exporter's Name: **मै. एफएए इंटरनेशनल (आयात निर्यातकोड:ATZPS8726K)**
M/s. FAA International (IEC-ATZPS8726K)

मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि: शुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूच ना 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 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।
3. इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (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.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

On the basis of specific intelligence from NCTC, it was observed that a consignment of goods declared as “**Ladies’ long Scraves Dupatta of MMF Fibres & Ladies Scraves of man Made Fibres**” (hereinafter called as “**the goods**”) under CTH 6214 pertaining to the exporter M/s. FAA International (IEC-ATZPS8726K), having address at 4/101, Mubarak complex, Vinoba Bhawe Nagar, LIG Colony, Kurla(W), Mumbai-400070 (hereinafter referred to as the “**Exporter**”) was being attempted to export the goods by over-invoicing their value to claim undue export benefits i.e. Drawback and RoSCTL vide the Shipping Bill bearing No.-4170767 dated 14.09.2022 filed through their Customs Broker M/s. Crosswater Logistics (hereinafter referred to as the “**CB**”) from Nhava Sheva port. Thereafter, the said consignment was put on hold vide Hold No. 29/2022-23-SIIB(X) vide letter F. No. SG/Misc-101/21-22 SIIB(X)/JNCH dated 19.09.2022. The details of the said Shipping Bill are tabulated as below: -

Table-I

Sr. No.	Shipping Bill No. & Date	Leo Date	Item Sl.No.	Item description	Declared Qty (in pcs)	Declared FOB Value (in Rs)	Drawback Claimed (in Rs)	RoSCTL claimed (inRs)
1	4170767 dated 14.09.2022	16.09.2022	1	Ladies’ long scraves Dupatta of MMF	50200	35,50,070	95,852	1,68,628
			2	Ladies’ scraves of MMF	30600	14,42,658	38,952	68,526
				Total		49,92,728	1,34,804	2,37,154

2. Subsequently, the goods covered under the subject shipping bill were examined under Panchanama dated 10.10.2022 in presence of the authorized representative of exporter i.e. Shri Sumit Laxman Mhatre on behalf of Customs Broker of M/s Crosswater Logistics. During the course of 100% examination, the number of packages & quantity were found as declared in the shipping bill. However, it was found that the goods were not in conformity with the declared value. 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.

3. Vide letter dated 12.10.2022, Drawback Section was requested to withhold the drawback claimed by the said exporter. Further, a letter dated 15.11.2022 was also sent to jurisdictional DC/CGST Commissionerate to verify genuineness of the exporter and its suppliers based on NCTC alerts. In the meantime, as per Exporter’s request, the goods were allowed to release provisionally for export on execution of bond equivalent to FOB value of the subject goods and on submission of Bank Guarantee amounting to Rs. 50,000/- (Rupees Fifty Thousand Only) vide letter dated 14.11.2022.

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 on dated 12.10.2022. The DYCC, JNCH forwarded Test Report No. 859/SIIB(X) & 860/SIIB(X) dated both dated 13.10.2022. The details of the said DYCC reports are tabulated as below: -

Table-II

Item S r. No.o f S/B	Description Of Good s	Test results
1	Readymade Garments Ladies Long Scraves Dupatta Man Made Fi bres	The sample as received is in form of a RMG (dupatta). It is made of dyed and printed woven fabrics. Base woven fabrics is composed of polyester (81.39%) & (viscous-Balance) filament yarns.
2	Readymade Garments Ladies Scraves Man Made Fibres	The sample as received is in form of a RMG (Scraves). It is made of dyed and printed woven fabrics and woven fabrics is composed of wholly polyester filament yarns.

5. From the above Table-II, the goods were found as declared in terms of composition and description, thus the investigation moved towards overvaluation angle in order to avail undue export benefits and genuineness verification from jurisdictional GST.

6. Re-determination of Valuation

6.1 Whereas, during 100% examination, it was noticed that “*the goods appear to be mis-declared in terms of value*”. Further, the same is dually signed by the representative of the exporter i.e. CB, during the panchanama dated 10.10.2022 as a token of agreement with the examining officer observation thus, the declared value 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 of the exporter.

Accordingly, the average wholesale price of the goods was re-determined to Rs 40.67/- per piece for item Sl. No. 1 and Rs 27/- per piece for item Sl. No. 2 of the shipping bill no.- 4170767 dated 14.09.2022, thus as per Section 2(30) of Customs act 1962, the present market value(PMV) of the goods appears to be @Rs 40.67/- per piece & Rs 27/per piece against declared PMV of @ Rs 77.79/- per piece & 51.86/-per piece and accordingly in same proportionate, declared FOB value needs to be re-determined as detailed below:-

Table-III

Shipping Bill No/date	Item Sl. No. of the Shipping Bill	Declared FOB Value (in Rs.)	Redetermined Av. Wholesale PMV as per market enquiry (in Rs.)	Redetermined FOB Value (in Rs.)	Declared DBK (in Rs.)	Re-determined DBK @ 2.7% (in Rs.)	Diff./Excless claimed amt. of DBK (in Rs.)	Declared RoS CTL (in Rs.)	Redetermined RoSCTL @ 4.75% (in Rs.)	Diff./Excless claimed amt. of RoSCTL (in Rs.)
4170767 dated 14.09.2022	1	35,50,070.3	40.67	18,56,040	95,851.9	50,113.08	45,738.82	1,68,628	88,162	77,230
	2	14,42,657.7	27	7,51,095	38,951.75	20,279.56	18,672.19	68,526	35,677	29,281
Total		49,92,728		26,07,135	1,34,804	70392.64	64,411.01	2,37,154	1,23,839	1,13,315

