



**સિમા ચુલક આયુક્ત કા કાયારી,**  
**નવન સિમા ચુલક વન, ન્યા કા.ડી.આ. ૧**

**OFFICE OF THE COMMISSIONER OF CUSTOMS,  
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)  
Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	File No.	S/10-78/Adjn/2013-14
B	Order-in-Original No.	KDL/COMMR/PVRR/24/2014-15
C	Passed by	SHRI P.V.R. REDDY Commissioner of Customs, Kandla.
D	Date of order	31.03.2015
E	Date of issue	06.04.2015
F	SCN No. & Date	DRI/MZU/GRU/INV/02/2012 dated 06.09.2013
G	Noticee/Party/Exporter	M/s. Terapanth Foods Pvt. Ltd., Gandhidham and Shri Babulal Singhvi Director - M/s Terapanth Food Pvt. Ltd., Gandhidham

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,  
O-20, Meghaninagar, New Mental Hospital Compound, Ahmedabad-380 016.”**

3. Appeal shall be filed within three months from the date of communication of this order.

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

**BRIEF FACTS OF THE CASE-**

Intelligence was gathered by the officers of Directorate of Revenue Intelligence (DRI), Goa Regional Unit, that M/s Terapanth Foods Limited, Maitri Bhawan, Plot No. 18, Sector- 8, Gandhidham-Kutch, Gujarat-370 201, having IEC3700000561 [hereinafter referred to as 'M/s TFL'], were evading Customs export duty by undervaluing their shipments of Iron Ore Fines exported through various ports in India. The Intelligence suggested that as the Customs duty on the export of iron ore is levied on *ad valorem* basis on the FOB (Free on Board) value of the export consignments, M/s TFL under-invoiced their shipments of iron ore and declared lower FOB price to Customs authorities so as to evade payment of appropriate export duty of Customs. It was also gathered that with mutual understanding, a difference of US\$ 10 per dry metric ton between the actually negotiated FOB price of iron ore consignments and the under-invoiced value, that was not disclosed to the Customs authorities at the time of assessment of the duty, was paid by the overseas buyer, directly to the bank accounts situated in outside countries, that were said to be held by commission agents of M/s TFL.

2 Discreet enquiries conducted by the officers of DRI pursuant to the above intelligence, revealed that—

- i. M/s TFL were involved in trading of commodities such as Salt, Iron Ore, Castor Oil;
- ii. M/s TFL has been exporting iron ore to the overseas buyers namely M/s Express Well International Ltd., Hong Kong, M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore, etc. from Indian Ports like Goa, Kandla, Kakinada, Krishnapatnam (Nellore) etc.;
- iii. In some of the iron ore fines shipments exported, with mutual arrangements with their overseas buyers, M/s TFL had under-invoiced their shipments to an extent of an amount paid as 'commission' and/ or 'vessel freight charter arranging charges' to their overseas agent/s, which was usually US\$ 10 per dry metric ton;
- iv. This amount of US\$ 10 per dry metric ton — an integral part of the actual FOB price negotiated with the buyer(s) as a total consideration for the export cargo and hence payable to M/s TFL— was instead paid by the overseas buyer(s) directly in to foreign bank accounts, said to be held by commission agents of M/s TFL;
- v. In addition to some other persons, Shri Babulal Singhvi and Shri Mukesh Singhvi are Directors in M/s TFL;

- vi. Shri Babulal Singhvi was also Director of M/s The Kutch Salt and Allied Industries Ltd., M/s Friends Salt Works and Allied Industries, Gandhidham, which were other group companies dealing in export of iron ore and other commodities. In addition, he was also a Director or Partner in several other companies belonging to the same group;
- vii. Shri Babulal Singhvi was looking after all the negotiations and the entire work of export of iron ore from all the group companies; And
- viii. Shri Suresh Bhagia was preparing all the documents relating to the export of iron ore and was communicating with the buyers and local sellers in connection with the export/ purchase of iron ore by M/s TFL.

3 The office premises of M/s TFL situated at Maitri Bhawan, Plot No. 18, Sector-8, Gandhidham-Kutch, Gujarat, were searched on 26.06.2012, by the officers of DRI, Goa Regional Unit, with assistance from the officers of DRI, Gandhidham Regional Unit, Kutch, Gujarat, under the provisions of Section 105 of the Customs Act, 1962. The search resulted in seizure and recovery of certain incriminating documents and electronic storage devices pertaining to the export of iron ore by M/s TFL, the details of which are as per Panchanama dated 26.06.2012 and the same were taken over for the purpose of further investigation.

4 During the course of search of the office premises of M/s TFL, a case of short levy of Customs duty in respect of Shipping Bill Nos. 8410415 and 8412947, both dated 10.04.2012, pertaining to export of iron ore fines by M/s TFL to M/s Express Well International Ltd., Hong Kong, was also noticed. The customs duty payment Challan Nos. 02/11.04.2012 and 04/11.04.2012 recovered during the said search showed that the export duty on the above shipments was paid @ 20% *ad valorem*, while the effective rate of duty at the relevant time was 30% *ad valorem*. The export documents pertaining to the Shipping Bill Nos. 8410415 and 8412947, both dated 10.04.2012, were taken over for further investigation into the short payment of Customs export duty in respect of the said shipments and to examine the possibility of such short payments that might have been made in respect of other similar shipments.

5 This Show Cause Notice covers under-valuation and short levy of export customs duty in respect of exports of iron ore made by M/s TFL through Kandla Port only. Similar irregularities noticed in respect of exports of iron ore made by M/s TFL through Krishnapatnam Port is being dealt separately. Accordingly, statements and other evidences have been extracted/reproduced/discussed hereinafter are in relation to exports of iron ore through Kandla Port only.

## 6 STATEMENTS:

Statements of the persons concerned including Shri Babulal Singhvi, Director of M/s TFL, were recorded under the provisions of Section 108 of the Customs Act, 1962, to bring on record the mechanism of undervaluation or under-invoicing adopted by M/s TFL. Shri Babulal Singhvi, in his statements categorically admitted the undervaluation in respect of iron ore shipments exported by M/s TFL per Vessels M.V. Equinox Dawn and M.V. Diamond Star, through Kandla Port. The gist of the statements of the key persons of M/s TFL, relevant to the export of iron ore fines through Kandla Port are reproduced as under—

6.1 Statement of Shri Babulal Singhvi, Director of M/s Terapanth Foods Ltd., Gandhidham, was recorded at the office of the DRI, Gandhidham Regional Unit, under the provisions of Section 108 of the Customs Act, 1962, on 27.06.2012, wherein he *inter alia* stated that They generally decide the price of the commodity depending upon the open market price, taking into consideration their purchase price, cost of transportation to ports, storage and handling, loading into the vessels and other expenses; that usually the price was within the range of US\$ 10-15 of the price reflected in the Indices such as My-steel, U-Metal, Platts Index etc. which maintain the pricing pattern for iron ore; that they were paying the duty on FOB basis and no part of the FOB price such as transportation/loading or duty amount was being recovered by them separately from the overseas buyers besides the price as agreed upon in the contract; that they have not received any commission, or any facilitation charges from the overseas buyers of iron ore in the bank accounts held by them individually or in the name of the company in India or outside India; that they have not advised any of their overseas buyers of iron ore to pay commission or facilitation charges on their behalf to any company/agency in any bank accounts in India or abroad; that they have not received any export proceeds in any other bank account other than the designated banks; that they have not received any payment from any of the overseas companies in any of their companies' or in any of the personal accounts other than the export proceeds of the commodities exported by them; that as far as his knowledge, they have not maintained any overseas bank account; that they have exported iron ore from ports such as Krishnapatnam, Mangalore, Belikeri, Goa, Kakinada, Kandla and Karwar.

6.2 Further Statement of Shri Babulal Singhvi, Director of M/s Terapanth Foods Ltd., Gandhidham, was recorded at DRI, Goa Regional Unit, under the provisions of Section 108 of the Customs Act, 1962, on 21.11.2012, wherein he *inter alia* stated that he was partner/director of the following companies namely: 1)M/s Terapanth Foods Ltd. 2) M/s The Kutch Salt and Allied Industries Ltd. 3) M/s Gautham Freight Ltd. 4) M/s Friends Salt and Allied Industries Ltd. 5) M/s Nidhi Mining Pvt. Ltd.; that he does not have any overseas company; that Shri Suresh Bhagia prepares documents related to the iron ore export as per his directions; that he tries to ascertain the rate of iron ore and then negotiates with the buyer.

Sometimes the rate agreed upon between him and the buyer could be lower or higher than the market price or My-Steel Index price.

