

**BRIEF FACTS OF THE CASE**

M/s. Shree Renuka Sugars Ltd, At & Po Bharapar, Tal.Gandhidham, Dist.Kutch (hereinafter referred to as the "SRSL"), holding IEC number 0798015616, filed various warehouse Bills of Entry / Bills of Entry for home consumption / Ex-bond Bills of Entry for clearance of Brazilian Cane Raw Sugar falling under CTH 1701 in bulk and claimed Nil rate of duty for Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 as per Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012. M/s. SRSL imported the said goods through their authorized Custom House Agent M/s. J.M. Baxi and Company.

M/s. Shree Renuka Agriventures Limited (hereinafter referred to as the "SRAVL"), a subsidiary company of M/s. SRSL had imported raw sugar and filed warehousing Bills of Entry. M/s. SRAVL claimed Nil rate of duty for Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 as per Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012. M/s. SRAVL sold the imported raw sugar on bond to bond basis to the M/s. SRSL. M/s. SRSL on purchase of raw sugar from M/s. SRAVL filed the Ex-bond Bills of Entry and cleared either on payment of duty or without payment of duty against advance authorizations.

2. The Notification No.21/2012-Cus dated 17.03.2012 as amended reads as under:

*"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), No. 20/2006-Customs, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 1st March, 2006, and No. 29/2010-Customs, dated the 27th February, 2010, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 27th February, 2010, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the Table aforesaid"*

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The Sr.No.12 of the Notification No.21/2012-Cus dtd.17.03.2012 reads as under :

<b>S. No</b>	<b>Chapter, heading, sub-heading or tariff item of the First Schedule</b>	<b>Description of goods</b>	<b>Standard rate</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
12	Any Chapter	All goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957)	Nil

Thus, the exemption in excess of Nil rate of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act is available only to the goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

In the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 [Appendix IV], the tariff item 1701 has been omitted w.e.f. 08.04.2011 from the First Schedule by Section 78 read with the Thirteenth Schedule to the Finance Act, 2011 (8 of 2011).

The Section 78 of the Finance Act, 2011 reads as under :

“78. Amendment of First Schedule to Act 58 of 1957. – The First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 shall be amended in the manner specified in the Thirteenth Schedule.”

**“THE THIRTEENTH SCHEDULE**

*[See section 78]*

In the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, -

- (a) heading 1701 and all sub-headings and tariff items thereof and the entries relating thereto shall be omitted;
- (b) Tariff item 1702 90 10 and the entries relating thereto shall be omitted;
- (c) .....

It therefore appeared that w.e.f. 08.04.2011, the tariff item 1701 did not exist in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. As such, the Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 is not applicable to the tariff item 1701 for sugar for the purpose of avilment of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975.

3. An intelligence was received by the Officers of Docks Examination that some importers were clearing raw sugar without payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 by mis-declaring the Sr. No.12 of the exemption Notification. The Bills of Entry for warehousing / home consumption / Ex-bond Bills of Entry for clearance of Brazilian Cane Raw Sugar filed by various importers were examined in detail by the Officers of Docks Examination. The preliminary inquiry revealed that these importers had while seeking clearance under Bills of Entry for warehousing / home consumption / Ex-bond Bills of Entry wrongly claimed benefit of Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012.

4. The detailed inquiry was assigned to SIIB. Accordingly, a quantity of 68855 MT of raw sugar valued at Rs.185.84 Crores was put under detention vide Detention Memo dated 28.03.2013 by the Superintendent (SIIB), CH, Kandla. The quantity of 68855 MT of raw sugar valued at Rs.185.84 Crores detained under Detention Memo dated 28.03.2013 was placed under seizure vide Panchnama dtd.09.04.2013 on a reasonable belief that the said goods were liable for confiscation under Section 111 of the Customs Act, 1962 as they attracted Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act @ 4%. The said seized goods were handed over to M/s. Shree Renuka Sugars Ltd / M/s. Shree Renuka Agriventures Ltd under Supratnama dtd.09.04.2013.

5. Despite of clear cut provisions, SRS� did not co-operate and did not discharge their liability to Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, and instead they filed Special Civil Application No.7211 of 2013 praying for quashing and setting aside of the Detention Memo & Seizure Panchnama, passing an appropriate order that no Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was leviable on the import of raw sugar, staying the operation of detention memo & seizure panchnama and passing appropriate directions for release of the goods. Thus, the issue before the Hon'ble High Court raised by the petitioner was with regard to payability or otherwise of the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act (4%) and the detention / seizure effected by the department of 68855 MT of raw sugar. The Hon'ble High Court of Gujarat vide its Oral Order dtd.10.05.3013 decided the Special Civil Application No.7211 of 2013 as under :

- (a) As regards the issue of payability or otherwise of the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act (4%), the Hon'ble High Court did not incline to go into the said question and observed that such issues must be decided by the competent departmental authorities.
- (b) As regards the seizure of 68855 MTs of raw sugar, the Hon'ble High Court approached the issue in two compartments. With respect to 13400 MTs of

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raw sugar (for which Ex-Bond Bills of Entry had been filed), the Hon'ble High Court ordered the petitioner to deposit a sum of Rs.1,60,27,991/- latest by 15.05.2013, upon which the department shall permit out of charge; that it would be open for the department to call upon the petitioners to make good the shortfall, if any, which the petitioner shall do forthwith and that it would be open for the department to carry out further investigation / enquiry and adjudication proceedings after issuing SCN. With respect to the remaining quantity of 55450 MTs of raw sugar (for which no Bills of Entry had been filed or out of charge was requested), the Hon'ble High Court observed that the action of detention and seizure was not justified; that the petitioners shall apply to the Commissioner of Customs latest by 13.05.2013 for permitting the import under advance license or under any other procedures as may be permissible under the rules and the Commissioner shall decide the same latest by 20.05.2013 and permit clearances.

5.1 SRSL had made the payment of Additional Duty of Customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act amounting to Rs.1,60,27,991/- along with interest of Rs.1,30,664/- under protest on 10.05.2013 / 13.05.2013 in respect of 13400 MTs of raw sugar as ordered by the Hon'ble High Court. SRSL vide their letter dtd.17.05.2013 informed that they had filed four Bills of Entry in respect of 22500 MTs of raw sugar; that they were depositing / paying the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act amounting to Rs.2,58,48,533/- under protest against said four Bills of Entry. Since as per correct calculation they were required to pay Rs.2,58,48,681/- SRSL vide manual challan No.690 dtd.02.08.2013 paid the difference of Rs.147/- against the said four Bills of Entry.

6. During the course of investigation, summons were issued to the Authorized Representative of SRSL and their CHA M/s. J.M. Baxi & Co. on 11.06.2013, 19.06.2013 and 27.06.2013.

6.1 Statement of Shri M. Radhakrishnan, Senior Manager of M/s. J.M. Baxi & Co was recorded on 11.06.2013 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that they trusted the Government Publications and filed the Bills of Entry claiming the exemption, however, on going through the Appendix IV (Central Excise Tariff 2012-13) showing the details of goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 and its foot note given in the Appendix IV at Sr. No.4 the tariff item 1701 had been omitted w.e.f. 08.04.2011 from the First Schedule; that referring the same read with notification nos. 20/2006-Cus dtd.01.03.2006 and 21/2012-Cus dtd.17.03.2012, he was fully convinced

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that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act @ 4% was leviable in this case w.e.f.08.04.2011; that on being known to them from the Department that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was payable i.e. exemption was not applicable as the item raw sugar was omitted from the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 w.e.f.08.04.2011, agreeing with the same they were pursuing the matter with their principal for making payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act.