6.6 Hence, on the basis of the Market Enquiry report dated 29.10.2022 as detailed in Table-III, the re-determined FOB of the said Shipping bill comes out to be **Rs 26,07,135/-** against

declared FOB of Rs 49,92,728/- and re-determined Drawback (in Rs) 70,393/- against claimed drawback of Rs 1,34,804/- and redetermined RoSCTL benefit of Rs 1,23,839/- against declared RoSCTL of Rs 2,37,154/-. In this way, it appears that the goods covered under Shipping Bill mentioned in Table-III, the exporter had inflated FOB value of the export goods & attempted to claim undue/excess export benefits i.e. differential drawback of Rs 64,411/- & differential RoSCTL amounting to Rs 1,13,315/-. However, the drawback is not disbursed so far as letter to Drawback has been addressed on 12.10.2022 to withhold Drawback and other export benefits.

7. Recording of the Statement: Statement of Shri Farzana Waseem Shaikh, Proprietor of M/s FAA International (IEC-ATZPS8762K) was recorded under section 108 of the Customs Act, 1962 on 21.06.2023 wherein he inter-alia stated that the company was established in 2014; that his address is 4/101, Mubarak Complex, Vinoba Bhave Nagar, LIG Colony, Kurla(W), Mumbai-400070; that the Shipping Bills No. 4170767 dated 14.09.2022 was filed by their company; that they are Merchant Exporter; that they had purchased the subject goods from local vendor M/s Nicea Enterprises, Mumbai, that they file GSTR regularly and they suo-moto did not cancel their GST registration and had submitted all the requisite documents to CGST department for verification and to activate his GST registration in the month of May 2023; that he would submit Tax Invoice for the shipment covered under shipping bill no-4170767 dated 14.09.2022 to authenticate his purchase but didn't have e-way bill; that erroneously the GSTIN Trade name of their firm was updated as Prime Impex at the time of GST registration, they would submit for amendment of GSTIN Trade of their firm from M/s Prime Impex to M/s FAA International (IEC-ATZPS8762K) within 02 working days, their buyer M/s Belium Carbon Chemicals Ltd. has made advance payments of USD10,000 but not end user of their goods; that they agree with market enquiry dated 29.10.2022.

8. From the above, it appears that the exporter has mis-declared the goods in terms of value as per quality of the goods which was unearthed only after market enquiry conducted on 29.10.2022 in presence of representative of the exporter and the same was accepted by the exporter during his statement also and it is cardinal rule that "what is accepted needn't to prove".

8.1 Further, Jurisdictional CGST Commissionerate vide letter File No-CGST/ME/Div-II/Ref/Misc/311/21-22 dated 01.12.2022, informed that M/s FAA International was found to be existent at the registered premises having registration dated 21.12.2021. The Exporter has filed GST3B & GSTR1 from Dec., 2021 to April, 2022, hence, Suo moto cancellation has been initiated on 01.12.2022.

Moreover, in respect of ITC (Input Tax Credit), it was informed that Tax payer is a merchant exporter and its GSTR2A obtained from the system didn't reflect any credit even after they have availed and utilized ITC. Therefore, ITC availed is not genuine and above tax payer appears to be fraudulent. Further, the data were retrieved from GST portal wherein it was noticed that GSTIN of its supplier M/s Shreeya Enterprises cancelled on 18.06.2022 i.e. before purchase Tax invoice no-SE/107 dated 06.08.2022 of said shipping bill, which means the purchase tax invoice no-SE/107

dated 06.08.2022 was fraudulently obtained. Thus, for this act and omission, wrongful GST @ 5% amounting to **Rs 2,49,636/-** approximately on the declared FOB of Rs 49,92,728/- in the said shipping bill appears at stake. This clearly shows the guilty intention on part of the Proprietor of M/s FAA International and have rendered himself liable for penalty under Section 114AC of the Customs act 1962.

8.2 Past Exports:

During the further course of investigation, past exports of the exporter M/s FAA International (IEC-ATZPS8762K) were retrieved from the ICES 1.5 system especially wherein 07 shipping bills were found to be exported in past & their BRC/foreign remittance or sales proceed was not received/submitted till date having FOB value of USD 3,67,895/- (@ USD=Rs 78.7) i.e. Rs 2,89,53,337/- in which the drawback amount claimed of Rs 7,13,708/- (Rupees Seven Lakh Thirteen Thousand Seven Hundred and Eight only) appears to be recoverable under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RoSCTL duty scrips amounting to Rs 9,92,588/- (Nine Lakh Ninety Two Thousand Five Hundred and Eighty Eight only) (as detailed in Table- IV below) appears recoverable in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 alongwith applicable interest under Section 28AA of Customs act 1962.