6.3 On seeing the contract No. 1000/ZIRO/14001844/2012 entered between M/s Terapanth Foods Ltd. and M/s Swiss Singapore Overseas Enterprises Pte. Ltd., wherein the price is US\$ 139.50 PDMT and the related final invoice No.TFL/Iron/EXP/001-Final, dated 25.11.2011, wherein the price PDMT is US\$ 133.50 CFR, he said that as per the provisions of Para 4 of the contract, the final invoice has been made @ US\$ 133.50 PDMT, in view of the cargo grade having been reported as 'Fe' 58/59 percent;

6.4 Further statement of Shri Babulal Singhvi, Director of M/s Terapanth Foods Ltd., Gandhidham, was recorded at DRI, Goa Regional Unit, under the provisions of Section 108 of the Customs Act, 1962, on 03.01.2013, wherein he *inter alia* stated that they have exported iron ore consignments to the overseas buyer M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore, as per the following details:

Sr. No.	Name of the vessel	Quantity (WMT)	Shipping Bill No.	S/B date	'Fe' %	Unit Price(US\$)
1.	M.V. Diamond Star	27500	5599529	27.09.2011	58	139.50 (US\$ 120 reduced price)
2.	M.V. Equinox Dawn	49201	4696772	25.07.2011	60	139.50(133.50)

6.5 He further stated that they have exported 27500 WMT (25146 DMT) iron ore cargo on account of M/s Terapanth Foods Ltd., vide vessel M.V. Diamond Star; that they have negotiated and agreed upon the price of US\$ 149.50 Per Dry Metric Ton (PDMT) CFR, for the entire export cargo, but at the time of signing the contract the price was reduced by US\$ 10.00 PDMT as this amount was to be paid as the commission to their agents through whom they have got the export order; that the contract Nos. 1000/ZIRO/14002155/2012 dated 13.09.2011, was prepared showing export price of US\$ 139.50 (CFR) PDMT; that in that particular transaction, the buyer alleged certain discrepancy in the cargo documents and payment was held up; that they had to release discount of US\$ 19.50 PDMT which was in effect extracted from them by the buyer on the excuse of unsubstantiated reasons, by holding up the LC documents and stopping the payment; that they learnt that all this was done because the final buyer had refused to pick up the cargo at the pre-settled rate due to sudden market crash; that the final payment received from the overseas buyer M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore was @ US\$ 120 (CFR) PDMT though they were supposed to have been paid @ US\$ 139.50 (CFR) PDMT; that they had to issue the Credit Note/s bearing No.TFL/IRON/EXP/002-CN dated 01.11.2011, for the balance amount; that he had submitted the said credit notes and the communication about the holding up of LC payment (10 pages); that they have exported 49201 WMT (46932.83 DMT) iron ore cargo on account of M/s Terapanth Foods Ltd. vide vessel M.V. Equinox Dawn; that they had negotiated a price of US\$ 149.50 per dry Metric Ton PDMT (CFR) with the overseas buyer but the contract No. 1000/ZIRO/14001844/2012 dated 05.07.2011, was entered @ price of US\$ 139.50

(CFR) PDMT by reducing the commission amount of US\$ 10.00 PDMT as that amount was to be paid as the commission to their agents; that however, even in this case they had received the export remittance as per the US\$ 133.50 PDMT as the 'Fe' grade was found to be 58.74 % (as per the CIQ test report). As per Para 4 of the contract, if the iron ore cargo was below 59% Fe, then the cargo was to be treated as 59/58 grade and the base price was to be reduced to US\$ 133.50 PDMT (CFR); that in no other cases of export of Iron ore, the export value has been under-invoiced; that in case of export of iron ore on board the vessels M.V. Equinox Dawn and M.V. Diamond Star, the export value was declared only by reducing the commission paid to their overseas agent for getting them export order at good rate; that as per the agreement with their agents, such commission was to be paid in their designated overseas bank accounts against the export orders received through them; that such payments were made by the buyer on their advice in the designated bank accounts of their agents viz. M/s Reliance Shipping and Trading Limited, Hong Kong and M/s Amkey Company Limited, Hong Kong, either as 'Freight Charter Arrangement Charges' or as 'Commission'.

6.6 He admitted that these commissions were not declared to the Customs and the value declared to the customs was reduced to the extent of commissions paid to these overseas agents; that if any export duty liable to be paid on these commissions, they were ready to pay the same.

6.7 Further statement of Shri Babulal Singhvi, Director of M/s Terapanth Foods Ltd., Gandhidham, was recorded at DRI, Goa Regional Unit, under the provisions of Section 108 of the Customs Act, 1962, on 04.01.2013, wherein he confirmed the statement given by him on 03.01.2013 and also submitted photo copies of the relevant export documents of their export shipments, from various ports of India

6.8 Statement of Shri Suresh Bhagia was recorded at DRI, Goa Regional Unit, under the provisions of Section 108 of Customs Act, 1962, on 21.11.2012, wherein he *inter alia* stated that Friends group of companies consists of M/s Terapanth Foods Ltd., M/s Friends Salt Works & Allied Industries, M/s Friends and Friends Shipping Pvt. Ltd., M/s Kutch Salt and Allied Industries and other companies, names of which he was not able to remember; that as a computer operator, he used to handle documentation, correspondence, typing of some drafts of imports, exports and other miscellaneous things; that from the year 1994 to 2002, he used to report to Shri Tribhuvan Singhvi and after that to Shri Babulal Singhvi; that in the year 2006, he has resigned from the company and continued to give services to the company as an advocate; that from the year 2003 onwards, he used to handle mainly documentation of exports of Salt and Iron Ore; that salt was exported from Kandla Port and Iron Ore was exported from various ports; that all the negotiations of purchase of iron ore and sale were done by Shri Babulal Singhvi; that all the communication of sending/receiving of contracts or any of the documents was done via emails; that he used to communicate on [tfl@friendsgroupindia.com](mailto:tfl@friendsgroupindia.com) and same email was also used by Mrs. Ancy, Mr. Pradeep and Mr. Anwar; that he has accessed

his email account suresh\_bhagya@hotmail.com and three copies of contracts which were there as attachments i.e., Contract No. Baoye-Friends/002/2009-10 dated 24.11.2009, Contract No. TFL/WRL/003/2006 dated 19.12.2006 and contract No. FSW/WRL/002/2006 dated 18.08.2006, were retrieved. He had put his dated signature on the same as a token of having seen the same; that he has also opened his other email accounts i.e., suresh\_bhagya\_007@hotmail.com, suresh\_bhagya\_007@yahoo.com and suresh.bhagya1972@gmail.com; that he used to inform about all the exports related emails to Shri Babulal Singhvi and Shri Babulal Singhvi used to take a decision and direct him accordingly; that he sometimes used to sign the contracts, invoices other related documents pertaining to the exports; that he has accessed his email account tfl@friendsgroupindia.com and print out of email dated 19.11.2012 received from Manish Jain along with the attachments of freight invoices for vessels MV African Blue Crane, MV Agios Nektarios. MV Alcyone, MV Ariston, MV Moondance-II, MV Ocean Ranger and MV Oriental Key, MV Yong Fa Men were taken. He had put his dated signature on the same in token of having seen; that he had requested Shri Manish Jain of M/s Starcam Maritime PTE Ltd. to send the original invoices of freight. However, he has emailed him the said invoices; that he will submit the original freight invoices raised by M/s Starcam Maritime PTE Ltd. by 26.11.2012.

6.9 Statement of Shri Arvind V. Joshi, Partner of M/s A.V. Joshi and Company, Gandhidham (Customs House Agent), was recorded at DRI, Gandhidham Regional Unit on 02.07.2012, wherein he *inter alia* stated that M/s Arvind Joshi & Company is engaged in business of customs clearing work. They were clearing the export and import goods from customs port Kandla. He was aware of the Customs rules and procedures and duties of Clearing Agent; that other partners of said company were Shri Y.V. Joshi and Shri Mahesh A. Joshi. The CHA License No. of the said firm is AABFA6236DCH001; that their main Customers are: 1) M/s The Kutch Salt and Allied Industries Ltd. 2) M/s Terapanth Foods Limited, 3) M/s Friends & Friends Shipping Pvt. Ltd. and 4) M/s Kandla Export Corporation; that M/s Terapanth Foods Limited and M/s The Kutch Salt and Allied Industries Ltd. are engaged in the export of Iron Ore business; that the partners of M/s Terapanth Foods Limited are S/Shri Babulal Singhvi, Sukhraj, Tribhuvan, Ashok, Ramesh, Harsindhu, Pravin, Pankaj and Mukesh.

6.10 On being asked, he produced the Shipping Bill No. 8412947 dated 10.04.2012 and S/ Bill No. 8410415 dated 10.04.2012, filed by them on behalf of M/s Terapanth Foods Limited, Gandhidham, on or after 01.01.2012. The description of export goods in the said Shipping Bills was shown as Iron Ore Fines covered under RITC/CTH 26011130.

6.11 He stated that Shri Babulal Singhvi (Mob. No. 9825226015) contacted them for the clearance of the consignment exported by M/s Terapanth Foods Limited, Gandhidham, covered under the above said Shipping Bills; that the total duty amount

of Rs.2,09,90,754/-@ of 20% on FOB value (without Cess) has been paid by them for the said export consignments covered under Shipping Bill No. 8412947 dated 10.04.2012 and S/Bill No. 8410415 dated 10.04.2012 and the total amount of duty paid by them including Cess is Rs.2,10,16,179/-; that the rate of customs duty for the export of Iron Ore covered under RITC/CTH 26011130 is 30% on FOB value as per Notification No. 129/2011, dated 30.12.2011; that due to confusion in interpretation of rate of duty vide above said notification, it was not understandable whether the duty was applicable or was omitted for export. However, to be on safer side, they had paid duty @ 20% applicable as per old Notification No. 27/2011, dated 01.03.2011.

6.12 On being shown the Shipping Bill Nos. 8412947 & 8410415, both dated 10.04.2012 and the duty paid bank Challan Nos. 02 & 04, both dated 11.04.2012, he confirmed that duty was paid @ 20% however it attracts duty @ 30% and also clarified that his intention as CHA or the intention of the exporters was not to evade Customs duty. It happened due to confusion of language of Notification. The Shipping Bills were assessed through EDI system, so neither him nor his staff noticed the mistake and paid duty in old rate i.e., @ 20%. But, after the search of the company premises by DRI officers, he discussed the matter with both the exporters and they were ready to pay differential Customs duty; that they had not exported the iron ore by paying the export duty @ 20% through any other ports in India except Kandla; that after the consultation with the experts and the officers of the DRI at the time of search, he was convinced that the Rate of duty on the export of iron ore would be @ 30% as per the Second Schedule of Export Tariff; that he had submitted the demand draft bearing Nos. 638592,638593, 638594 and 638595, all dated 28.06.2012, in connection with the differential duty payable on said exports.