6.2 Shri Sreekumar Nair, Senior Manager of M/s. J.M. Baxi & Co. in his statement dtd.19.06.2013 recorded under Section 108 of the Customs Act, 1962 stated inter alia that they agreed with the provisions of Noti.No.20/2006-Cus dtd.01.03.2006 and Noti. No.21/2012-Cus dtd.17.03.2012; that they were aware of these provisions; that at the material time they did not deeply examine these provisions; that as of now, they had studied the said provisions and after understanding the same thoroughly they agreed that the tariff item 1701 had been omitted from the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 w.e.f. 08.04.2011; that due to oversight they were not aware of the provisions of omission of tariff item 1701; that they agreed that ignorance of law was not an excuse; that they trusted the Government Publications and filed the Bills of Entry claiming the exemption; that however, on going through the Appendix IV (Central Excise Tariff 2012-13) showing the details of goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 and its foot note given in the Appendix IV at Sr. No.4, the tariff item 1701 had been omitted w.e.f. 08.04.2011 from the First Schedule; that referring the same read with notification nos. 20/2006-Cus dtd.01.03.2006 and 21/2012-Cus dtd.17.03.2012, he fully agreed that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act @ 4% was leviable in this case w.e.f.08.04.2011; that on being known to them from the Department that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was payable i.e. exemption was not applicable, agreeing with the same they were pursuing the matter with their principal for making payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act; that this amounted to claiming of a wrong exemption and filing a wrong bill of entry making a wrongful declaration therein; that due to oversight, the B/Es were filed wrongly; that as soon as they were known made by the Department about the payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, they brought it to the notice of M/s. SRSL; that they were pursuing the matter with their principal for making the payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act and that they agreed that it was their mistake that they did not study the matter at the material time deeply, but later on when

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they came to know from the Department that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was payable, they were regularly pursuing the matter with them for making payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act.

6.3 Shri Rahul Patil, Manager (Accounts) of M/s. SRSL appeared for tendering his statement on 27.06.2013. As per letter dtd.24.09.2013 of M/s. SRAVL, he is also an authorized person of M/s. SRAVL. As per letter dtd.26.09.2013 of M/s. SRAVL, it is stated that the statement given by Shri Rahul Patil on behalf of M/s. SRSL hold good to the extent it is applicable to M/s.Shree Renuka Agriventures Limited. In his statement dtd.27.06.2013 recorded under Section 108 of the Customs Act, 1962 he stated inter alia that M/s. SRSL was having factory at Karnataka, Maharashtra and Sugar Refinery at Bharapar, Gujarat and Haldia, West Bengal; that their Bharapar Refinery started commercial production in the month of July, 2011; that M/s. SRAVL was subsidiary company of M/s. SRSL and imported raw sugar; that M/s. SRAVL sold the imported raw sugar on bond to bond basis to M/s. SRSL; that M/s. SRSL on purchase of raw sugar from M/s. SRAVL filed the ex-bond Bills of Entry and cleared either on payment of duty or without payment of duty against advance authorizations; that the CHA filed the Bill of Entry on the basis of shipping documents forwarded by them to him; that they had claimed benefit of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act as per Sr.No.12 of Noti.No.21/2012-Cus dtd.17.03.2012 in the said B/Es which provided for exemption from payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act in excess of "Nil" rate of duty in respect of all the goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); that earlier the Sr. No.50 of Notification No.20/2006-Cus dtd.01.03.2006 specified "Nil" rate of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act for all the goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); that they knew these provisions; that as per the foot note given in the Appendix IV at Sr. No.4, the tariff item 1701 had been omitted w.e.f. 08.04.2011 from the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957; that they were aware of these provisions when they were proposed to be brought into effect; that they were in the bonafide belief that the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was applicable if there was VAT or any Sales Tax applicable on the commodity, whereas raw sugar was exempted from Gujarat VAT, and therefore, Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was not applicable on raw sugar; that they agreed that according to the Finance Bill, 2011 Sugar and textile items were proposed to be omitted from the First schedule of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on enactment of the Finance Bill; that they agreed that as per Section 78 of the Finance

Act, 2011 the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was amended in the manner specified in the Thirteenth Schedule; that according to the Thirteenth Schedule of the Finance Act, 2011, heading 1701 and all sub-headings and tariff items thereof and the entries relating thereto were omitted w.e.f.08.04.2011 i.e. the date of enactment of the Finance Act, 2011.

6.3.1. He was shown para 6.12 of the D.O. letter dtd.28.02.2011 of the Joint Secretary (TRU), New Delhi, wherein it is stated that "Amendments are being made in the Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 to remove sugar and textile and textile products from its purview; that this would enable the State Governments to levy VAT on these items". On being asked that this clearly showed the intention of the Government that State Governments were made able to levy VAT on this commodity on account of the fact that exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was being removed by deleting the sugar from the first schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), he stated that they agreed with the proposed amendment; that this amendment had been brought by Finance Act, 2011 by visualizing the GST in coming year and that in Gujarat there was no VAT on Sugar.

6.3.2. On being asked he further stated that the Bill of Entry No.2017816 dated 02.05.2013 had been filed by them on their own volition seeking clearance of imported raw sugar on payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act due to urgency of material; that they considered 4% Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act while clearing the raw materials as they were unable to clear the material under Notification No.21/2012-Cus dtd.17.03.2012.

6.3.3. On being asked he further stated that after detection of the case by the Department, discussion took place between CHA and Renuka Sugars on applicability of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act on raw sugar; that as per their discussion with the CHA after detection of the case by the Department, they paid the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under protest, though in principle they were not in agreement that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was payable because Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was leviable to counter balance the Sales Tax / VAT and there was no Sales Tax / VAT on sugar in Gujarat; that they sought the waiver of show cause notice, but before adjudication of the case they may be heard in person.

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7. Though the authorized person of M/s. SRSL and M/s. SRAVL had sought waiver of show cause notice, but no such waiver of show cause notice had been sought by M/s. J.M. Baxi & Company. Therefore, the show cause notice was issued.

8. It was observed that Schedule – I of Gujarat VAT provides the schedule for the goods, the sales or purchase of which are exempt from Tax. Sr.No.51A of the said Schedule – I lays down as under :

“51A Sugar of all types on which additional excise duty is levied and collected in lieu of sales tax under the Additional Duties of Excise (Goods of Special Importance) Act, 1957”

Thus, under the Gujarat VAT, exemption is available to sugar of all types only if additional excise duty is levied and collected in lieu of sales tax under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on the same.

9. Since prior to 08.04.2011, the sugar was covered under first schedule to the Additional Duties of Excise (Goods of special importance) Act, 1957, the 4% of Additional Custom Duty was exempt in terms of Notification No. 20/2006-Cus Sr. No. 50. Now the Notification No.20/2006 has been superseded vide Notification No 21/2012-Cus dtd.17.03.2012. As per Sr. No. 12 of this notification all goods covered under first schedule to the Additional Duties of Excise (Goods of special importance) Act, 1957, are exempt from Additional Custom Duty. The goods cleared by M/s. Shree Renuka Sugars Ltd, Bharapar are falling under CTH 1701. CTH 1701 has been omitted from the first schedule w.e.f. 08.04.2011 i.e. the date on which Finance Act, 2011 got assent of the President of India. Since the Raw Sugar falling under CTH 1701 is now not in first schedule to the Additional duty of Excise (Goods of special importance) Act, exemption under Sr. No. 12 of Notification No.21/2012-Cus dtd.17.03.2012 is not available on the clearance of Raw Sugar falling under CTH 1701. It therefore appeared that the 4% Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act paid by M/s Shree Renuka Sugars Ltd under protest in respect of raw sugar imported by them at Kandla Port is liable to be appropriated towards the duty demand.