Table-IV

Sl. No.	S/B No.	S/B Date	LEO Date	Expected Realization Date	FOB to be Realised (in Rs.)	FOB Actually Realised (in Rs.)	Drawback Amount (in Rs.)	RoSCTL Claimed (in Rs.)
1.	3058764	25.07.2022	30.07.2022	30.04.2023	1271005	0	34,535	0
2.	3310893	05.08.2022	06.08.2022	31.05.2023	2353130	0	63,413	0
3.	3818230	29.08.2022	30.08.2022	31.05.2023	4141037	0	1,11,951	1,96,951
4.	3926908	02.09.2022	05.09.2022	30.06.2023	5304380	0	1,43,218	2,51,958
5.	3984460	05.09.2022	08.09.2022	30.06.2023	5658530	0	1,52,780	26,87,80
6.	4121391	12.09.2022	14.09.2022	30.06.2023	5232527	0	73,007	37,745
7.	4170767	14.09.2022	16.09.2022	30.06.2023	4992728	0	1,34,804	2,37,154
				Total	2,89,53,337	0	7,13,708	9,92,588

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).

75. Drawback on imported materials used in the manufacture of goods which are exported—

(1) Where it appears to the Central Government that in respect of goods of any class or description [manufactured, processed or on which any operation has been carried out in India] [, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer], [or being goods entered for export by post under [clause (a) of section 84] and in respect of which an order permitting clearance for exportation has been made by the proper officer], a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the 3 [manufacture or processing of such goods or carrying out any operation on such goods], the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2):

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the [Foreign Exchange Management Act, 1999 (42 of 1999)], such drawback shall [except under such circumstances or such conditions as the Central Government may, by rule, specify,] be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.]

(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide—

[(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest if any payable thereon;]

[(aa) for specifying the goods in respect of which no drawback shall be allowed;

(ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) [or interest chargeable thereon];] (b) for the

production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;

Section 75A Interest on drawback

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

Section 124: Issue of Show Cause Notice before confiscation of goods, etc.- Section 124 of the Act deals with the confiscation and imposition of the penalty. The provisions relating to the seizure of the goods and those relating to the confiscation of the goods or imposition of penalty stand on different footing. Section 124 of the act does not lay down any period within which the notice required by it has to be given. Notice under Section 124 of the Customs Act must necessarily be given in respect of the acts already done and can never be in respect of any act to be done in future. At the time when the notice is issued the act complained of must necessarily have been completed. Section 124 (a) provides for issue of a notice to appear before the adjudicating authority. The law requires that such notice must contain grounds on which it is proposed to confiscate the goods or to impose penalty.

If the proper officer has reason to believe that any goods are liable to confiscation under Section 113 (a to l) of the Customs Act 1962, he may seize such goods and

- a. A notice should be served under Section 124 of the Customs Act 1962 on him in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty.
- b. He may give an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein.
- c. He may give a reasonable opportunity of being heard in the matter;

Provided that if the persons concerned requested that no notice and personal hearing is required, the same shall be considered to be oral.

B. Customs and Central Excise Duties Drawback Rules, 2017

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.

18. Recovery of amount of Drawback where export proceeds not realised –

(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall, except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below: Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone. (2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order: Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds. (3) Where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 17. (4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, to the claimant provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India.

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, evidence and provisions discussed above, it appears that exporter had mis-declared the goods in terms of value to avail undue drawback/RoSCTL benefits. The FOB value of said shipping bill has been re-determined under Rule 6 of CVR, 2007 which comes to Rs 26,07,135/- against declared FOB of Rs 49,92,728/-as mentioned at Table-III. Thus, it appears that by mis-declaring the value of the goods, the exporter had inflated FOB value of the export goods and attempted to claim undue/excess export benefits i.e. differential drawback of Rs 64,411/- & differential RoSCTL amounting to Rs 1,13,315/-, for the said shipping bill no-4170767 dated 14.09.2022.

10.2 In this case, the exporter had mis-declared grossly in terms of value and consequently claimed ineligible export benefits, with mala-fide intention to defraud the Govt. exchequer by attempting to claim undue/excess export benefits i.e. differential drawback of Rs 64,411/- (Rupees Sixty Four Thousand Four Hundred and Eleven only) & RoSCTL amounting to Rs 1,13,315/- (One Lakh Thirteen Thousand Three Hundred and Fifteen only) & also breached the 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 bill number 4170767 dated 14.09.2022 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) & 114 AC of the Customs Act 1962.

10.3 Further, in case of past Exports vide 07 shipping bills having FOB value of Rs 2,89,53,337/- (Rupees Two Crore Eighty Nine Lakh Fifty Three Thousand Three Hundred and Thirty Seven only), wherein neither foreign remittance nor sale of proceeds has been submitted as detailed in **Table-IV above**, the claimed drawback and RoSCTL benefit appears not applicable as neither the foreign remittance as per ICES data nor proof of sales submitted for the same. Thus, it appears that the exporter has claimed undue Export Drawback vide these 07 past shipping bills to the tune of Rs 7,13,708/- and the same appears recoverable under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RosCTL scrips amounting to Rs 9,92,588/- appears recoverable in terms of Para 5 of Notification no-76/2021-Cus(N.T) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 alongwith applicable interest under Section 28AA of Customs act 1962 and thus, the goods exported vide these past 07 shipping bills wherein foreign remittance has not been received as detailed in **Table-IV above**, having FOB of Rs 2,89,53,337/- (Rupees Two Crore Eighty Nine Lakh Fifty Three Thousand Three Hundred and Thirty Seven

only), though not available for confiscation, appears liable to be confiscated under Section 113(ia) & 113(ja) of the Customs Act 1962