6.13 Another statement of Shri Arvind V. Joshi, Partner of M/s A.V. Joshi and Co., was recorded at DRI, Goa Regional Unit, on 02.04.2013, wherein he *inter alia* stated that he is a Director in M/s Terapanth Foods Ltd., Kutch, M/s Friends & Friends Shipping Pvt. Ltd., M/s Friends Oil and Chemical Terminals Pvt. Ltd., M/s Gautam Freight Pvt. Ltd. and also a Partner in M/s Friends Oil and Chemical Terminal, Kutch, M/s Friends Mercantile Pvt. Ltd., M/s Friends Salt Works and Allied Industries Ltd., Kutch; that M/s Gautam Freight Pvt. Ltd. looked after stevedoring work for M/s A.V. Joshi and Company Limited; that they have no agreement with M/s Gautam Freight Pvt. Ltd. for the work outsourced to them by M/s A.V. Joshi and Company Limited. As he was also a Director in M/s Gautam Freight Pvt. Ltd., they never felt the need to go for a contract; that whenever M/s Gautam Freight Pvt. Ltd. had worked for them, they used to make payments for the same; that as a CHA, his customers are: 1) M/s Terapanth Foods Ltd. 2) M/s The Kutch Salt and Allied Industries Ltd. 3) M/s Friends Salt Works and Allied Industries (Partnership Firm) 4) M/s Kandla Export Corporation 5) M/s Friends Mercantile Pvt. Ltd. and a few other companies; that on the basis of contract given to them by the exporters, they prepared provisional invoice for filing of S/B, then they filed the S/B in customs; that at the time of shipment, shipper provides addendum to the contract if there are any changes

in the contract and thereafter they get the amendment carried out in the Shipping Bill from the Customs Authorities; that after the shipment, they submit copies of amendment of S/B, exchange control copy of S/B, provisional invoice and short shipment, if any, to the shipper; that as a CHA, they have worked for the iron ore exporters namely M/s Terapanth Foods Limited and M/s The Kutch Salt and Allied Industries Limited; that they were not involved in the negotiations of the price or finalization of the contract and were only looking after the CHA related work of the said companies; that being a director of M/s Terapanth Foods Limited, if any act of mis-declaration or undervaluation has been done by the said company, then the total responsibility lies with the directors of the company; that there is mutual understanding between the partners that everyone will do their allotted work and in the business of iron ore Shri Babulal Singhvi was the sole person who looked after all the work including the negotiations of the price and finalization of the contract/s etc.; that as a CHA, he was aware of Customs formalities, duties and procedures; that in cases of exports done by M/s Terapanth Foods Limited (S/B 8412947/10.04.2012, 8410415/10.04.2012) per vessel M.V.AMAMI K, the exporter had paid Customs duty @ 20% instead of 30%; that in the said shipments, as a CHA they have filed Shipping Bills as detailed above, but as the Shipping Bills were assessed through the EDI system, the same was not accepting duty on export of iron ore fines and showing only 'NIL' rate of duty; that therefore, they had paid the export duty manually on iron ore shipment as per the old rate (@20 %). In view of EDI showing 'NIL' rate of duty, even customs officials were confused about the interpretation of the Notification No. 129/2011 dated 30.12.2011 and they were told to pay, to be on the safer side, the export duty as per the old Notification No.27/2011 dated 01.03.2011.

6.14 He admitted that due to mis-interpretation of the Notification, they have paid duty as per the old rate i.e., @ 20%; that neither the exporter nor the CHA had any intentions of evading any duty; that therefore, they had promptly paid the differential duty (i.e., @ 10%), as soon as the same was brought to their notice by DRI officers during the course of search proceedings; that as CHA, they have attended to the exports of Iron Ore made by M/s Terapanth Foods Limited, vide the following Shipping Bills at Kandla Port—

Sr. No.	Name of the vessel	S/B No.	S/B date
1.	M.V. Diamond Star	5599529	27.09.2011
2.	M.V. Equinox Dawn	4696772	25.07.2011
		3508730	03.05.2011
4.	M.V. Amami K	8412947	10.04.2012
		8410415	10.04.2012

6.15 He further added that all the above mentioned Shipping Bills were provisionally assessed and till date they were not finalized; that they have not been handling or handled CHA work of any other iron ore exporters than the companies of Friends Group. He also added that they have not handled CHA work at any other Port in the country other than at Kandla Port; that M/s A.V. Joshi & Company Limited are operating Bank Account/s of Punjab National Bank (A/c No. 0190008700003909),

HDFC (02162320003394), and State Bank of Bikaner & Jaipur (A/c No.51021360017); that the letter forwarded by them to the Asstt. Commissioner of Customs, Kandla, wherein they have informed about the amendment in the name of the vessel from MV HYOK SIN2 to MV Equinox Dawn has been shown and he put his dated signature on it, in token of having seen the same and to confirm the same.

6.16 On being shown the statement dated 03.01.2013 of Shri Babulal Singhvi he read the same and as a CHA he added that in the export shipment per vessel M.V. Equinox Dawn, the S/B No. 3508730 dated 03.05.2011 has not been mentioned.; that for the export shipment per vessel M.V. Equinox Dawn, two Shipping Bills bearing Nos. 4696772/25.07.2011 and 3508730 dated 03.05.2011, were filed by them on the behalf of Exporter M/s Terapanth Foods Limited.

7 The matter relating to short payment of export duty by M/s TFL in respect of Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, resulting in outright evasion of 10% *ad valorem* duty on the FOB value of iron ore shipments, was initially investigated by DRI, Gandhidham Regional Unit. However, in view of the fact that DRI, Goa Regional Unit, was already investigating a case of undervaluation in the export of iron ore made from various ports in India by M/s TFL, the Regional unit of DRI, Gandhidham, forwarded all the documents relating to the short payment of export duty by M/s TFL in respect of Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, so that the impugned shipments may also be simultaneously investigated from the angle of undervaluation and the issue of short levy may be incorporated in the Show Cause Notice to be issued to the exporter.

7.1 The Tariff rate of Customs Duty on export of iron ore was @ 30% *ad valorem* w.e.f. 01.03.2011. However, by virtue of exemption Notification No. 27/2011-Customs, dated 01.03.2011, the effective rate of duty leviable on export of iron ore was reduced to 20% *ad valorem*. The said exemption was withdrawn w.e.f. 30.12.2011, vide Notification No. 129/2011-Cus. dated 30.12.2011. As such, the effective rate of duty on the export of iron ore because 30% *ad valorem* (equal to tariff rate) with effect from 30.12.2011. Whereas, M/s TFL had paid customs (export) duty @ 20% *ad valorem* on the goods exported by them vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, resulting in outright short payment of Customs (export) duty by 10% *ad valorem* on the FOB value of the said iron ore shipments. Therefore, M/s TFL is liable to pay differential duty on the iron ore shipments exported by them vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, the details of which are as shown at Sr. No. 3 of the 'Annexure-A' to this Notice. The actual differential duty liability of M/s TFL in respect of these two shipping bills is calculated after considering the discharge port test report as well as penalty, bonus (as per the contract) and short or excess shipments, if any.

7.2 Subsequent to investigations initiated by DRI, Goa Regional Unit, M/s TFL admitted short levy of customs (export) duty in respect of the iron ore

shipments exported by them vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012 and have voluntarily deposited certain amounts towards their differential duty and interest liability. The details of the payments of duty and interest made by the exporter M/s TFL are as under—

Sr. No.	Challan No. and date	Particulars	S/B No. and date	Amount Paid (Rs.)
1	11 / 03.07.2012	Differential liability Duty	8410415/ 10.04.12	92,87,944/-
			8412947/ 10.04.12	12,07,434/-
Total				1,04,95,378/-
2	12 / 03.07.2012	Interest on differential duty	8410415/ 10.04.12	3,20,625/-
			8412947/ 10.04.12	41,682
Total				3,62,307/-

8.1 Scrutiny of the export documents during the course of investigation and examination of a few documents contained in the electronic storage devices, taken over under Panchnama dated 26.06.2012 from the office premises of M/s TFL revealed that M/s TFL had undervalued the iron ore fines cargo exported by them per vessels M.V. Equinox Dawn and M.V. Diamond Star. The following table shows the details of iron ore fines exported by M/s TFL vide aforementioned Vessels—

Sr. No.	Name of the Vessel	S/B No. & Date	Quantity (DMT*)	Declared Unit Price (CFR) US\$/DMT
1.	M.V. Diamond Star	5599529/ 27.09.2011,	25125.30	139.50
2.	M.V. Equinox Dawn	4696772/ 25.07.2011	21196.89	139.50
		3508730/ 03.05.2011	25774.20	

\*DMT = Dry Metric Ton

8.2 The investigation into undervaluation of iron ore shipments exported by M/s TFL vide above mentioned Shipping Bills revealed deliberate mis-statement and suppression of facts on part of the exporter, who was actively involved in under-invoicing and outright mis-declaration of the value of export goods, with an intention to evade appropriate export duty leviable on *ad valorem* basis on such goods.

8.3 The valuation of export goods under the Customs Act, 1962, is governed by the provisions of Section 14 *ibid*, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [hereinafter referred as 'CVR (E), 2007']. As per the provisions of Section 14 of the Customs Act, 1962, the value of export goods shall be the 'transaction value' of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation i.e., the FOB price. As such, the sum total of price paid by the overseas buyer for delivery at the time and place of exportation would be the 'transaction value' of such goods.