9.1 During the period from 08.04.2011 to 30.06.2013, M/s.SRSL have filed various warehouse Bills of Entry / Bills of Entry for home consumption / Ex-Bond Bills of Entry for clearance of raw sugar. It is observed that most of these Bills of Entry have been assessed provisionally for pending test report. Similarly, M/s. SRAVL (a subsidiary company of M/s. Shree Renuka Sugars Limited) also filed various warehouse Bills of Entry for warehousing of imported raw sugar during this period. It is observed that all of these Bills of Entry have been assessed provisionally for pending test report. It was stated by Shri Rahul Patil, Manager (Accounts) of M/s. SRSL in his statement



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dtd.27.06.2013 that M/s. SRAVL was subsidiary company of M/s. SRSL and imported raw sugar; that M/s. SRAVL sold the imported raw sugar on bond to bond basis to M/s. Shree Renuka Sugars Limited; that M/s. SRSL on purchase of raw sugar from M/s. SRAVL filed the ex-bond Bills of Entry and cleared either on payment of duty or without payment of duty against advance authorizations. M/s. SRSL had furnished the details of various Bills of Entry (warehousing B/E, Ex-Bond B/E, Home Consumption B/E) filed by them during the period from 19.11.2010 to 20.06.2013. Based on the said details, the details of Ex-Bond Bills of Entry filed by them during the period from 08.04.2011 to 30.06.2013 for seeking clearance of imported raw sugar on payment of duty have been worked out as mentioned in Annexure-A attached to the notice, wherein they claimed the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 (in case of B/E No.9610111 dtd.19.03.2013, the respective W/H BE No.8912656 dtd.01.01.2013 shows claim of said exemption).

9.2 It appeared that M/s. SRSL & M/s. SRAVL indulged in willful mis-statement of facts with an intention to evade customs duty inasmuch as the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 was not available to the said imported raw sugar. Thus, the very claim of the exemption under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 (mentioned in Annexure A&B) was a willful mis-statement to avail duty exemption.

9.3 From the evidences gathered during investigations and the legal provisions, as discussed above, it appeared that M/s. SRSL filed Ex-bond Bills of Entry for clearance of imported raw sugar 35900 MTs against payment of duty during the period from 08.04.2011 to 30.06.2013 (As detailed in Annexure-A attached), wherein they claimed the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 (in case of B/E No.9610111 dtd.19.03.2013, the respective W/H BE No.8912656 dtd.01.01.2013 shows claim of said exemption). The benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 was not available to the said imported raw sugar having assessable value of Rs.91,73,06,085/- involving Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act of Rs.4,18,76,670/- and is required to be denied to them and duty demanded. It appeared that M/s. SRSL wrongly claimed the benefit of exemption at the time of import under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012, which they were not entitled to resulting in evasion of payment of duty. The Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act of Rs.4,18,76,670/- along with interest is therefore liable to be

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recovered from them under Section 28(4) of the Customs Act, 1962 and Section 28AA of the Customs Act, 1962 respectively. M/s. SRSL had paid Additional Duty of Customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act amounting to Rs.2,58,48,680/- covered by Manual Challan dtd.17.05.2013 and Manual Challan No. 690 dtd.02.08.2013 under protest for the Bills of Entry No.9523207 dtd.09.03.2013, 9440390 dtd.28.02.2013, 9482327 dtd.05.03.2013 & 9482328 dtd.05.03.2013. For the Bills of Entry No.9610114 dtd.19.03.2013, 9582331 dtd.15.03.2013, 9582330 dtd.15.03.2013, 9571572 dtd.14.03.2013 & 9610111 dtd.19.03.2013, the Hon'ble High Court has permitted clearance of 13400 MTs of raw sugar on a condition of deposit of Rs.1,60,27,991/-, which M/s. SRSL had paid covered by Challan No.2005785008 (E-payment) and Manual Challan dtd.11.05.2013 under protest along with interest of Rs.1,30,664/-. The Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act and interest so paid is required to be appropriated towards the duty / interest demand. Further the said imported raw sugar valued at Rs.91,73,06,085/- are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 for wrongly entering the claim of exemption in Bills of Entry and violating the condition stipulated under the said notification.

9.3.1 Further, M/s. SRSL filed various Bills of Entry for warehousing / Bills of Entry for home consumption against Advance Authorizations during the period from 08.04.2011 to 30.06.2013, as detailed in Annexure-B attached, wherein they claimed the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012. The benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 was not available to the said imported raw sugar 531967.043 MT having assessable value of Rs.1504,60,11,924/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against advance authorizations. Out of the warehoused quantity, a quantity of 22500 MTs of raw sugar valued at Rs.56,59,11,843/- has already been cleared by M/s. SRSL against Ex-bond Bills of Entry, on which duty is being demanded with proposal for confiscation, penalty etc as mentioned in para 9.3 above. The balance quantity of imported raw sugar warehoused by M/s. SRSL 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against Advance Authorizations was liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 for wrongly entering the claim of exemption in Bills of Entry and violating the condition stipulated under the said notification.

9.3.2 Further, for the above acts and omission, M/s. SRSL have rendered themselves liable for penal action under Section 112(a) and / or 114A of the Customs Act, 1962.

10. M/s. SRAVL filed various Bills of Entry for warehousing during the period from 08.04.2011 to 30.06.2013, as detailed in Annexure-B attached, wherein they claimed the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012. The benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 was not available to the said imported raw sugar 172935 MT having assessable value of Rs.451,19,65,034/- (cleared against warehouse Bills of Entry and respective Ex-Bond Bills of Entry). Out of this quantity, a quantity of 13400 MTs of raw sugar valued at Rs.35,13,94,242/- has already been cleared by M/s. Shree Renuka Sugars Limited against Ex-bond Bills of Entry upon purchase from M/s. SRAVL, on which duty is being demanded with proposal for confiscation, penalty etc as mentioned in para 9.3 above. The balance quantity of imported raw sugar warehoused by M/s. SRAVL 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations) are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 for wrongly entering the claim of exemption in Bills of Entry and violating the condition stipulated under the said notification.

10.1 Further, for the above acts and omission, M/s. SRAVL have rendered themselves liable for penal action under Section 112(a) and / or 114A of the Customs Act, 1962.

11. The CHA M/s. J.M. Baxi & Company did not exercise due diligence to ascertain the correctness of the information which they imparted to their client with reference to the work related to clearance of cargo. They were required to advise their client to comply with the provisions of the Act and in case of non-compliance they were required to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. They have agreed to the omission of tariff item 1701 in the Act of 1957 w.e.f. 08.04.2011 and that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act @ 4% was leviable in this case w.e.f. 08.04.2011. They also agreed that it was their mistake that they did not study the matter at the material time deeply, but later on when they came to know from the Department that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was payable, they were regularly pursuing the matter with them for making payment of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act. The CHA M/s. J.M. Baxi & Company are also therefore liable for penalty for the misdeeds on their part under Section 112(b) of the Customs Act, 1962.

12. Thus, M/s. Shree Renuka Sugars Ltd, At & P.O. Bharapar, Tal. Gandhidham, Dist. Kutch was called upon to show cause to the Commissioner of Customs, Kandla, as to why :

- a. The Bills of Entry as mentioned in Annexure-A & B attached to this notice and which have been assessed provisionally should not be assessed finally under Section 18(2) of the Customs Act, 1962 based on the test reports.
- b. The benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 should not be denied to them and Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act amounting to Rs.4,18,76,670/- on 35900 MTs of imported raw sugar, should not be demanded under Section 28(4) of the Customs Act, 1962. The amount of Rs.4,18,76,670/- already paid / deposited by M/s. SRSL during investigation should not be appropriated against the demand of the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act.
- c. The benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 should not be denied to them in respect of imported raw sugar 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against advance authorizations.
- d. The interest should not be demanded and recovered at the appropriate rate under section 28AA of the Customs Act, 1962 on the duty demand at (b) above. The amount of Rs.1,30,664/- paid / deposited towards interest by M/s. SRSL during investigation should not be appropriated against the demand of interest.
- e. The imported raw sugar 35900 MTs valued at Rs.91,73,06,085/- should not be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962.
- f. The imported raw sugar 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against advance authorizations should not be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962.