10.4 Further, vide CGST letter F.No-CGST/ME/Div-II/Ref/Misc/311/21-22 dated 01.12.2022; it was informed that GSTN-(27ATZPS8726K1ZF) suo moto cancelled on 01.12.2022 and ITC(Input Tax Credit) availed was not found genuine and above tax payer appears to be fraudulent. This clearly shows the guilty & malafide intention on part of the Proprietor Shri Farzana Waseem Shaikh of M/s FAA International which have rendered him liable for penalty under Section 114 (iii) & 114AC of the Customs act 1962.

11. ISSUANCE OF SCN: Now, therefore, the Exporter M/s FAA International (IEC-ATZPS8762K) having address at 4/101, Mubarak complex, Vinobha Bhawe Nagar, LIG Colony, Kurla (W), Mumbai-400070, was hereby called upon to explain in writing to the Addl. Commissioner of Customs, NS-II, JNCH, Nhava-Sheva, Tal.-Uran, Dist.-Raigad, Maharashtra 400707 (the Adjudicating Authority in this case), within 30 days of the issue of this notice as to why: -

(i) The total declared FOB value of Shipping bill no- 4170767 dated 14.09.2022 of Rs 49,92,728/- (**Rupees Forty Nine Lakh Ninety Two Thousand Seven Hundred and Twenty Eight only**) as mentioned in Table-III above, should not be rejected under Rule 8 of the Customs Valuation (Determination of value of export goods) Rules, 2007, and should not be re-determined at Rs 26,07,135/- (Rupees Twenty Six Lakh Seven Thousand One Hundred and Thirty Five Only) under Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007.

(ii) The Shipping bill no- 4170767 dated 14.09.2022 should not be re-assessed with re-determined FOB value of Rs 26,07,135/- (Rupees Twenty Six Lakh Seven Thousand One Hundred and Thirty Five Only) as detailed in Table-III above.

(iii) The goods have been exported vide Shipping Bill No.- 4170767 dated 14.09.2022 having declared FOB value of Rs 49,92,728/- (Rupees Forty Nine Lakh Ninety Two Thousand Seven Hundred and Twenty Eight only) should not be confiscated under Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 and the Bond and BG submitted at the time of provisional release for export should not be enforced.

(iv) The goods exported vide past 07 shipping bills wherein foreign remittance has not been received as detailed in Table-IV above having FOB of Rs 2,89,53,337/-, (Rupees Two Crore Eighty Nine Lakh Fifty Three Thousand Three Hundred and Thirty Seven only) though not available for confiscation, should not be held liable to be confiscated under Section 113(ia) & 113(ja) of the Customs Act 1962.

(v) Total Drawback of said shipping bill should not be re-determined to Rs. 70,392/- (Rupees Seventy Thousand Three Hundred and Ninety Two only) against claimed drawback of Rs 1,34,804/- (Rupees One Lakh Thirty Four Thousand Eight Hundred and Four only) under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 and RoSCTL should not be

redetermined to Rs 1,23,839/- against claimed RoSCTL of Rs 2,37,155/-.

(vi) Further, Drawback amounting to Rs. 7,13,708/- (Rs Seven Lakh Thirteen Thousand Seven hundred and Eight only) claimed against 07 past shipping bills as detailed in Table-IV above, wherein foreign remittance has not been realized, for the goods covered under past shipments should not be recovered under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding claimed RoSCTL duty scrips amounting to Rs 9,92,588/- (Rupees Nine Lakh Ninety Two Thousand Five Hundred and Eighty Eight only) should not be recovered in terms of Para 5 of Notification No.-76/2021-Cus(N.T.) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 along with applicable interest under Section 28AA of Customs act 1962.

(vii) Penalty should not be imposed upon the exporter M/s FAA International (IEC-ATZPS8762K) under Section 114(iii) of the Customs Act 1962 for omission on the part of the exporter which have rendered the export goods liable for confiscation under section 113 of the Customs Act, 1962.

(viii) Penalty should not be imposed upon the Proprietor Shri Farzana Waseem Shaikh of M/s FAA International (IEC-ATZPS8762K) under Section 114AC of the Customs Act 1962.

WRITTEN SUBMISSIONS OF THE EXPORTER

12. Vide SCN dated 09.10.2023, the Exporter was asked to submit written reply to the SCN within 30 days of receipt of the subject SCN, however, so far, the Exporter has not submitted any reply to the SCN.