8.4 Further, for the purpose of charging export duty, the value to be considered is the FOB price. This is so because, the terms "*for export from India for delivery at the time and place of exportation*" appearing in Section 14 of the Customs

Act, 1962, means to FOB (Free on Board) value only. This has been clarified also by the Central Board of Excise and Customs (CBEC) vide Circular No. 18/2008, dated 10.11.2008, wherein it stated that in case of iron ore shipments, *for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.*

8.5 In the instant case, M/s TFL negotiated and finalized certain price with their overseas buyer, but entered into contract showing the sale price of export goods lower than the amount actually paid by the buyer as consideration for the export goods. A portion of amount (representing the amount of commission) paid by the overseas buyer towards the export has been excluded from the price declared to Indian customs. The amount excluded from the declared transaction value could not be assessed to duty as the same was not declared to the Customs. The balance amount not shown in the contracts and invoices was used by mutual agreement of the buyer and the seller to set-off some other liability of the exporter i.e., M/s TFL.

The shipping bill wise instances of such transactions and the actual FOB value negotiated by M/s TFL are tabulated as under—

Sr. No.	Port of Export (Name of the vessel)	Shipping Bill No. and date	Qty. of iron ore exported as per Final Invoice		CFR Value (unit price) finalized with buyer (US\$ PDMT)	CFR Value (unit price) Declared to Customs (US\$ PDMT)	Rate of Exchange	Total CFR Value of export cargo (INR)	Total Freight of the export cargo (INR)	Actual FOB Value (INR)
			WMT	DMT						
1	2	3	4	5	6	7	8	9=(5*6*8)	10	11=(9-10)
1	Kandla (M.V. Diamond Star)	5599529/ 27.09.11	27507	25125	149.5	139.5	45.75	171847630	22646250	149201380
2	Kandla (M.V. Equinox Dawn)	4696772/ 25.07.11	24000	21197	143.5	139.5	44.7	135966410	19739520	116226890
		3508730/ 03.05.11	27000	25774	143.5	139.5	44.15	163293088	22075000	141218088

8.6 The FOB value in the above table has been calculated on the basis of actual negotiated price and includes the portion of that amount which was excluded from the declared value and was paid as commission. The actual differential duty liability of M/s TFL on this FOB value in each case is calculated after considering the test report as well as penalty, bonus (as per the contract) and short or excess shipments, if any and shown at Sr. No. 1 & 2 of the 'Annexure-A' to this Notice.

8.7 The facts and circumstances leading to such duty evasion by the exporter and the relevant factors in arriving at the differential duty liability are discussed as under—

8.7.1 **Shipping Bill No. 5599529 dated 27.09.2011:**

- i. In case of export of iron ore vide Shipping Bill No. 5599529 dated 27.09.2011, the exporter M/s TFL had negotiated and finalized the unit price of impugned export goods as US\$ 149.5 PDMT (Per Dry Metric Ton) on CFR basis. However, it was mutually agreed to pay US\$ 10.00 PDMT as commission to their overseas agents in Singapore. Accordingly, M/s TFL signed Contract No. 1000/ZIRO/14002155/2012 dated 13.09.2011, with their overseas buyer by reducing the transaction value to unit price of US\$ 139.50 PDMT i.e., lesser by US\$ 10 PDMT than the finalized price. The invoice was also prepared accordingly showing the transaction value lesser by US\$ 10 PDMT than the actual price (CFR) at which the transaction in fact had taken place. This commission amount of US\$ 10 PDMT which also forms the part of the price of the export goods, was never disclosed to the Customs and the amount shown as sale price in the contract i.e., US\$ 139.50 PDMT (CFR), was mis-represented as the Transaction Value, instead of the Actual Transaction value of US\$ 149.50 PDMT (CFR), being paid by the overseas buyer. It is an admitted fact by M/s TFL that out of the actual transaction value of US\$ 149.50 PDMT (CFR), an amount of US\$ 139.50 PDMT was payable to M/s TFL directly in India and US\$ 10 PDMT was to be paid to their overseas agent outside India. This differential value of US\$ 10 PDMT was liable for an appropriate duty leviable at the relevant time, but could not be charged to duty owing to suppression of actual transaction value by the exporter. This mis-representation was further supported by under invoicing the export goods and issuing the invoices showing the value of goods as only US\$ 139.50 PDMT (CFR) and not the actual transaction value of US\$ 149.50 PDMT (CFR). Therefore, US\$ 10 PDMT, being the balance amount of the actual transaction value that was not included in the declared value for calculation of export duty during the relevant time, needs to be taken in to account for the purpose of assessment of customs export duty at appropriate rate. Hence, the value declared by M/s TFL to Customs in respect of S/B No.5599529 dated 27.09.2011, as transaction value is liable to be rejected and the export goods are to be valued at their Actual Transaction Value in terms of provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of CVR (E), 2007.
- ii. Accordingly, the transaction value on FOB basis in this case has to be arrived at by adding the amount of US\$ 10 PDMT to the declared value and by excluding the total freight from the CFR value of the shipment. At the time of assessment of the said Shipping Bill No. 5599529 dated 27.09.2011, the actual freight in full i.e., US\$ 4,95,000.00 has already been excluded/deducted from the declared CFR price i.e., US\$ 139.50 PDMT to arrive at FOB price of export goods and duty has been charged accordingly. However, the unit price of US\$ 149.50 PDMT was the actual price on CFR

basis at which the goods were in fact sold to overseas buyer. Since the duty has already been paid on the declared FOB value of US\$ 139.50 PDMT (CFR), the differential amount of US\$ 10 PDMT is liable to duty as applicable at the time of export.

- iii. Shri Babulal Singhvi, Director of M/s TFL, has submitted in his statement dated 03.01.2013, that they had to subsequently issue a Credit Note dated 01.11.2011 for US\$ 19.50 PDMT, in view of some alleged discrepancy in the cargo shipped by them to M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore.
- iv. As a matter of fact, the contract for the sale of the iron ore fines cargo was entered between M/s TFL and the buyer on 13.09.2011 showing the CFR value of US\$ 139.5 PDMT and totally suppressing the commission of US\$ 10 PDMT. The Invoice No. TFL/EXP/11-12/05 for US\$ 139.5 was raised on 20.09.2011. The vessel laden with the export cargo was set on sail on 10.10.2011, as evident from the Bill of Lading No.D-STAR/001. The Credit Note for reduction of the value of the cargo was issued on 01.11.2011 and amendment to the Contract dated 13.09.2011 was effected on 08.11.2011, making the CFR price of US\$ 120 PDMT effective retrospectively. Interestingly, neither Shri Babulal Singhvi, nor the amendment to the contract effected on 08.11.2011 have thrown any light on the facts and circumstances for which the price originally agreed upon was drastically lowered. Further, unlike the Contract No. 1000/ZIRO/14001844/2012 dated 05.07.2011, entered by the same exporter with the same buyer in case of Shipping Bill Nos. 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, wherein there was a inbuilt clause within the contract outlining the circumstances for reducing the base price, the contract dated 13.09.2011 in the present case, there was no such provision. Changing of the major clause of a contract without plausible reason, that too after a month after the acts were performed as per the original contract, is neither in consonance with the law or international practice. Also, considering the outright suppression of the commission paid to foreign agents by M/s TFL and in absence of any valid reasons leading to lowering of the unit CFR price of the iron ore cargo from US\$ 139.5 PDMT to US\$ 120 PDMT, the said contention of Shri Babulal Singhvi, Director of M/s TFL, appears unacceptable.
- v. Thus, the amount of US\$ 10 PDMT that was excluded from the CFR price of US\$ 149.5 PDMT finalized between M/s TFL and his buyer and paid separately as commission, is liable to be included for the purpose of valuation of goods as well as for calculation of differential duty liable to be paid by the Exporter on the said shipment. Accordingly, the differential duty liable to be paid by M/s TFL on the differential amount in respect of export

of impugned goods vide Shipping Bill No. 5599529 dated 27.09.2011, has been worked out and shown at Sr. No.1 of the 'Annexure-A' to this Notice.

**8.7.2 Shipping Bill Nos. 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011:**

- i. In case of export of iron ore vide Shipping Bill Nos. 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, the exporter M/s TFL had negotiated and finalized the unit price of impugned export goods as US\$ 149.5 PDMT (Per Dry Metric Ton) on CFR basis. However, it was mutually agreed to pay US\$ 10.00 PDMT as commission to their overseas agents M/s Amkay Company Limited, Hong Kong. Accordingly, M/s TFL signed Contract No. 1000/ZIRO/14001844/2012 dated 05.07.2011, with their overseas buyer by reducing the transaction value to unit price of US\$ 139.50 PDMT i.e., lesser by US\$ 10 PDMT than the finalized price. The invoice was also prepared accordingly showing the transaction value lesser by US\$ 10 PDMT than the actual price (CFR) at which the transaction in fact had taken place. This commission amount of US\$ 10 PDMT which also forms the part of the price of the export goods, was never disclosed to the Customs and the amount shown as sale price in the contract i.e., US\$ 139.50 PDMT (CFR), was mis-represented as the Transaction Value, instead of the Actual Transaction value of US\$ 149.50 PDMT (CFR), being paid by the overseas buyer.
- ii. Further, the above mentioned unit price of US\$ 149.50 PDMT in this case was subject to Clause 4 of the No. 1000/ZIRO/14001844/2012 dated 05.07.2011, wherein a provision was inserted that "if 'Fe' content is below 59%, then cargo shall be treated as 59/58 grade and the base price shall be reduced to US\$ 133.50 PDMT". The discharge port test report issued by "Entry- Exit Inspection and Quarantine of the People's Republic of China" shows that the 'Fe' grade in this case was 58.74%. As such, the negotiated price in terms with clause 4 of the contract modification would work out to US\$ 133.50 + US\$ 10.00 i.e., US\$ 143.50.
- iii. It is clearly evident from the relevant facts that out of the actual transaction value of US\$ 143.50 PDMT (CFR), an amount of US\$ 133.50 PDMT was payable to M/s TFL directly in India and US\$ 10 PDMT was to be paid to their overseas agent outside India i.e., M/s Amkay Company Limited, Hong Kong. This differential value of US\$ 10 PDMT was liable for an appropriate duty leviable at the relevant time, but could not be charged to duty owing to suppression of actual transaction value by the exporter. This mis-representation was further supported by under-invoicing the export goods and issuing the final invoice showing the value of goods as only US\$ 133.50 PDMT (CFR) and not the actual transaction value of US\$143.50 PDMT (CFR). Therefore, US\$ 10 PDMT, being the balance amount of the actual

transaction value that remained out of the purview of calculation of export duty during the relevant time, needs to be taken in to account for the purpose of assessment of customs (export) duty at appropriate rate. Hence, the value declared by M/s TFL to Customs in respect of Shipping Bill Nos. 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, as transaction value is liable to be rejected and the export goods are to be valued at their Actual Transaction Value in terms of provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of CVR (E), 2007.