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g. Penalty should not be imposed on them under Section 112(a) and / or 114A of the Customs Act, 1962.

13. Thus, M/s. Shree Renuka Agriventures Ltd, At & Post Bharapar, Tal. Gandhidham, Kutch, Gujarat were called upon to show cause to the Commissioner of Customs, Kandla, as to why :

a. The Bills of Entry as mentioned in Annexure-B attached to the notice and which have been assessed provisionally should not be assessed finally under Section 18(2) of the Customs Act, 1962 based on the test reports

b. The benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 should not be denied to them in respect of imported raw sugar 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations).

c. The quantity of imported raw sugar warehoused by M/s. SRAVL 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse Bills of Entry and respective Ex-Bond Bills of Entry against Advance Authorizations) should not be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962.

d. Penalty should not be imposed on them under Section 112(a) and / or 114A of the Customs Act, 1962.

14. M/s. J.M. Baxi & Company, Seva Sadan II, New Kandla, Dist. Kutch (Gujarat) were called upon to show cause to the Commissioner of Customs, Kandla, as to why penalty should not be imposed on them under Section 112(b) of the Customs Act, 1962.

## **DEFENCE**

**15.1** M/s. SRSL in their written reply dated **24.01.2014 and 11.05.2015**, to the Show Cause Notice, has denied and disputed the allegations levelled against them in the present Show Cause Notice. Further they have, inter-alia, submitted SAD exemption was claimed as a routine under Sr. no 12 of the Customs Notification 21/2012 since product "sugar" was listed under First Schedule to the "Goods of Special Importance Act, 1957"; that at the time of assessing above said B/E's pertains to 22,500 MT, informed our CHA that First Schedule to the "Goods of Special Importance Act, 1957" was amended vide Finance Act, 2011 and accordingly Sugar is omitted from the list". In view of such change, the assessee (SRSL) should pay "SAD" on its raw sugar import (13,400 MT) since ineligible to claim exemption benefit under Sr. 12 of the Customs Notification 21/ 2012; Though the said amendment took place in 2011; the Customs raised the issue first time ; that M/s. SRSL referred the issue to its Consultant/s to opine and made detail study wherein it was revealed that "SAD" [to be levied under section 3(5) of the Customs Act, 1962] is levied in lieu of Sales tax/VAT;

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that Sugar is exempted from Sales tax in Gujarat and that Raw Sugar Import was exclusively meant for captive consumption, M/S. SRSL formed its bonafide opinion that even otherwise also SAD is not leviable on Raw Sugar. With such bona-fide belief, the SRSL wrote various letters to the Customs that SAD is not payable in its case but in case Customs insist, SRSL will give necessary undertaking to that effect and that in the event, if the courts decide the issue in favour of the Customs, it shall pay the duty with interest. This shows bona-fide intention of M/s.SRSL; that M/S.SRSL paid all other Customs Duties and cess; that SAD is cenvatable therefore, SAD payment is revenue neutral transaction; that had it known that SAD is Cenvatable, that they would have opted either to pay SAD & avail Cenvat or pay SAD under protest and contest the issue in the court of law; this would have possible if reassessment process followed by Customs; Unfortunately the Customs, instead of adjudicating and re-assessing B/E's as per the provisions of the law, made upfront demand and started pressurising M/S.SRSL for immediate SAD payment.

15.2 The quantity includes 13,400 MT raw sugars cleared by the Customs. The balance 55,455 MT of Raw Sugar was belongs to SRAVL (Noticee NO.2) lying in their warehouse, under the Bond. This detained raw sugar had no relevance whatsoever with the impugned issue nor was offered to customs for clearance under home consumption. In view of the export commitments and unwarranted business loss likely to be suffered on account of illegal detention action, M/S.SRSL once again made humble request to the Customs authority to clear raw sugar against necessary undertaking and subject to producing Advance Authorisation on receipt. This again turned down by the Customs. Since concerned & aggrieved by the said illegal, unjustifiable, inappropriate & unprecedented detention action of the customs, M/S.SRSL was forced to take up its grievance to the Honourable High Court at Ahmadabad (Special Civil Application No. 7211 of 2013) for its redressal. While doing so, M/s.SRSL thought it appropriate to raise an additional issue of SAD also.

15.3 The Honourable High Court did not discuss the SAD issue but declared the detention action as illegal. Accordingly, the Honourable Court by its oral order dated 10.05.2013 directed the Customs to release the detained goods (55,455 MT of raw sugar) immediately and allowed clearance if so permitted under Advance Authorisation. As regard to B/E for 13,400 MT, which was cleared by the Customs and out of charge was given, the Honourable Court directed M/S.SRSL to pay SAD "under protest" and contest later at appropriate forum. That, M/S. SRSL paid applicable SAD with interest under protest (on 10.05.2013 & 17.05.2013). M/S. SRSL cleared additional quantity of 22,500 MT on payment of Duty with SAD since application of which was made earlier. The Customs also released the said detained goods (55,455 MT of raw sugar) which was subsequently processed & exported under Advance Authorisation. Raw sugar (total 35,900 MT) against which SAD was paid "under protest" was subsequently processed & refined into white sugar and was exported under "Open General License (OGL)". Almost 7 months thereafter the Customs issued impugned show cause notice to both M/s. SRSL (Shree Renuka Sugars Limited) & Noticee No.2 ( Shree Renuka Agriventures Limited) covering all the B/E's having no relevance whatsoever with the impugned issue.

15.4 Further, it has even covered warehouse B/E's which are out of the purview of SAD". This is despite the fact that the raw sugar in every case was cleared by Noticee NO.1, being manufacturer importer. As per the term "Import" or "Importer", Noticee NO.2 was never the Importer in all the clearances made by M/S. SRSL since it was transferred BOND to BOND. M/S. SRSL came across an Order dated 26.06.2010 passed by the Commissioner (Appeal) in the matter of Katyal Metal, Patna wherein the

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Commissioner(Appeal) has made similar observation as above and upheld the contention made by M/s. Katyal Metal. CESTAT, Kolkata also on 26.03.2012, considering the merit in the matter refused to grant stay against the said order. The relevant portion of the order of commissioner appeal, as quoted by the CESTAT in its order is as under:

*"In other words, when the subject goods is exempted from sales tax, it necessary follows that he is not required to pay CVD. When the item imported is exempted from sales tax/vat, the same should have also been exempted from CVD. This would have simplified the matter",*

This makes clear that even the department is of the view that SAD is not payable when the import item itself is exempted from sales tax/vat. This also substantiates the contention of this noticee NO.1, made herein above. That the SCN and the demand made therein are improper, inappropriate and illegal since issued to two different importers at a time and against the same import. There cannot be two importers at a time for the same goods.