RECORD OF PERSONAL HEARING

13. In adherence of the Principles of Natural Justice the Exporter was granted an opportunity to appear before the Adjudicating Authority for Personal Hearing (PH) for giving oral submissions in their defence. Accordingly, PH Memos dated 01.08.2025 25.08.2025 & 10.09.2025 were issued 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 and the provisions of law applicable to the present matter. The Show Cause Notice dated 09.10.2023 alleges that the Exporter had mis-declared the value of export goods under Shipping Bill No. 4170767 dated 14.09.2022 with intent to claim excess export incentives in the form of Drawback and RoSCTL. It is noted that during investigation: The description and composition of the goods were found to be correct as confirmed by DyCC test reports. Market enquiry conducted on 29.10.2022 revealed that the declared FOB value was

substantially higher than prevailing wholesale market prices. The Exporter, through the statement of the Proprietor recorded under Section 108 of the Customs Act, 1962, accepted the re-determined value based on market enquiry. The Exporter also voluntarily accepted the re-determined value of the goods on the basis of DyCC Test Report and Market Inquiry and re-determined export incentives in form of Drawback/RoSCTL/IGST Refund thereof.

I find that the Exporter neither submitted written reply to the SCN till now nor appeared for PH on the scheduled dates and time. I find that ample opportunities have been given to the Exporter for submission of written reply and appearance for PH, which they failed to avail. These acts on the part of the Exporter amounts to non-co-operation and tactic used to delay adjudication proceedings. However, adjudication being a time bound proceeding, cannot be kept pending indefinitely. Therefore, I am constrained to proceed with the adjudication proceedings *ex-parte*, on the basis of available facts and evidences on record.

15. I find that 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 09.10.2023 for discussion on the merit of the case. With regard to proceeding to decide the case following the Principle of Natural Justice, reliance is placed on the decision of the *Hon'ble High Court of Allahabad in the case of M/s. Modipon Ltd. V/s. CCE, Meerut [reported in 2002 (144) ELT 267 (All)]* effectively dealing with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

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

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

15.4. In view of the above, it is observed that sufficient opportunities have been given to the

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

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

(i) Whether the total declared FOB value of Shipping bill no- 4170767 dated 14.09.2022 of **Rs 49,92,728/- (Rupees Forty Nine Lakh Ninety Two Thousand Seven Hundred and Twenty Eight only)** as mentioned in Table-III above, to be rejected under Rule 8 of the Customs Valuation (Determination of value of export goods) Rules, 2007, and to be re-determined at Rs 26,07,135/- (Rupees Twenty Six Lakh Seven Thousand One Hundred and Thirty Five Only) under Rule 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007 or not.

(ii) Whether the Shipping bill no- 4170767 dated 14.09.2022 to be re-assessed with re-determined FOB value of **Rs 26,07,135/- (Rupees Twenty Six Lakh Seven Thousand One Hundred and Thirty Five Only)** as detailed in Table-III above or not.

(iii) Whether the goods have been exported vide Shipping Bill No.- 4170767 dated 14.09.2022 having declared FOB value of **Rs 49,92,728/- (Rupees Forty Nine Lakh Ninety Two Thousand Seven Hundred and Twenty Eight only)** to be confiscated under Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 and the Bond and BG submitted at the time of provisional release for export should be enforced or not.

(iv) Whether the goods exported vide past 07 shipping bills wherein foreign remittance has not been received as detailed in **Table-IV above** having FOB of Rs 2,89,53,337/-, (**Rupees Two Crore Eighty Nine Lakh Fifty Three Thousand Three Hundred and Thirty Seven only**) though not available for confiscation, to be held liable to be confiscated under Section 113(ia) & 113(ja) of the Customs Act 1962 or not.

(v) Whether the Total Drawback of said shipping bill to be re-determined to Rs. 70,392/- (**Rupees Seventy Thousand Three Hundred and Ninety Two only**) against claimed drawback of Rs 1,34,804/- (**Rupees One Lakh Thirty Four Thousand Eight Hundred and Four only**) under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 and RoSCTL should be redetermined to Rs 1,23,839/- against claimed RoSCTL of Rs 2,37,155/- or not.

(vi) Whether the Drawback amounting to **Rs. 7,13,708/- (Rs Seven Lakh Thirteen Thousand Seven hundred and Eight only)** claimed against 07 past shipping bills as detailed in Table-IV above, wherein foreign remittance has not been realized, for the goods covered under past shipments should not be recovered under Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 read with section 75 of the Customs Act, 1962 along with applicable interest under the second proviso of section 75A of the Customs Act, 1962 and corresponding

claimed RoSCTL duty scrips amounting to **Rs 9,92,588/- (Rupees Nine Lakh Ninety Two Thousand Five Hundred and Eighty Eight only)** to be recovered in terms of Para 5 of Notification No.-76/2021-Cus(N.T.) dated 23.09.2021 & 25/2023-Cus(N.T) dated 01.04.2023 along with applicable interest under Section 28AA of Customs act 1962 or not.

(vii) Whether the Penalty to be imposed upon the exporter M/s FAA International (IEC-ATZPS8762K) under **Section 114(iii) of the Customs Act 1962** for omission on the part of the exporter which have rendered the export goods liable for confiscation under section 113 of the Customs Act, 1962 or not.

(viii) Whether the Penalty to be imposed upon the Proprietor Shri Farzana Waseem Shaikh of M/s FAA International (IEC-ATZPS8762K) under **Section 114AC of the Customs Act 1962**.