- iv. The transaction value on FOB basis in this case has to be arrived at by adding the amount of US\$ 10 PDMT to the value shown in the final invoice and excluding the total freight from the CFR value of the shipment. At the time of assessment of the said Shipping Bill Nos. 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, the actual freight in full i.e., US\$ 4,41,600.00 and US\$ 5,00,000.00, respectively, has already been excluded/deducted from the declared CFR price i.e., US\$ 139.50 PDMT to arrive at FOB price of export goods and duty has been charged accordingly. However, the unit price of US\$ 143.50 PDMT was the actual price on CFR basis at which the goods were in fact sold to overseas buyer. Since the duty has already been paid on declared CFR value of US\$ 139.50 PDMT, the differential amount of US\$ 4 PDMT is liable to duty as applicable at the time of export.
- v. Accordingly, the differential duty liable to be paid by M/s TFL on the actual FOB value in respect of export of impugned goods vide Shipping Bill Nos. 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, has been worked out and shown at Sr. No.2 of the 'Annexure-A' to this Notice.

9 During the course of investigation, the exporter M/s TFL has paid certain amount towards their differential duty liability, interest and penalty if any. The details of such payments are as under—

Sr. No.	Shipping Bill No. & Date	Demand Draft No. & Date	Name of the Bank	Amount Paid (Rs.)	Challan No. & Date
1.	5599529 dtd. 27.09.2011	964469/ 12.02.2013	State Bank of India, Gandhidham.	24,09,205/-	RD 40 dated 19.02.2013
2.	4696772 dtd. 25.07.2011	964470/ 12.02.2013		15,97,175/-	
3.	3508730 dtd. 03.05.2011				

10 A reference vide letter F. No. DRI/MZU/GRU/02/2012, dated 08.03.2013, was made to the Customs Authorities of Kandla Port, requesting to forward the certified copies of the export documents in respect of the Shipping Bill Nos. 8412947 / 10.04.2012, 8410415 / 10.04.2012, 5599529 / 27.09.2011, 4696772 / 25.07.2011 and 3508730 / 03.05.2011. It was also requested to communicate the present status of the said Shipping Bills which were assessed provisionally. The reply received from Kandla Customs vide letter F. No. S/14-21/Exp/2012-13 dated

07.06.2013, revealed that the Shipping Bill Nos. 8412947 / 10.04.2012 and 8410415 / 10.04.2012, were assessed provisionally, subject to pending test reports and they were not yet finalized. Further, the reply furnished vide letter F. No. S/12-21/Exp/2012-13 dated 18.06.2013, revealed that Shipping Bill Nos. 5599529 / 27.09.2011, 4696772 / 25.07.2011 and 3508730 / 03.05.2011, were finally assessed.

10.1 In the event of short levy of Customs duty by reason of collusion, any wilful mis-statement or suppression of facts by the exporter or the agent or employees of the exporter, such duty can be recovered by invoking extended period of five years as provided in Section 28 of the Customs Act, 1962. In case of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, where the assessment is final, it appears that the exporter has knowingly and deliberately mis-declared the transaction value. Hence, the extended period of five years is rightly invocable in all these cases to recover the differential duty as detailed at Sr. No. 1 & 2 of the 'Annexure-A' to this Notice. Further, M/s TFL is also liable to pay interest on their said differential duty liability as per provisions of Section 28 AA of the Customs Act, 1962, at applicable rate.

10.2 In connection with export of iron ore cargo vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, the Assistant Commissioner, Customs House, Kandla, vide letter F. No. S/14-21/Exp/2012-13 dated 07.06.2013, has informed that the assessment of the said Shipping Bills was still provisional and not yet finalized. These shipping bills are required to be finalized in terms with the provisions of Section 18 (2) of the Customs Act, 1962, read with Section 17 *ibid*, along with interest at applicable rates as provided in Section 18 (3) of the Customs Act, 1962, by charging the export duty @ 30% *ad valorem* as detailed at Sr. No. 3 of the 'Annexure-A' to this Notice.

11. From the scrutiny of the documents recovered during the search of the office premises of M/s TFL; examination of the relevant documents found in the electronic storage devices, which were also recovered during the said search and the recorded statements of their CHA and the key persons involved in export of their iron ore shipments from various ports of India, it appeared that—

- i. Shri Babulal Singhvi, Director of M/s TFL, was the person who on behalf of M/s TFL negotiated and finalized the sale price of iron ore fines cargo, exported by M/s TFL to M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore, vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011.
- ii. The Contract No. 1000/ZIRO/14002155/2012 dated 13.09.2011 for the iron ore fines cargo exported vide Shipping Bill No. 5599529 dated 27.09.2011 and the Contract No. 1000/ZIRO/14001844/2012 dated 05.07.2011 for the iron ore fines cargo exported vide Shipping Bill Nos. 4696772 dated 25.07.2011 & 3508730 dated 03.05.2011, signed between the exporter

M/s TFL and the overseas buyer, did not reflect the correct sale price of the export goods;

- iii. The Invoice No. TFL/EXP/11-12/05 dated 20.09.2011 in respect of S/B No. 5599529 dated 27.09.2011, Invoice No. TFL/EXP/11-12/02 dated 25.07.2011 in respect of S/B No.4696772 dated 25.07.2011 and Invoice No. TFL/EXP/11-12/01 dated 02.05.2011 in respect of S/B No. 3508730 dated 03.05.2011, issued by M/s TFL to M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore, also did not reflect the correct value of the goods being exported;
- iv. The value of export goods in these cases was mis-declared by M/s TFL to Customs supported by the above mentioned impugned contracts and invoices resulting in suppression of actual transaction value at the time of assessment of the export goods. As such, the value of export goods in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, was mis-represented to be lower than the actual transaction value, thereby causing evasion of export duty leviable on iron ore shipments exported from Kandla Port;
- v. The value of export goods pertaining to each of the Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, are liable to be rejected and reassessed as per their actual transaction value, by taking into account the amount which was excluded from the declared value at the time of assessment, as brought out in Para 7.5 of this Notice;
- vi. The balance amount not included in the Contracts or Invoices and wilfully suppressed by not declaring to Customs with an intention to misrepresent the transaction value of the export goods, is liable to be assessed to duty at the applicable rate at the relevant time as detailed at Sr. No. 1 & 2 of the 'Annexure-A' to the Show cause Notice and the same is recoverable along with interest at applicable rate;
- vii. The act of under invoicing and mis-declaration of actual transaction value in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, by M/s TFL has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 and consequently M/s TFL have rendered themselves liable to a Penalty under the provisions of 114A of the Customs Act, 1962;
- viii. Shri Babulal Singhvi, Director of M/s TFL, appears to be the person who knowingly or intentionally either made, signed and used or caused to be

made, signed and used, the Contracts for sale of iron ore, invoices and Shipping Bills for export of Iron Ore by M/s TFL, which were incorrect as regards to the value of export goods. The goods covered under Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, contained the declarations made by M/s TFL which were false and incorrect in material particulars relating to the value of the impugned goods. The contracts with the buyer for sale and export of iron ore as well as the export documents submitted to Customs were signed by Shri Suresh Bhagia, as per the direction of Shri Babulal Singhvi. This fact has been admitted by Shri Babulal Singhvi in his statement dated 21.11.2012 that as per his direction Shri Suresh Bhagia used to sign and complete the formalities of documentation, in relation to the iron ore export. Shri Arvind Joshi, director/partner of M/s Terapanth Group Companies, had also stated in his statement dated 02.04.2013 that Shri Babulal Singhvi was the whole and sole person who handled the export of iron ore for M/s TFL. In view of this, it appears that Shri Babulal Singhvi, is the key person who has orchestrated the entire scheme of mis-declaration of value of the export goods, with an intention to evade customs (export) duty. Shri Babulal Singhvi is, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of iron ore by M/s TFL. The act of Shri Babulal Singhvi regarding under invoicing and mis-declaration of actual transaction value in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, by M/s TFL has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, Shri Babulal Singhvi, has rendered himself liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962;

- ix. The short levy of Customs (export) duty in case of export of iron ore by M/s TFL vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, wherein they had paid duty @ 20 % *ad valorem* instead of 30% *ad valorem*, is to be recovered at the time of final assessment of the said Shipping Bills as provided under the provisions of Section 18(2) of the Customs Act, 1962, read with Section 17, *ibid*, as per the details contained at Sr. No. 3 of the 'Annexure-A' to this Notice. M/s TFL is also liable to pay interest on such differential duty from the first date of the month in which the duty was provisionally assessed till the date of payment, under the provisions of Section 18 (3) of the Customs Act, 1962;