*Following extract from "Customs manual", reproduced herewith, is evidentiary & self explanatory on the above.*

15.5 In this case, the importer is M/S. SRSL who cleared raw sugar under Advance Authorisation or in above two cases for home consumption on payment of duty. The SCN became premature since issued after payment of entire customs duty. B/E's mentioned under Sr. NO.5,6,11,20,21,22,23,25,26,27,28, 31,36,37, 38,40 & 41 of Annexure "B" to the impugned SCN are assessed finally and has no relevance with the impugned issue hence please be directed to drop from the list. Even on merit also, the B/E's covered under Annexure "B" to the impugned show cause Notice are Warehoused B/E, which has no relevance whatsoever with the impugned issue. There was no fraud/wilful statement in the declared notification (21/2012) or filed with mala-fide intention to evade duty since ware housed goods doesn't have any duty implication. In this connection, it would be appropriate to consider an observation made by the Apex Court in the matter of Union of India V. Ashok Kumar & ors, 2005 that *"it cannot be overlooked that burden of establishing mala-fides is very heavy on the person who alleges it, the allegation of mala-fides are often are easily made than proved, and the very seriousness of such allegation demand proof of a high order of credibility"*. In "Uniworth textiles ltd. vs Commissioner of Central Excise (January 2013) it has further held that *" It is a cardinal postulate of law that the burden of proving any form of malafide lies on the shoulders of the one alleging it "*

15.6 All provisionally assessed B/E's may please be directed to assess finally as the same were assessed provisionally pending the test report and that there was no dispute as regard to quality of the raw sugar. Further, for the sake of argument, even if mistake happened, same was not deliberate but bona-fide & without any mala-fide intention. Ware House B/E pertains to impugned issue, filed by SRAVL, are assessed finally hence no substance in the matter now remain Further the raw sugar was cleared bond to bond, under Advance Authorisation hence the same is outside the purview of SAD. There won't be any revenue implication even if directed to asses finally. Since M/S. SRSL has paid & satisfied entire customs duty with interest much before the issuance of SCN, against B/E' s listed under Annexure "A" to the impugned SCN, nothing is now survive in the impugned issue. The impugned SCN therefore is premature and hence required to be drop.

16. M/s. SRAVL written reply dated **24.01.2014 and 11.05.2015 interalia submitted** that M/s. Shree Renuka Sugars Ltd (Noticee No.1) had already filed a

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detailed reply to the impugned SCN whereby it has been brought out clearly that duty demanded is not payable for the detailed reasons mentioned therein. It has been further urged that no penalty is leviable under the provisions of the Customs Act,1962 as envisaged. That the noticee herein craves leave to refer to the same as part of the present reply. If the Honourable Commissioner reaches a decision that neither duty nor penalty is payable by *M/s. Shree Renuka Sugars Ltd*, then the allegation against this noticee also do not survive.

16.1 In case of goods cleared from warehouse I the person filing the Bill of Entry is chargeable to pay duty undisputedly in the matter of the subject SCN all the goods were cleared by *M/s. Shree Renuka Sugars Ltd* by filing the ex bond bills of entry. Hence *M/s SRAVL* is not chargeable to duty. Since *M/S. SRSL* is not chargeable to duty the allegation of wrong claim of exemption from 4% SAD against the noticee no.2 is unsustainable. Only person chargeable to duty can be liable for imposition of penalty under Section 114 A of the Customs Act, 1962. As stated in the preceding paragraph the noticee is not chargeable to duty. Hence penalty under Section 114A of the Customs Act, 1962 is not leviable on Noticee No.2.

16.2 In view of the given back ground, facts & legal position, your honour may please be ignore the mistake, if any, as genuine & bona-fide and drop the penalty, if proposed to be levy.

17. *M/s. J. M. Baxi & Co., CHA* in their written reply dated **nil**, to the Show Cause Notice, has denied and disputed the allegations levelled against them in the present Show Cause Notice. They further inter-alia contended that if at all there was any misunderstanding between the Customs Department and the importer, arising out of the Bills of Entry filed, the same cannot be attributed to any negligence by them as the CHA, simply because the exemption claim, although available as per valid provisions of law, was merely sought under some other heading/notification too. In any case, the fact that similar import consignments were assessed and given out of charge by the Customs officials, having granted them exemptions under Notification No. 20/2006, even after 08.04.2011, itself would indicate that it was a recent change then in the exemption regime, which was not even clear to the Department officials themselves. Whenever a certain change in a long continued regime is brought about, all concerned parties including government officials do take some time to actually understand the change in norms, and simply because there was a belief amongst some customs officials that we or our Principals had sought exemption on an alleged misstatement of facts, such belief or allegations will not hold ground in view of the circumstances of this case, especially when exemption is anyways available under a distinct and separate provision; and there is no loss of revenue to the Government, as alleged or at all.

17.1 That as a matter of trade practice/relations, it was genuinely expected that the documents / information provided to them by their Principals (Importer), would be in terms with the proper procedures / regulations followed by the Customs and it was never anticipated that such a dispute/misunderstanding would arise in relation to exemption being available under one provision or another. It should be appreciated that we as the CHA are totally innocent in this case and have not aided and/or abetted any offence for the simple reason that we have merely followed / acted upon the instructions of our Principal, with honest / bonafide intentions.

17.2 that they have not committed any act or omission in regard to the import of the subject cargo making us liable to any penalty as proposed or at all. At most, and as is honestly recorded in the statement of our employees during the investigation of the



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matter, it can be said that there may have been an unintentional oversight in noticing that the exemption available under provisions of the Goods of Special Importance Act, 1957 (58 of 1957), was no longer then available by virtue of passing of the Finance Act, 2011, vide which sugar was omitted from the exempted list; though exemption continued to be available under the Foreign Trade Policy -Advance Authorization Scheme. This innocent oversight, coupled with the fact that there was no intention to evade duty, especially considering that exemption is in any case available for the same consignment under "Advance Authorization" Scheme, should be evidence enough of the innocence and bonafide on our part. It should also be noted that we as the CHA acting on behalf of our Principals (importer), applied for out of charge against the above mentioned 5 bills of entry, only after our Principals had paid the differential duty (under protest).

17.3 That, not only logically, but also based on the observation and ruling of the Supreme Court of India, *Commissioner of Customs, Calcutta v G. C. Jain and another*, (2011) 12 SCC 713 it is submitted that even if there was a misunderstanding with regards to availability of an exemption, it is the Department's prerogative to allow it or not and/or find alternative, instead of directly coming to the stage of making allegations and invoking penal provisions against the parties involved, much less against a CHA who's job is solely restricted to liaise with the Customs officials and ensure smooth clearance of the cargo based on the documents given to them by their Principals for onward submission to the Department.

## **18. PERSONAL HEARING**

18.1 Personal hearing the in matter was held on 11.05.2015. Shree Sunil Kadam, General Manager(Legal), Shri Rahul Patil, Senior Manager Accounts and Shri Bimal Vaidya, Manager Accounts on behalf of M/s. SRSL and M/s. SRAVL appeared before me and they reiterated the submissions made in the reply to the notice.

18.2 They submitted that as far as SRAVL is concerned they have only transferred the goods from bond to bond basis and they have not violated any law and there is no evasion of duty. As the transaction is in the nature of High Sea Sale there is no VAT on such transaction and hence SAD is not imposable. Further, in the state of Gujarat there is no VAT on sale of either raw sugar or refined sugar. The first consignment was cleared by the Customs without levy of SAD and however, subsequent consignments were stopped and subjected to levy. There is no suppression of the fact and hence no penalty is imposable. It is a bonafide mistake on everybody's part if it is considered that SAD is imposable on the Sugar. As there is no intention to evade payment of duty they have requested to drop the proceedings on merit.

16.3 On the date of 10.04.2015, Shree Chandrashekhar Ramchander Gupte appeared on behalf of M/s. J. M. Baxi and Co, and he reiterated the submissions made in the reply to the notice. He submitted that they have not played any role in the alleged evasion of duty. They have acted in bonafide faith and there is no allegations in the SCN that they have abetted in such evasion. In view of the above, he requested to drop the proceedings.

**17. DISCUSSION AND FINDINGS**

I have carefully gone through the records of the case, including the Show Cause Notice dated 20.11.2013, the written submissions dated 24.01.2014 and 11.05.2015 filed by M/s. SRSL and M/s. SRAVL and written submissions dated nil and 10.05.2015 filed by M/s. J.M.Baxi & Co as well as their oral submissions made during the course of Personal Hearing.