17.1 Issue (i): Rejection of declared FOB value and re-determination.

17.1.1 I find that the exporter M/s FAA International filed Shipping Bill No. 4170767 dated 14.09.2022 for export of Ladies' long Scraves Dupatta of MMF Fibres & Ladies Scraves of man Made Fibres" declaring total FOB value of ₹49,92,728/-. and the consignment was subjected to 100% physical examination under Panchanama dated 10.10.2022, and representative samples were drawn and forwarded to DyCC for testing. The DyCC Test Report confirmed that the goods were scarves/dupattas made of man-made fibre and matched the declared description and composition.

17.1.2 I find that the declared value is abnormally high. Accordingly, a market enquiry was conducted on 29.10.2022 in the presence of the exporter's representative, wherein wholesale market prices were ascertained at ₹40.67 per piece and ₹27 per piece respectively. On applying these market prices to the declared quantities, the total FOB value works out to ₹26,07,135/-, which is substantially lower than the declared value of ₹49,92,728/-. I further find that the proprietor of the exporter firm, in his statement recorded under Section 108 of the Customs Act, 1962, voluntarily accepted the market enquiry valuation and did not dispute the same. The exporter has also failed to submit any documentary evidence such as export contract, price negotiations, cost sheets, or contemporaneous export data to justify the declared value. As per Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, transaction value is acceptable only when it represents the true price of the goods. In the present case, the declared value is unsupported by any commercial evidence and is inconsistent with market reality. I further find that valuation could not be determined under Rule 4 due to non-availability of comparable export data of like kind and quality and under Rule 5 due to absence of cost of production details. Hence, recourse to Rule 6 (residual method) by adopting market enquiry value is legally justified. Accordingly, I find that the declared FOB value of ₹49,92,728/- is liable to be rejected under Rule 8 and correctly re-determined at ₹26,07,135/- under Rule 6 of the Export Valuation Rules, 2007.

17.2 Issue (ii): Re-assessment of Shipping Bill.

17.2.1 I find that assessment of a shipping bill is premised on the correctness of the particulars declared therein, especially the FOB value, as the same forms the basis for determination of admissibility and quantum of export incentives such as drawback and RoSCTL. Where the declared value is found to be incorrect and is rejected in terms of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, the self-assessment made by the exporter on such incorrect value ceases to have any legal validity. In the present case, I have already held that the declared FOB value of ₹49,92,728/- is not acceptable and that the correct FOB value stands re-determined at ₹26,07,135/-. Accordingly, I find that Shipping Bill No. 4170767 dated 14.09.2022 cannot be allowed to stand assessed on the basis of the incorrect declared value and is therefore liable to be re-assessed with the re-determined FOB value of ₹26,07,135/-.

17.3 Issue (iii): Confiscation of goods & enforcement of bond/BG.

17.3.1 I find that Section 50(2) of the Customs Act, 1962 casts a statutory obligation upon exporter to make a true, correct and complete declaration of the value and other particulars of the export goods at the time of filing the shipping bill. In the present case, it is evident from the investigation that the exporter declared a FOB value of ₹49,92,728/- which was found to be grossly inflated when compared with the prevailing wholesale market prices, and the same was subsequently re-determined at ₹26,07,135/- on the basis of market enquiry. Such declaration of an inflated value, clearly establishes that the exporter furnished incorrect particulars in the shipping bill and thereby mis-declared the value of the export goods with the intention of claiming higher amounts of drawback and RoSCTL benefits than what was legally admissible. I therefore find that the said act attracts the provisions of Sections 113(i), 113(ia) and 113(ja) of the Customs Act, 1962, which render the goods liable to confiscation for mis-declaration of value and wrongful claim of export incentives.

Although the goods were provisionally released and have already been exported, I find that their physical non-availability does not extinguish or nullify their legal liability to confiscation under the Customs Act. Confiscation in such circumstances is necessarily of a notional nature, but the legal consequence in terms of liability under Section 113 continues to subsist.

Accordingly, I hold that the goods exported under Shipping Bill No. 4170767 dated 14.09.2022 are liable to confiscation under Sections 113(i), 113(ia) and 113(ja) of the Customs Act, 1962.

17.4 Issue (iv): Confiscation – Past 7 shipping bills.

17.4.1 I find from the investigation that in respect of seven past shipping bills, involving a total FOB value of ₹2,89,53,337/-, the exporter has failed to realise the foreign exchange proceeds within the period prescribed under the applicable provisions of the Foreign Exchange Management Act, 1999 and the rules made thereunder. The exporter has also not produced any documentary evidence such as Bank Realisation Certificates or any other proof to establish that the export proceeds were subsequently realised. I further find that realisation of export proceeds is not a mere procedural formality but a statutory requirement and a fundamental condition for

lawful retention of export incentives such as drawback and RoSCTL. In the present case, by retaining the export incentives despite non-realisation of export proceeds, the exporter has derived undue financial benefit without fulfilling the basic condition attached to such benefits. Such conduct clearly amounts to making a wrongful claim of export incentives and results in misuse of the export promotion schemes. Accordingly, I find that the goods exported under the said seven shipping bills, though not physically available, have become liable to confiscation under Sections 113(ia) and 113(ja) of the Customs Act, 1962, for having been exported under claim of export incentives which were not legally admissible due to non-realisation of foreign exchange.