## **12 SHOW CAUSE NOTICE-**

12.1 On the basis of above discussed investigation a Show Cause Notice from F. No. DRI/MZU/GRU/INV/02/2012 DATED 06.09.2011 by the Additional Director General, DRI, ZU, Mumbai to M/s Terapanth Foods Limited, Maitri Bhawan, Plot

No.18, Sector- 8, Gandhidham-Kutch, Gujarat-370 201, holding IEC 3700000561, asking them, as to why—

1. The declared value in respect of three (03) iron ore fines shipments exported vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, should not be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (2) *ibid* and Section 14 (1) of the Customs Act, 1962;
2. The value in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, should not be re-determined by taking into account the additional amount of US\$ 10 PDMT in case of each shipment covered by these Shipping Bills as discussed in Para 7.4 to 8 of this notice, under the provisions of Section 14 (1) of the Customs Act, 1962;
3. The differential (export) duty amounting to Rs.39,86,320/- (Rupees Thirty Nine Lakhs Eighty Six Thousand Three Hundred and Twenty only) payable, as calculated and shown at Sr. No. 1 & 2 of the 'Annexure-A' to the Show Cause Notice, in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, should not be demanded and recovered from them in addition to any other amount due from them, by invoking the extended period of limitation available under the provisions of Section 28 of the Customs Act, 1962;
4. The interest on the differential duty of Rs.39,86,320/- in respect of the iron ore fines shipments exported vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, should not be demanded and recovered from them under the provisions of Section 28AA of the Customs Act, 1962;
5. The total amount of Rs.40,06,380/-(Rupees Forty Lakhs Six Thousand Three Hundred and Eighty only) voluntarily deposited by them during the course of investigation, as detailed at Para 8 of this Notice, towards differential duty and interest liability in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, should not be appropriated towards their differential Customs export duty liability, interest and/or penalty if any, as adjudged under the Customs Act, 1962;
6. The three (03) iron ore fines shipments exported vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, should not be held liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962;
7. The Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, wherein the assessment is provisional, should not be assessed *inter alia* finally, by charging the export goods to appropriate duty @ 30% *ad valorem*, under the provisions of Section 18(2) of the Customs Act, 1962, read with Section 17 *ibid*;

8. Subsequent to such final assessment, the differential export duty totally amounting to Rs.1,15,60,439/- (Rupees One Crore Fifteen Lakhs Sixty Thousand Four Hundred and Thirty Nine only) payable in respect of Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, as detailed at Sr. No. 3 of the 'Annexure-A' to this Notice, should not be recovered from them under the provisions of Section 18 (2) (a) of the Customs Act, 1962 and/or the bond executed at the time of the provisional assessment;
9. The interest on the differential duty of Rs.1,15,60,439/- in respect of the iron ore fines exported vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, should not be recovered in accordance with the provisions of Section 18 (3) of the Customs Act, 1962;
10. The total amount of Rs.1,08,57,685/- (Rupees One Crore Eight Lakhs Fifty Seven Thousand Six Hundred and Eighty Five only) voluntarily deposited by them during the course of investigation, as detailed at Para 6.2 of the Show Cause Notice, towards differential duty and interest liability in respect of Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, should not be appropriated towards their differential Customs (export) duty liability, interest and/or penalty if any, as adjudged under the Customs Act, 1962;
11. Penalty in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, should not be imposed on them under the provisions of Section 114A of the Customs Act, 1962 for the reasons aforesaid; And

12.2 Shri Babulal Singhvi, Director of M/s TFL, having residential address as Plot No.99, Sector -2, Gandhidham-Kutch- 370 201, was also called upon to show cause vide a Show Cause Notice F. No. DRI/MZU/GRU/INV/02/2012 DATED 06.09.2011 by the Additional Director General, DRI, ZU, Mumbai, asking them, as to why penalty should not be imposed on him under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962, for his acts of omission and commission by which the iron ore fines cargo exported through Kandla Port vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, were rendered liable to confiscation under the provisions of Section 113 of the Customs Act, 1962.

### **13 PERSONAL HEARING-**

13.1 Personal hearing in the instant case was granted on 08.08.2014 and 05.03.2015.

13.2 On the date of personal hearing held on 05.03.2015, Shri V.M. Doiphode, Advocate and Ms. Padmini Sundaram, Advocate, appeared on behalf of the noticees and reiterated the submissions made in reply to the Show Cause Notice. He has produced a copy of the 10 % commission paid by M/s Reliance Shipping & Trading

Ltd. dated 15.08.2011 and certified that is with reference to the shipment made from Kakinada and not from Kandla. This is not even for commission as evident from the description as it states that 'Vessel Freight Charter Arranging Charges'. There is no other corroborative evidence showing any commission paid in the transaction. As far as the reduction of the price is a fall in the International price and they have re-entered into a new agreement and price is fixed at US \$ 120. Freight should be deducted on actual basis as the assessment is referred. Since Show Cause Notice was issued demanding duty as per the settled legal position. Regarding provisional assessment of 2 S/Bs they have contended they are finally assessed as per the screen shots produced by them and hence extended period cannot be invoked. Regarding 3 S/Bs where extended period is invoked and proposed for confiscation they contended that goods cannot be confiscated in view of the Tribunal decision in the case of K. Kamala Bai V/s CC of C. Ex., Trichy [2005 (186) ELT 459 (Tri.-Chennai)] of and hence there is no question of imposition of any redemption fine. In view of the above, he requested to drop the further proceedings.

**14                    DEFENCE REPLY-**

14.1                Shri V.M. Doiphode, Advocate, on behalf of both the noticee, filed reply to the Show Cause Notice vide a letter dated 22.05.2014.

14.2                In the early part of the reply to the Show Cause Notice, discussion in regard to the allegations in the Show Cause Notice is discussed.

14.3                In the later part of the Show Cause Notice, the advocate to the noticees interalia stated that in respect of Shipping Bill No. 5599529 dtd. 27.9.2011, it is alleged that M/s TFL had negotiated and finalised the unit price of impugned export goods as US \$ 149.5 PDMT (Per Dry Metric Ton) on CFR basis. However, it was mutually agreed to pay US \$ 10.00 PDMT as commission to their overseas agents in Singapore and Contract the Customs and the sale price of US \$ 139.50 PDMT was mis-represented as the transaction value and therefore value declared by M/s. TFL to Customs is liable to be rejected and the export goods are to be valued at their actual transaction value in terms of provisions of Section 14 of the Customs Act, 1962 read with Rule 3 of CVR (E), 2007 by excluding the total freight from the CFR value of the shipment. The actual freight is US \$ 4,95,000/- has already been excluded / deducted from the declared CFR price No.1000/ZIRO/14002155/2012 dtd. 13.9.2011 was signed with their overseas buyer by reducing the transaction value to unit price of US \$ 139.50 PDMT and invoices were also prepared accordingly. The commission amount of US \$ 10 PDMT was not disclosed to the Customs and the sale price of US \$ 139.50 PDMT was mis-represented as the transaction value and therefore value declared by M/s. TFL to Customs is liable to be rejected and the export goods are to be valued at their actual transaction value in terms of provisions of Section 14 of the Customs Act, 1962 read with Rule 3 of CVR (E), 2007 by excluding the total freight from the CFR value of the shipment. The actual freight is US \$ 4,95,000/- has already been

excluded/deducted from the declared CFR price i.e. US \$ 139.50 PDMT to arrive at FOB price; that the credit note for US \$ 19.50 PDMT for reduction of the value of the cargo was issued on 01.11.2011 and amendment to the contract dtd. 13.09.2011 was affected on 08.11.2011 making the CFR price of US \$ 120 PDMT effective retrospectively. Neither Shri Babulal Singhvi, nor the amendment to the contract effected on 08.11.2011 have thrown any light on the facts and circumstances for which the price originally agreed upon was drastically lowered. There was an inbuilt clause within the contract outlining the circumstances for reducing the base price, in contract no. 1000/ZIRO/14001844/2012 dtd. 05.07.2011 and there was no such provision in the contract dtd. 13.9.2011 and therefore the contention regarding lowering of the unit CFR price appears to be unacceptable; that in respect of Shipping Bill No. 4696772 dtd. 25.7.2011 and 3508730 dtd. 3.5.2011, it is alleged that M/s. TFL had negotiated and 'finalised the unit price of impugned export goods as US \$ 149.5 PDMT on CFR basis'. However, it was mutually agreed to pay US \$ 10.00 PDMT as commission to their overseas agents M/s. Amkay Company Ltd., Hong Kong, accordingly M/s TFL signed the contract NO.1000/ZIRO/14001844/2012 dtd. 5.7.2011 with their overseas buyer by reducing the transaction value to unit price of US \$ 139.50 and the invoice was also prepared accordingly. Thus, the commission amount of US \$ 10 PDMT was not disclosed to the Customs. The negotiated price in terms of clause 4 of the contract works out to US \$ 133.50 plus US \$ 10 PDMT i.e. US \$ 143.50. Therefore, the transaction value is proposed to be rejected and value to be arrived at their actual transaction value in terms of Section 14 of the said Act read with Rule 3 of CVR (E), 2007. The actual freight of US \$ 441600/- and US \$ 500000/- have already been excluded / deducted from the declared CFR price; that In para 11, it is alleged that Shri Babulal Singhvi, Director of M/s TFL is the person who knowingly or intentionally mis-declared the value either made, signed and used or caused to be made signed and used the contracts for sale of iron ore, invoices and shipping bills for export of iron ore by M/s TFL which were incorrect as regards to the value of export goods; that In respect of allegation that the payment of US \$ 10 PDMT, as commission to overseas agents was suppressed from the Customs Deptt., the evidence in support cited in the Show Cause Notice is statement dtd. 3.1.2013 of Shri Babulal Singhvi, where Shri Babulal Singhvi has stated that they have negotiated and agreed upon the price of US \$ 149.50 PDMT (CFR) for the export cargo of 27,500 MTs and 49201 MTs exported vide Shipping Bill No.5599529 dtd.27.9.2011 pertaining to contract No. 1000/ZIRO/14002155/2012 dtd. 13.9.2011 showing the export price of US \$ 139.50 (CFR) PDMT and S/B. Nos.4696772/25.7.2011, 3508730/3.5.2011 pertaining to contract dtd. 5.7.2011. In his statement he has stated that no other cases of export of iron ore, the export value has been under invoiced. The commission was paid by the buyer on their advice in the designated bank account of their agents namely M/s Reliance Shipping and Trading Ltd.), Hong Kong and M/s Amkey Company Ltd. Hong Kong either as freight charter arrangement charges or as commission. In para 7.1 of the Show Cause Notice, it is alleged that the scrutiny of the export documents and examination of few documents contained in the Electronic Storage Devices taken over under the panchanama dtd. 26.6.2012 from the office