17.1 I find that the following main issues are involved in the subject Show Cause Notice, which is required to be decided:-

- a. Whether the Bills of Entry as mentioned in Annexure-A & B attached to the notice and which have been assessed provisionally should be assessed finally under Section 18(2) of the Customs Act, 1962 based on the test reports.
- b. Whether the benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 is required to be denied to M/s. SRSL and Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act,1975 amounting to Rs.4,18,76,670/- on 35900 MTs of imported raw sugar, is required to be demanded under Section 28(4) of the Customs Act, 1962. Whether the amount of Rs.4,18,76,670/- already paid / deposited by M/s. SRSL during investigation is required to be appropriated against the demand of the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act.
- c. Whether the benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 is required to be denied to them in respect of imported raw sugar 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against Advance authorizations.
- d. Whether M/s. SRSL is required to pay the interest at the appropriate rate under section 28AA of the Customs Act, 1962 on the duty demand at (b) above. Whether the amount of Rs.1,30,664/- paid / deposited towards interest by M/s. SRSL during investigation is required to be appropriated against the demand of interest.

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- e. Whether the imported raw sugar 35900 MTs valued at Rs.91,73,06,085/- is liable to be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962.
- f. Whether the imported raw sugar 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against advance authorizations is liable to be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962.
- g. Whether M/s. SRSL is liable for penal action, under Section 112(a)/ or 114A of the Customs Act, 1962.
- h. Whether the benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 is required to be denied to M/s. SRAVL in respect of imported raw sugar 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations).
- i. Whether the quantity of imported raw sugar warehoused by M/s. SRAVL 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse Bills of Entry and respective Ex-Bond Bills of Entry against Advance Authorizations) is liable to be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962.
- j. Whether M/s. SRAVL is liable for penalty under Section 112(a) and / or 114A of the Customs Act, 1962.
- k. Whether M/s. J.M. Baxi & Company, Custom House Agent is liable for penalty under Section 112(b) of the Customs Act, 1962.

17.2 The main crux of the issue in this case, around which all the above issues are involved which I am required to decide, is whether the benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 for the item under import Raw Sugar under CTH 1701 is required to be denied to M/s. SRSL and M/s. SRAVL and whether Additional duty of customs is leviable under sub-section (5) of Section 3 of the Customs Tariff Act,1975.

17.3 For clear depiction, the Notification No.21/2012-Cus dated 17.03.2012 as amended reads as under:

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*"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), No. 20/2006-Customs, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 1st March, 2006, and No. 29/2010-Customs, dated the 27th February, 2010, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 27th February, 2010, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the Table aforesaid"*

The Sr.No.12 of the Notification No.21/2012-Cus dtd.17.03.2012 reads as under :

<b>S. No</b>	<b>Chapter, heading, sub-heading or tariff item of the First Schedule</b>	<b>Description of goods</b>	<b>Standard rate</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
12	Any Chapter	All goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957)	Nil

Thus, the exemption in excess of Nil rate of Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act is available only to the goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

In the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 [Appendix IV], the tariff item 1701 has been omitted w.e.f. 08.04.2011 from the First Schedule by Section 78 read with the Thirteenth Schedule to the Finance Act, 2011 (8 of 2011).

The Section 78 of the Finance Act, 2011 reads as under :

*“78. Amendment of First Schedule to Act 58 of 1957. – The First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 shall be amended in the manner specified in the Thirteenth Schedule.”*

*“THE THIRTEENTH SCHEDULE*

*[See section 78]*

*In the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, -*

- (d) heading 1701 and all sub-headings and tariff items thereof and the entries relating thereto shall be omitted;*
- (e) Tariff item 1702 90 10 and the entries relating thereto shall be omitted;*
- (f) .....”*

17.4 In view of the above, I find that w.e.f. 08.04.2011, the tariff item 1701 did not exist in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. As such, the Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 is not applicable to the tariff item 1701 for sugar for the purpose of availment of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975. Thus, I find that M/s. SRSL and M/s. SRAVL had while seeking clearance under Bills of entry for warehousing / home consumption / Ex-bond Bills of Entry wrongly claimed benefit of Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 for the item under import.

17.5 I also find that the issue before the Hon'ble High Court was raised by M/s. SRSL whether the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act (4%) and the detention / seizure effected by the department of 68855 MT of raw sugar was payable or otherwise. The Hon'ble High Court of Gujarat vide its Oral Order dtd.10.05.2013 decided the Special Civil Application No.7211 of 2013 as under :

- (a) As regards the issue of payability or otherwise of the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act (4%), the Hon'ble High Court did not incline to go into the said question and observed that such issues must be decided by the competent departmental authorities.*
- (b) As regards the seizure of 68855 MTs of raw sugar, the Hon'ble High Court approached the issue in two compartments. With respect to 13400 MTs of raw sugar (for which Ex-bond Bills of Entry had been filed), the Hon'ble High Court ordered the petitioner to deposit a sum of Rs.1,60,27,991/- latest by 15.05.2013, upon which the department shall permit out of charge; that it would be open for the department to call upon the*

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*petitioners to make good the shortfall, if any, which the petitioner shall do forthwith and that it would be open for the department to carry out further investigation / enquiry and adjudication proceedings after issuing SCN. With respect to the remaining quantity of 55450 MTs of raw sugar (for which no Bills of Entry had been filed or out of charge was requested), the Hon'ble High Court observed that the action of detention and seizure was not justified; that the petitioners shall apply to the Commissioner of Customs latest by 13.05.2013 for permitting the import under advance license or under any other procedures as may be permissible under the rules and the Commissioner shall decide the same latest by 20.05.2013 and permit clearances.*

17.6 I find that as per the direction of the Hon'ble High Court of Gujarat SRSL had made the payment of Additional Duty of Customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act amounting to Rs.1,60,27,991/- along with interest of Rs.1,30,664/- under protest on 10.05.2013 / 13.05.2013 in respect of 13400 MTs of raw sugar. Further, M/s. SRSL vide their letter dtd.17.05.2013 informed that they had filed four Bills of Entry in respect of 22500 MTs of raw sugar for which that they were depositing / paying the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act amounting to Rs. 2,58,48,681/- under protest against said four Bills of Entry.

17.7 I find that key person Shri Rahul Patil, Manager (Accounts) of M/s. Shree Renuka Sugars Limited his statement on 27.06.2013 had deposed that the statement given by him on behalf of M/s.Shree Renuka Sugars Limited hold good to the extent and it is applicable to M/s.Shree Renuka Agriventures Limited. I find that Shri Rahul Patil in his statement has already accepted the facts that as per Section 78 of the Finance Act, 2011 the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was amended in the manner specified in the Thirteenth Schedule. He was also in agreement that according to the Thirteenth Schedule of the Finance Act, 2011, heading 1701 and all sub-headings and tariff items thereof and the entries relating thereto were omitted w.e.f. 08.04.2011 i.e. the date of enactment of the Finance Act, 2011.

17.8 I find that M/s. SRSL and SRAVL during the course of personal hearing and in their written submissions had argued that the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act was applicable if there was VAT or any Sales Tax applicable on the commodity, whereas raw sugar was exempted from Gujarat VAT, and therefore, Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 was not applicable on raw sugar.

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In this regard, I find that Schedule – I of Gujarat VAT provides the schedule for the goods, the sales or purchase of which are exempt from Tax. Sr.No.51A of the said Schedule – I lays down as under :

*“51A Sugar of all types on which additional excise duty is levied and collected in lieu of sales tax under the Additional Duties of Excise (Goods of Special Importance) Act, 1957”*

Accordingly, under the Gujarat VAT, exemption is available to sugar of all types only if Additional Excise Duty is levied and collected in lieu of sales tax under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on the same.