17.5 Issue (v): Re-determination of drawback & RoSCTL (current SB).

17.5.1 I find that the quantum of export incentives such as Drawback and RoSCTL is linked to the FOB value declared in the shipping bill, and any inflation in such value directly results in a corresponding increase in the amount of incentives claimed. In the present case, since the FOB value of the goods exported under Shipping Bill No. 4170767 dated 14.09.2022 has been re-determined at ₹26,07,135/- in place of the originally declared value of ₹49,92,728/-, the entitlement of the exporter to export incentives necessarily stands revised. On re-calculation on the basis of the re-determined FOB value, the admissible drawback works out to ₹70,392/- as against the amount of ₹1,34,804/- originally claimed, and the admissible RoSCTL benefit works out to ₹1,23,839/- as against the amount of ₹2,37,155/- originally claimed. It is thus evident that the exporter attempted to claim excess drawback of ₹64,411/- and excess RoSCTL of ₹1,13,315/-. Accordingly, I hold that the excess drawback and RoSCTL amounts so claimed are inadmissible and are liable to be recovered from the exporter along with applicable interest under the relevant statutory provisions.

17.6 Issue (vi): Recovery of drawback & RoSCTL – past exports.

17.6.1 I find that the realisation of export proceeds is a fundamental condition for the grant and retention of export incentives. In terms of Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017 read with Section 75 of the Customs Act, 1962, where the sale proceeds in respect of exported goods are not realised within the period prescribed under the Foreign Exchange Management Act, the drawback paid or payable in respect of such goods is liable to be recovered along with applicable interest. In the present case, it is evident that in respect of the seven shipping bills detailed in Table-IV of the Show Cause Notice, involving a total FOB value of ₹2,89,53,337/-, the exporter has failed to realise the export proceeds within the stipulated period and has also not produced any documentary evidence to establish subsequent realisation. Therefore, in terms of Para 5 of Notification No. 76/2021-Customs (N.T.) dated 23.09.2021 and Notification No. 25/2023-Customs (N.T.) dated 01.04.2023, governing the RoSCTL scheme, the benefit is admissible only upon realisation of export proceeds, and in cases where such proceeds are not realised within the prescribed period, the duty credit scrips so granted are liable to be recovered along with applicable interest under Section 28AA of the Customs Act, 1962.

Accordingly, I find that the drawback amounting to ₹7,13,708/- and the RoSCTL benefit amounting to ₹9,92,588/- claimed by the exporter in respect of the said seven past shipping bills are inadmissible and are liable to be recovered from the exporter along with applicable interest under the relevant statutory provisions.

17.7 Issue (vii): Penalty on exporter firm.

17.7.1 I find that the exporter, by deliberately declaring an inflated FOB value of the export goods and thereby attempting to obtain higher amounts of drawback and RoSCTL benefits than what was legitimately admissible, has furnished incorrect particulars in the shipping bill and contravened the statutory obligation cast under Section 50(2) of the Customs Act, 1962 to make a true and correct declaration. Such acts and omissions have directly resulted in rendering the goods liable to confiscation under Section 113 of the Customs Act, 1962.

I further find that Section 114(iii) of the Customs Act, 1962 specifically provides for imposition of penalty on any person who, by any act or omission, renders any goods liable to confiscation under Section 113. In the present case, the conduct of the exporter in mis-declaring the value and attempting to claim excess export incentives squarely falls within the ambit of the said provision. Accordingly, I hold that M/s FAA International is liable to penalty under Section 114(iii) of the Customs Act, 1962.

17.8 Issue (viii): Penalty on proprietor under Section 114AC.

17.8.1 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.

17.8.2 I find that the jurisdictional CGST authorities, in their report, have established that the exporter availed and utilised input tax credit which was neither reflected in GSTR-2A nor supported by any genuine inward supply and that the purchase invoice relied upon for the export

transaction was issued by a supplier whose GST registration had already been cancelled prior to the date of such invoice, rendering the said invoice invalid in law. I further find that such utilisation of ineligible and non-existent input tax credit is directly connected with the export transaction covered under Shipping Bill No. 4170767 dated 14.09.2022, in respect of which export incentives were claimed, and could not have occurred without knowledge and intent. Accordingly, the Proprietor, Shri Farzana Waseem Shaikh, has rendered himself liable to penalty under Section 114AC of the Customs Act, 1962.

18. 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)."

18.1. 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.

18.2 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.