premises of our clients revealed that M/s TFL had undervalued the iron ore cargo fines exported by them per vessels M.V. Equinox Dawn and M.V. Diamond Star. However, no specific reference to any documents or few documents contained in the Electronic Storage Devices is made; that our clients deny the allegations levelled in the Show Cause Notice regarding undervaluation of export cargo and state that they have correctly paid the export duty, in fact, they have paid excess export duty, as the freight actually paid in respect of 3 shipping bills dtd. 27.9.2011, 25.7.2011 and 3.5.2011 exported vide M.V. Diamond Star and M.V. Equinox Dawn is much more than what was indicated in the shipping bill which will be explained in later para and in respect of two shipping bills both dtd. 10.4.2012, the demand is time barred, as these two shipping bills were finally assessed to duty and the Show Cause Notice is issued on 06.09.2013 beyond the period of one year and freight actually paid is more than indicated in the Shipping Bills ; that M/s TFL is engaged in salt manufacturing, trading and into service industry and mining and iron ore exports. The prices of iron are decided upon by the open market price taking into consideration of purchase price, cost of transportation to port, storage and handling, loading into vessels and other expenses. M/s TFL had paid the duty on the FOB price as mentioned in the contract. The export proceeds are payable at State Bank of Bikaner, Gandhidham. M/s TFL exports from ports like Krishnapatnam, Mangalore, Belikeri, Goa, Kakinada and Kandla. M/s TFL entered into a contract No. 1000IZIRO/14002155/2012 dtd. 13.9.2011 with M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore for export of iron ore fines total 25,000 WMT (+1100/0 seller's option) Fe. 580/0 basis 570/0 Minimum (rejection below 56%) with moisture 10.00 % maximum (free moisture loss at 105 Degree C.), the price was US \$ 139.50 PDMT (CFR) Main Port, China on the basis of 58/57 grade price adjustment was agreed with FE content is over 58 % for each 1% Fe premium should be calculated at US \$ 1.00 PDMT, fractions pro-rata. If Fe content is below 57 % then cargo shall be treated as 57/56 grade and the base price shall be reduced to US \$ 132.50 PDMT CFR, Main Port, China. This contract was subsequently amended vide Amendment no.1 dtd. 3.10.2011 amending clause 2 as under: total 25,000 WMT (+ / - 10 % seller's option), I/O existing and the other terms remaining unchanged. Second amendment on 8.11.2011 amending article 4 as under: US \$ 120 PDMT (CFR), Main Port, China on the basis of 58/57 grade I/O existing and if the Fe content is below 57 % then cargo shall be treated as 57/56 grade and the base price shall be reduced to US \$ 113.00 PDMT CFR, Main Port, China I/O existing all other terms remain unchanged; that M/s TFL informed M/s Swiss Singapore Enterprises Ltd., Singapore withdrawing letter signed by lawyer and confirming that they have agreed to price reduction under the above contract US \$ 120 PDMT. Against this contract they have exported 27500 WMT vide vessel M.V. Diamond Star under Shipping Bill No.5599529 dtd.27.9.2011; that M/s TFL had entered into another contract No.1 OOO/ZIRO/14001844/2012 dtd.5.7.2011 with M/s Swiss Singapore Enterprises Pte. Ltd., Singapore for supply of 48000 WMT (+ or - 10% sellers option) at the price of US \$ 139.50 (CFR) PDMT, Main Port, China. There was a provision of price adjustment, like if Fe contents is over 60% for each 1% Fe premium should be calculated at US \$ 2 PDMT fractions pro-rata. If Fe content is

below 60 % but above and including 59 %, a penalty should be calculated at US \$ 4 PDMT for each 1% of Fe content below 60 % up to 59 % fractions pro rata. If Fe content is below 59 %, then cargo shall be treated as 59/58 grade and the base price shall be reduced to US \$ 133.50. This contract was in respect of Shipping Bill No.4696772 dtd. 25.7.2011 and 3508730 dated 03.05.2011; that it would be seen from both these contracts that the terms of both these contracts dtd. 5.7.2011 and 13.9.2011 are identical and the clause 4 is also identical. The Show Cause Notice in para 7.4 (iv) states that there was an inbuilt clause within the contract dtd. 5.7.2011, but there was no such clause in contract dtd. 13.9.2011 for reducing the base price. This is not factually true, as both the contracts are identical. In the Show Cause Notice in Annexure-A in case of contract dtd. 5.7.2011 and two shipping bills dtd. 3.5.2011 and 27.9.2011, benefit of 6\$ has been given. However, in respect of the contract dtd. 13.9.2011, when the noticee had already given a debit note for US \$ 19.50 PDMT and finally the payment was received from M/s Swiss Singapore Enterprises Ltd., Singapore at US \$ 120 (CFR) PDMT as against initial contract of 139.50 (CFR) PDMT, the transaction value becomes only US \$120 (CFR) PDMT and this is actual amount received by the noticee. Therefore, same should be considered for assessment, if US \$ 120 (CFR) PDMT is considered as export value, there is no short levy, as the noticee has already paid export duty on US \$ 139.50 (CFR) PDMT. There is no short levy in respect of two shipping bills dtd. 3.5.2011 and dtd. 27.9.2011. Further, this contract as stated earlier was amended on 3.10.2011 and 8.11.2011. In the amendment dtd. 8.11.2011, the amendment was that the price of US \$ 120 PDMT (CFR), main port, china on the basis of 58/57 grade I/O existing, when the amendment of contract is genuine, the same has to be accepted. Though, the Show Cause Notice only alleges that changing the major clause of contract without visible change, the reasons could be commercial, and if the noticee had encashed the price of amendment, the customs authority would have asked to pay export duty on higher contract price by way of amendment ; that the Show Cause Notice in para 12.1 (vi) proposes confiscation of 3 consignments exported vide Shipping Bills dtd. 27.9.2011, 25.7.2011 and 3.5.2011, as the goods have been already exported, the goods are not liable to confiscation u/s. 113 of the Customs Act, 1962 as held by Hon'ble Tribunal in the case of K. Kamlabai V/s C.C. Trichi reported in 2005 (186) ELT 459 (Tri-Chennai). Further, as the goods are not available for confiscation, even if it is held that the goods are liable for confiscation, no redemption fine can be imposed as held by the following two judgements: (1) 2009 (235) ELT 623 (Tri.-LB) and (2) 2009 (248) ELT 122 (Bom); that M/s TFL was required to pay freight with reference to cargo wet quantity, but inadvertently while calculating the freight in the shipping bill it was calculated on dry basis quantity in the case of shipments at Kandla. As per the terms of contract regarding freight M/s TFL remitted the actual freight based on the freight invoices raised on them. Therefore, actual freight amount is more than freight shown in the shipping bills, which requires to be deducted to arrive at FOB value.

14.4 It was further stated that regarding the issue of adding US \$ 10 PDMT as commission allegedly paid to the foreign agents on behalf of M/s. TFL by foreign

buyers, we have to submit that Shri Babulal Singhvi in his first statement dtd. 27.6.2012 had categorically stated that they had not advised any of their overseas buyers of iron ore to pay commissions or facilitation charges on their behalf to any company/agency in any bank account in India or abroad. In his second statement recorded on 21.11.2012 nothing is said about paying customs duty. In his 3<sup>rd</sup> statement recorded on 22.11.2012 when he was shown invoices No. RSTUGP/1021 dtd. 15.9.2011 he has seen this invoice for the first time and they have not received any money from this company, there is nothing in the statement about paying US \$ to any foreign agents. In his fourth statement dtd. 03.01.2013 wherein he has stated that they have exported 27500 and 27735 MTs of iron ore cargo and had negotiated and agreed upon the price of US \$149.50 PDMT for the entire export cargo, but at the time of signing the contract this price was reduced by US \$ 10 PDMT, as this amount was to be paid as the commission to their agents through whom they have got the export order. He further stated that the buyer alleged certain discrepancy in the cargo documents and LC was held up and therefore they had issued debit note for an amount of US \$ 19.50 PDMT. In respect of export of 49201 MT (DMT 46932.83) by vessel M.V. Equinox Dawn the contract dtd. 5.7.2011 was entered at the price of US \$ 139.50 by reducing the commission to their agents as stated in the foregoing paras and as per para 4 of the contract, the price was reduced to US \$ 133.50 PDMT (CFR). In his 5<sup>th</sup> statement recorded on 04.01.2013, he submitted the files contending bank statement for the year 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012 total files and similar files of M/s. Kutch Salt and Allied Industries Ltd. and files containing balance sheets for the year 2007-2008 to 2011-2012. Thus, the only evidence cited is this statement dtd. 03.01.2013 of Shri Babulal Singhvi regarding payment of US \$ 10 PDMT and Shri Babulal Singhvi has been issued notice proposing penalty on him under Section 114(ii) and 114AA of the Customs Act, 1962. Thus, he is a co-noticee and it is well settled principles in law that confession of co-accused or co-noticee cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible thereon. In the present case, apart from improved statement of Shri Babulal Singhvi there is no other independent evidence regarding payment of US \$ 10 PDMT as commission to their agents by their buyer; that Shri Babulal Singhvi while recording his statement on 22.11.2012 was shown the Invoice No. RSTL/GP/1021 dtd. 15.9.2011 raised by M/s Reliance Shipping and Trading Ltd. on M/s Swiss Singapore Overseas Enterprises Pte. Ltd., Singapore for US \$ 460222 at the rate of US \$ 10 PDMT in respect of Vessel M.V. Great Praise shipped on 8.9.2011. The description given in the invoice is vessel freight chartered arranging charges for M.V. Great Praise. Thus, the documentary evidence by way of this invoice is that even if 10 \$ commission was paid by our clients' buyer it is not buying commission, but it is commission for vessel freight charter arranging charges and therefore the same would be considered as part of the freight. This documentary evidence is contrary to the admission made by Shri Babulal Singhvi in his statement and it is well settled principle in law that the documentary evidence will prevail on oral statement apart from the fact that Shri Babulal Singhvi's statement admitting buyer