17.9. In view of the fact, that prior to 08.04.2011, the sugar was covered under first schedule to the Additional Duties of Excise (Goods of special importance) Act, 1957, and 4% of Additional Custom Duty was exempted in terms of Notification No. 20/2006-Cus Sr. No. 50. As the Notification No.20/2006 has been superseded vide Notification No 21/2012-Cus dtd.17.03.2012 and Sr. No.12 of this notification says that all goods covered under first schedule to the Additional Duties of Excise (Goods of special importance) Act, 1957, are exempted from Additional Custom Duty. On the other hand the tariff item 1701 was omitted w.e.f. 08.04.2011 from the First Schedule by Section 78 read with the Thirteenth Schedule to the Finance Act, 2011 (8 of 2011). I find that the goods cleared by M/s. Shree Renuka Sugars Ltd, Bharapar are falling under CTH 1701 and in view of the para supra exemption under Sr. No. 12 of Notification No.21/2012-Cus dtd.17.03.2012 is not available on the clearance of Raw Sugar falling under CTH 1701. I therefore find that the 4% Additional duty of Customs is leviable under sub-section (5) of Section 3 of the Customs Tariff Act from M/s. SRSL.

17.10 From the above discussions, it is amply clear that exemption is not applicable as the item under import was already omitted from the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 w.e.f. 08.04.2011. Consequently, Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 is not applicable to the tariff item 1701 for the purpose of availment of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975. Therefore, I find that M/s. SRSL and M/s. SRAVL had wrongly claimed benefit of Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 for clearance as mentioned in Annexure-A and B for the Bills of entry for warehousing / home consumption / Ex-bond attached to the notice.

18.1 I find that M/s. SRSL filed Ex-bond Bills of Entry for clearance of imported raw sugar 35900 MTs against payment of duty during the period from 08.04.2011 to 30.06.2013 (As detailed in Annexure-A attached to the notice ), wherein they claimed

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the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 (in case of B/E No.9610111 dtd.19.03.2013, the respective W/H BE No.8912656 dtd.01.01.2013 shows claim of said exemption). As per the above discussions, M/s. SRSL had wrongly claimed the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 on the said imported raw sugar, which in turn led to evasion of Additional duty of Customs to the tune of Rs. 4,18,76,670/- leviable under sub-section (5) of Section 3 of the Customs Tariff Act. Thus, Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act is liable to be recovered from them under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962. I also find that the amount of Rs.4,18,76,670/- had already been paid / deposited by the M/s SRSL during investigation and the said amount is hereby appropriated against the demand of the Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act,1975.

18.2 As regards, duty demand I have no hesitation in arriving at the conclusion that eligibility of exemption under the exemption notification has been wrongly claimed by M/s. SRSL. But for the detailed investigation by the Customs, the issue would have gone unnoticed. Hence, I find that they have willfully suppressed these vital materialistic information and caused deliberate mis-declaration to avail the exemption under the notifications. Accordingly, the 35900 MT of imported raw sugar valued at Rs.91,73,06,085/- is liable for confiscation, under Section 111(m) and 111(o) of the Customs Act, 1962.

18.3 Further, I also find that M/s. Shree Renuka Sugars Limited filed various Bills of Entry for warehousing / Bills of Entry for home consumption against Advance Authorizations during the period from 08.04.2011 to 30.06.2013, as detailed in Annexure-B attached to the Notice. As already discussed and held para supra that the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 is not available to the said imported raw sugar the balance quantity of imported raw sugar warehoused by M/s. Shree Renuka Sugars Limited 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse Bills of Entry and respective Ex-Bond Bills of Entry against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against Advance Authorizations is also liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 for wrongly entering the claim of exemption in Bills of Entry and violating the condition stipulated under the said notification.



18.4 I find that M/s. SRAVL had filed various Bills of Entry for warehousing during the period from 08.04.2011 to 30.06.2013, for total quantity of 172935 MT having assessable value of Rs.451,19,65,034/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es) as detailed in Annexure-B attached to the notice. As already discussed in the foregoing para that the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 is not available to the said imported raw sugar. I also find that out of 172935 MTs quantity, a quantity of 13400 MTs of raw sugar valued at Rs.35,13,94,242/- has already been cleared by M/s.Shree Renuka Sugars Limited against Ex-bond Bills of Entry upon purchase from M/s.Shree Renuka Agriventures Limited. The balance quantity of imported raw sugar warehoused by M/s.Shree Renuka Agriventures Limited 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations) are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 for wrongly entering the claim of exemption in Bills of Entry and violating the condition stipulated under the said notification.

18.5 In this case, most of the Bills of Entry were provisionally assessed and the impugned imported goods were cleared on execution of Test Bond and the goods are not physically available for confiscation. It is now a well settled position of law that the mere fact that the goods were released on bond being executed would not take away the power of the customs authorities to levy redemption fine. Further, since the goods were released on bond, the position remains that the goods are available. In this regard, I rely on the judgement/decisions in the case of Weston Components Ltd. – 2000 (115) ELT 278 (SC); M/s. Raja Impex – 2008 (229) ELT 185 (P&H); Pregna International Ltd. – 2010 (262) ELT 391; R.D. Metal & Co. – 2008 (232) ELT 464 (Tri-Ahmd) and Amartex inds Ltd. – 2009 (240) ELT 391, which are squarely applicable to the facts of the case.

19. As regards, imposition of penalty on M/s. SRSL under Section 112(a)/114A of the Customs Act, 1962 as already held in the foregoing para that the impugned Raw Sugar as detailed in Annexure-A & B to the Show Cause Notice are liable for confiscation under Section 111(m) and 111(o) ibid of the Customs Act, 1962. I also find from the statement recorded of the key person Shri Rahul Patil, Manager of M/s. SRSL had deposed that due to oversight they were not aware of the provisions of omission of Tariff item 1701 and he also agreed that ignorance of law was not an excuse. Nevertheless, but for a thorough investigation by the Customs, the matter would have gone overlooked. I find that the duty difference in question in this case is in Crores and not a small amount. The aforesaid acts of willful misstatement and suppression of facts by M/s. SRSL has led to non payment of Additional duty of Customs which constitutes an offence of the nature described in Section 112(a)/114A of

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the Customs Act, 1962. Further, I find that M/s. SRSL have made themselves liable to penalty under Section 112(a) as well as under Section 114A of the Customs Act, 1962. However, since I propose to impose penalty under Section 114A of the Customs Act, 1962, I do not impose any penalty on them under Section 112(a) of the Customs Act, 1962 as provided in proviso to Section 114A. However, since the issue involved in this case being of technical nature regarding availment of benefit of a notification, I will give due consideration while imposing the penalty.

20. I find that M/s. SRAVL had contended that only person chargeable to duty can be liable for penalty under Section 114A of the Customs Act, 1962. Hence penalty under Section 114A of the Customs Act, 1962 is not leviable on M/s. SRAVL.

20.1 I find that the impugned goods were cleared against warehouse Bills of Entry and respective Ex-Bond Bills of Entry against Advance Authorizations. I find that such clearance under Advance Authorizations is based on value and quantity and there is no duty demand against such clearance and hence the penalty under Section 114A is not sustainable. Therefore, I refrain from imposing penalty under Section 114A of the Customs Act, 1962. However, since as already held in the foregoing para that a quantity of 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse bills of entry and respective Ex-Bond B/Es against Advance Authorizations) of imported raw sugar warehoused by M/s. Shree Renuka Agriventures Limited is liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 for wrongly entering the claim of exemption in Bills of Entry and violating the condition stipulated under the said notification. I find that for the above acts and omission, M/s. Shree Renuka Agriventures Limited have rendered themselves liable for penal action under Section 112(a) of the Customs Act, 1962. I also find from the statement recorded of the key person Shri Rahul Patil, Manager of M/s. SRAVL had deposed that due to oversight they were not aware of the provisions of omission of Tariff item 1701 and he also agreed that ignorance of law was not an excuse. Nevertheless, but for a thorough investigation by the Customs, the matter would have gone overlooked.