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

ORDER

- (i) I reject the declared FOB value of ₹49,92,728/- (Rupees Forty Nine Lakh Ninety Two Thousand Seven Hundred and Twenty Eight only) in respect of Shipping Bill No. 4170767 dated 14.09.2022, under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determine the same at ₹26,07,135/- (Rupees Twenty Six Lakh Seven Thousand One Hundred and Thirty Five only) under Rule 6 of the said Rules.
- (ii) I order reassessment of Shipping Bill No. 4170767 dated 14.09.2022 on the basis of the re-determined FOB value of ₹26,07,135/-. I further hold the goods covered under the said shipping bill liable to confiscation under Sections 113(i), 113(ia) and 113(ja) of the Customs Act, 1962. Since the goods have already been provisionally released and exported, I impose a redemption fine of **₹ 2,00,000/- (Rs Two Lakh only)** under Section 125 of the Customs Act, 1962 in lieu of confiscation.
- (iii) I hold the goods exported under the seven past shipping bills, involving total FOB value of ₹2,89,53,337/-, in respect of which export proceeds have not been realised, liable to confiscation under Sections 113(ia) and 113(ja) of the Customs Act, 1962. I impose a redemption fine of **₹ 2,00,000/- (Rs Two Lakh only)** under Section 125 of the Customs Act, 1962 in lieu of confiscation.
- (iv) I order that the Drawback in respect of Shipping Bill No. 4170767 dated 14.09.2022 shall be re-determined at Rs. 70,392/- (Rupees Seventy Thousand Three Hundred and Ninety Two only) against the amount of Rs. 1,34,804/- originally claimed, in terms of Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017. I further order that the RoSCTL benefit in respect of the said shipping bill shall be re-determined at Rs. 1,23,839/- (Rupees One Lakh Twenty Three Thousand Eight Hundred and Thirty Nine only) against the amount of Rs. 2,37,155/- originally claimed. The excess Drawback of **Rs. 64,411/-** and excess RoSCTL of **Rs. 1,13,316/-**, so wrongly claimed, shall be recovered from the exporter along with applicable interest in accordance with law.
- (v) I order recovery of Drawback amounting to ₹7,13,708/-, under Rule 17 of the Customs and

Central Excise Duties Drawback Rules, 2017 read with Section 75 of the Customs Act, 1962 along with applicable interest under Section 75A of the Customs Act, 1962; and RoSCTL benefit amounting to ₹9,92,588/-, under Para 5 of Notification No. 76/2021-Customs (N.T.) dated 23.09.2021 and Notification No. 25/2023-Customs (N.T.) dated 01.04.2023 along with applicable interest under Section 28AA of the Customs Act, 1962, relating to the said seven past shipping bills.

(vi) The Regional Authority, DGFT, Mumbai is requested to take necessary action for recovery of the RoSCTL amount of ₹9,92,588/- (Rupees Nine Lakh Ninety Two Thousand Five Hundred and Eighty Eight only) from the exporter M/s FAA International (IEC: ATZPS8762K) in respect of the aforesaid seven past shipping bills, wherein the foreign exchange proceeds have not been realised. In respect of **Shipping Bill No. 4170767 dated 14.09.2022**, DGFT shall take necessary action for recovery of RoSCTL benefit, if the same has been credited in accordance with law.

(vii) The jurisdictional CGST Authorities, Mumbai Central Commissionerate, New GST Building, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051, are requested to initiate suitable action for recovery of inadmissible IGST / Input Tax Credit and to take necessary action in accordance with the provisions of the CGST Act, 2017 and the rules made thereunder against M/s FAA International (IEC: ATZPS8762K), in respect of the fraudulent availment and utilisation of ITC as brought out in the investigation and discussed in this order.

(viii) I impose a penalty of **₹2,00,000/- (Rs Two Lakh only)** on the exporter M/s FAA International (IEC: ATZPS8762K) under Section 114(iii) of the Customs Act, 1962 for acts and omissions rendering the export goods liable to confiscation by mis-declaration of value and wrongful claim of export incentives.

(ix) I impose a penalty of **₹3,00,000/- (Rs Three Lakh only)** on the Proprietor, Shri Farzana Waseem Shaikh, under Section 114AC of the Customs Act, 1962 for knowingly and intentionally utilising fraudulent input tax credit in connection with the export transaction for claiming export related benefits.

(x) I further order that the Bond executed and the Bank Guarantee amounting to **Rs. 50,000/- (Rupees Fifty Thousand Only)** furnished by the Exporter at the time of provisional release of the export goods shall be invoked, enforced and appropriated towards the recovery of the redemption fine, penalties and other recoverable amounts as ordered hereinabove.

20. 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.


28/10/26

(RAGHU KIRAN B.)

Commissioner of Customs (In-situ),
CEAC, NS-II, JNCH

To,

(i) M/s. FAA International(IEC-ATZPS8762K)
at 4/101, Mubarak complex, Vinobha Bhave Nagar,
LIG Colony, Kurla(W), Mumbai-400070.

Copy to:

1. The Commissioner of Customs, NS-II, JNCH, Nhava Sheva.
2. The Regional Authority, DGFT, Nishtha Bhavan, 48, Vithaldas Thackersey Marg, Churchgate, Mumbai – 400020, Maharashtra – for necessary action w.r.t. disbursal of export benefit under RoSCTL Scheme.
3. The Dy. Commissioner of GST, Mumbai Central Commissionerate, New GST Building, Bandra Kurla Complex(BKC), Bandra(East), Mumbai-400051(To take Necessary action against Exporter for IGST Refund under the provision of CGST Act, 2017)
4. The Dy. Commissioner of Customs, SIIB (Export), JNCH, Nhava Sheva.
5. The Dy. Commissioner of Customs, CRAC, JNCH, Nhava Sheva.
6. The Dy. Commissioner of Customs, CRRC, JNCH, Nhava Sheva.
7. The Dy. Commissioner of Customs, Centralized Adjudication Cell (CAC) NS-V, JNCH, Nhava Sheva.
8. The Dy. Commissioner of Customs, EDI, JNCH, Nhava Sheva.
9. Supdt. (P), CHS, JNCH for display on Notice Board.
10. The Dy./Asstt. Commissioner of Customs, Drawback Section, JNCH, Nhava Sheva.
11. Office copy.