20.2 In view of the above, I, hold that the penalty under Section 112 (a) ibid is attracted on M/s. SRAVL. However, the issue involved in this case being of technical nature regarding availment of benefit of a notification, I will give due consideration while imposing the penalty.

**ROLE OF M/S. J. M. BAXI, CUSTOM HOUSE AGENT:**

21. I find from the statement of the Senior Managers, Shri M. Radhakrishnan and Shri Sreekumar Nair recorded under Section 108 of the Customs Act, 1962 that they were aware of these provisions but that at the material time they did not deeply examine these provisions. Further, they agreed that the tariff item 1701 had been

omitted from the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 w.e.f. 08.04.2011 but due to oversight they were not aware of the provisions of omission of tariff item 1701 they agreed that ignorance of law was not an excuse.

21.1 I find that the CHA M/s. J.M. Baxi & Company did not exercise due diligence to ascertain the correctness of the information which they imparted to their client with reference to the work related to clearance of cargo. They were required to advise their client to comply with the provisions of the Act and in case of non-compliance they were required to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. I also find that they have agreed to the omission of Tariff item 1701 in the Act of 1957 w.e.f. 08.04.2011 and that Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act @ 4% was leviable in this case w.e.f. 08.04.2011. They also agreed that it was their mistake that they did not study the matter at the material time.

21.2 In view of the above, I find that CHA M/s. J.M. Baxi & Company are also therefore liable for penalty for the misdeeds on their part under Section 112(b) of the Customs Act, 1962.

22. As discussed above, I have already held that the benefit of exemption from Additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act under Sr.No.12 of Notification No.21/2012-Cus dtd.17.03.2012 is not available to the said imported raw sugar, and as a consequence M/s. SRSL is not eligible for the benefit of said exemption. I find that total nine (09) Bills of entry in Annexure- A and out of forty one (41) Bills of entry thirty seven (37) Bills of Entry detailed Annexure-B to the Show Cause Notice have been assessed provisionally. **Accordingly, the assessment in respect of the said nine (09) Bills of Entry in Annexure- A thirty seven (37) Bills of entry as detailed Annexure-B to the Show Cause Notice filed by M/s. SRSL, and four (04) Bills of entry as detailed Annexure-B to the Show Cause Notice filed by M/s. SRAVL which had been provisionally assessed, now stands finalized and concluded on the basis of the above discussion and findings under Section 18(2) of the Customs Act, 1962.**

23. In view of the foregoing discussions and findings, I pass the following order:-

**:ORDER:**

- a. The Bills of Entry as mentioned in Annexure-A & B attached to the notice which have been assessed provisionally stands assessed finally under Section 18(2) of the Customs Act, 1962 based on the test reports.

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- b. I deny the benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 by Shree Renuka Sugars Ltd, At & PO Bharapar, Tal.Gandhidham, Dist.Kutch and Additional Duty of Customs is leviable under sub-section (5) of Section 3 of the Customs Tariff Act and order recovery for Rs.4,18,76,670/- on 35900 MTs of imported raw sugar under Section 28(4) of the Customs Act, 1962. As the duty of Rs.4,18,76,670/- already paid / deposited by them, accordingly the same is hereby appropriated and adjusted towards their duty liability.
- c. I deny the benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 by Shree Renuka Sugars Ltd in respect of imported raw sugar 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse bills of entry and respective Ex-Bond Bills of Entry against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against bills of entry for home consumption) against Advance authorizations.
- d. I order recovery of interest from M/s. Shree Renuka Sugars Ltd at the appropriate rate under section 28AA of the Customs Act, 1962 on the duty demand at (b) above. As the interest of Rs. 1,30,664/- had already been paid / deposited by M/s. Shree Renuka Sugars Ltd accordingly the same is hereby appropriated and adjusted towards their interest liability.
- e. I order confiscation of imported raw sugar 35900 MTs valued at Rs.91,73,06,085/-, imported vide Bills of Entry shown in Annexure-A to the Show Cause Notice, by Shree Renuka Sugars Ltd under Section 111(m) and 111(o) of the Customs Act, 1962 which were provisionally assessed. I impose redemption fine of Rs.10,00,00,000/- (Rupees Ten Crores Only) on Shree Renuka Sugars Ltd under Section 125 of the Customs Act, 1962, in lieu of the confiscation for the goods provisionally assessed and cleared under Bond.
- f. I order confiscation of imported raw sugar 509467.043 MT valued at Rs.1448,01,00,081/- (cleared against warehouse Bills of Entry and respective Ex-Bond Bills of Entry against Advance Authorizations) and 266054.533 MT having assessable value of Rs.732,52,46,648/- (cleared against Bills of Entry for home consumption) against Advance Authorizations by M/s. Shree Renuka Sugars Ltd, under Section 111(m) and 111(o) of the Customs Act, 1962. I impose redemption fine of Rs.50,00,00,000 /- (Rupees Fifty Crores Only) on M/s. Shree Renuka Sugars Ltd under Section 125 of the Customs Act, 1962, in lieu of the confiscation for the goods provisionally assessed and cleared under Bond.

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- g. I impose penalty of Rs.4,20,07,334/- (Rupees Four Crores Twenty Lakhs Seven Thousand Three Hundred Thirty Four only) on M/s. Shree Renuka Sugars Ltd. under Section 114A of the Customs Act, 1962. However, the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined is paid within the period of thirty days referred to in that proviso of Section 114A.
- h. I deny the benefit of duty exemption as claimed under Sr.No.12 of Notification No.21/2012-Cus dated 17.03.2012 by M/s. Shree Renuka Agriventures Limited in respect of imported raw sugar 159535 MT valued at Rs.416,05,70,792/- (cleared against Warehouse Bills of Entry and respective Ex-Bond B/Es against Advance Authorizations).
- i. I order confiscation of imported raw sugar warehoused by M/s. Shree Renuka Agriventures Limited for 159535 MT valued at Rs.416,05,70,792/- (cleared against warehouse Bills of Entry and respective Ex-Bond Bills of Entry against Advance Authorizations) under Section 111(m) and 111(o) of the Customs Act, 1962. I impose redemption fine of Rs.20,00,00,000/- (Rupees Twenty Crores Only) on M/s. Shree Renuka Agriventures Limited under Section 125 of the Customs Act, 1962, in lieu of the confiscation for the goods provisionally assessed and cleared under Bond.
- j. I impose penalty of Rs.5,00,00,000/- (Rupees Five Crores Only ) on M/s. Shree Renuka Agriventures Limited under Section 112A of the Customs Act, 1962.
- k. I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on M/s. J.M. Baxi & Company, Custom House Agent under Section 112(b) of the Customs Act, 1962

(P V R REDDY)  
PRINCIPAL COMMISSIONER

**(By Regd. Post A.D. / By Hand Delivery)**

F. No. S/10-89/Adjn/2013-14

Date: .06.2015

To,

1. M/s.Shree Renuka Sugars Ltd,  
At & PO Bharapar, Tal.Gandhidham, Dist.Kutch
2. M/s.Shree Renuka Agriventures Ltd,  
At & Post Bharapar, Tal.Gandhidham, Kutch, Gujarat
3. M/s.J.M. Baxi & Company,  
Chetna Chambers, 2<sup>nd</sup> Floor, Gandhidham, Kutch (Gujarat)

Copy to:

- 1) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, with copy of Show Cause Notice dated 07.10.2013.
- 2) The Deputy/Assistant Commissioner(GR-I), Customs House, Kandla,
- 3) The Assistant Commissioner (Recovery Section), Custom House Kandla,
- 4) Guard file.

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