commission is only improved statement and there is no independent corroborative evidence in support of the said admission and enclosed copy of the invoice dtd. 15.9.2011; that invoice dtd.15.9.2011 is in respect of M.V. Great Praise and shipment dtd. 8.9.2011, the present case pertains to M.V. Diamond Star, M.V. Equinox Dawn and M.V. Amami K. and the Shipping Bills dtd. are 27.9.2011, 25.7.2011, 3.5.2011 and 10.4.2012, there are no corresponding invoices regarding freight chartering charges payment in respect of 3 vessels referred above. Therefore, on this ground also, in respect of these shipping bills proposing adding US \$ 10 PDMT in the export value, requires to be dropped and quoted an Hon'ble Supreme Court judgment [2007 (220) ELT (SC)] in support of their reply; that Shri Babulal Singhvi in his first 3 statements dtd. 12.6.2012, 21.11.2012 and 22.11.2012 never stated anything regarding payment of commission of US \$ 10, it is well settled law that if subsequent statement is improved upon the contents of the statement are not legal or cogent and cannot be considered as evidence as held by Hon'ble Gujarat High Court - 1984(17) ELT 294 (Guj.).

14.5 In the same reply, as discussed above, it was stated that Proposal for re-determining the value by taking into account that the additional amount of US \$ 10 PDMT is in respect of 3 shipping bills Le. 5599529 dtd. 27.9.2011, 4696772 dtd. 25.7.2011 and 3508730 dtd. 3.5.2011. Without prejudice, we submit that as per Section 14 of the Customs Act, 1962, the value of the exports goods shall be transaction value of such goods that is to say the price actually paid or payable for the goods when sold for export 'from India for delivery at the time and place of exportation. The transaction value therefore would not include even if 10\$ commission was paid by foreign buyer to an agent, as the FOB value will be the amount actually received by the noticee which alone would be chargeable to export duty. The Customs Valuation (Determination of Value of Exported Goods), Rules, 2007 are also silent regarding addition of commission paid to foreign buying agent. Rule 10 of Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 provide that for determining the transaction value shall be added to the price actually paid or payable for the imported goods the commissions and brokerage except buying commissions incurred by the buyer. Thus, for the valuation of the imported goods, there is a specific provision to add commission and brokerage but excluding buying commission. Therefore, as the Export Valuation Rules are silent and applying the same methodology as commission paid by the buyer to buying agent even if it is on behalf of M/s TFL, the transaction value will not include the commission of US \$ 10. Therefore, on this ground also the demand of export duty is not sustainable in law in respect of these 3 shipping bills; that further submit that without prejudice the price even including US \$ 10 should be considered as cum export duty price and accordingly the export value needs to be re-worked, though this method of computation of value was followed for long time, as is evident from the Circular No.18/2008-Cus. dtd. 10.11.2008 wherein para 2, it is stated that the export duty and cesses were calculated by taking the FOB price declared by the exporter as cum duty price and working backwards from the FOB price. This methodology is based on instructions

issued by the Board (contained in Appraising Manual) in 1966. This view was reconfirmed by the Board in 2000. Later without any legal basis, the CBEC issued this circular to change the existing practice of computation of export duty and cesses by taking the FOB price. The Ministry of Law has stated earlier that this practice is not in conflict with any of the statutory provisions. Therefore, the instruction dtd. 10.11.2008 has no legal sanctity and FOB value has to be considered as cum-duty-value; that they rely upon the Hon'ble Calcutta High Court Judgement in the case of Bird And Co. (Pvt.) Ltd. V/s Kalyan Kumar Sen Gupta reported in 1988 (37) ELT 70 (Cal.) wherein in para 26 it was held that the main question of merit before Hon'ble High Court as to how to determine f.a.s. value of jute specialties in order to determine whether the goods are entitled to the benefit of exemption from payment of export duty. It was held that the mode of valuation prescribed in section 14 of the Customs Act, 1962 must apply and the value of the Petitioner's goods in dispute will, therefore be the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of exportation in the course of international trade. In para 7 of the said judgement the stand of revenue was that the price at which the petitioners agreed to sell the goods included export duty or in other words, they entered into the contracts on the implied basis that duty was payable. The Hon'ble Court held that whether duty is payable, or not depends on the f.a.s. value of the goods calculated on the basis of Section 14 of the Customs Act, 1962, therefore, following the ratio of the Hon'ble Calcutta High Court Judgement the price prevailing has to be considered excluding export duty payable as if there was no export duty payable, the same would not have been included while arriving at the price on which ordinarily iron ore was sold in the international market in terms of Section 14 of the Customs Act, 1962. Therefore, the CBEC circular is directly contrary to the Hon'ble Calcutta High Court Judgement and should hold contrary to law as laid down by Hon'ble High Court; that they further submitted that the Show Cause Notice in para 7.5.1 (ii) has given the details of deduction of actual freight in full i.e. US \$ 495000 from CFR price to arrive at the FOB price of export goods. This is in respect of Shipping Bill No. 5599529 dtd. 27.9.2011. In respect of Shipping Bill Nos. 4696772 dtd. 25.7.2011 and 3508730 dtd. 3.5.2011, as per para 7.5.2(iv), the actual freight is i.e. US \$ 441600 and US \$ 5,00,000/-has been already excluded/deducted from the CFR price. However, as already stated at the time of filing shipping bill, the freight was calculated with cargo dry quantity, but as per the terms of freight has to be calculated with cargo wet quantity. Therefore, our clients without prejudice to other submissions are entitled for deduction of actual freight for arriving at FOB price for charging export duty. We are enclosing freight invoice No. TFUAKI001 dtd. 10.4.2012 for US \$ 600,600.00 in respect of vessel M.V. Amami K. for a quantity of 28,000 MTs alongwith State Bank of India Advice showing remittance of 4 lacs and US \$ 2,00,600 towards freight and Invoice No. TFUDS/001 dtd. 25.10.2011 in respect of vessel M.V. Diamond Star for quantity of 27,500 net freight being US \$ 536,250 alongwith forex remittance advice for 45,000 US \$, US \$ 1 lac. and US \$ 2 lacs. and State Bank of Bikaner and Jaipur showing transaction Ref. NO.US \$ 540,832, total US \$ 9778613 and in respect of Vessel M.V. Equinox Dawn freight invoice No. TFL/ED/001 dtd. 4.8.2011 for US \$

959400 alongwith swift payment details through State Bank of Bikaner for US \$ 959,400 through State Bank of India. We are enclosing a chart marked as Exhibit -'A' in respect of these shipping bills indicating the quantity of iron ore exported in WMT and DMT, total freight, the actual assessable value and actual duty payable alongwith export cess. This chart will show that in respect of 3 shipping bills, there is no differential duty payable, on the contrary our clients have paid excess duty of Rs. 3224937.98, Rs.4347804.53 and Rs.3318844.03 (i.e. FOB value is considered as cum duty value) total Rs. 10890686.54. In this chart, the commission of 10 is added and even discount 19.50 is also added, what is deducted is the penalty paid by the noticee as per the terms of the contract as indicated in both the contracts which is accepted in the SHOW CAUSE NOTICE. The differential duty payable in respect of 3 shipping bills on the total FOB value without considering cum duty value will be as under Rs.1541976.74 minus Rs. 499644.24 and Rs. 1292912.16, total differential duty would be RS.2335244.66 and they also submitted a chart working out the differential duty; that in respect of demand of export duty for Rs.11560439/-, on the iron ore fines exported vide Shipping Bill No. 8410415 and 8412947 both dtd. 10.04.2012, the Show Cause Notice proposes to assess 'finally by charging the export goods to appropriate duty @ 30% ad valorem, under the provisions of Section 18(2) of the Customs Act, 1962 read with Section 17 ibid. The Show Cause Notice in para 9 refers to a letter from Kandla Customs dtd. 07.06.2013 stating that these two shipping bills were assessed provisionally subject to pending reports and these were not yet finalized. In respect of two shipping bills, the Deptt. has not provided the screen shots of shipping bills which will indicate whether the shipping bills were assessed provisionally or finally. The Show Cause Notice specifically relies upon such screen shots in respect of 3 other shipping bills dtd. 27.9.2011, 25.7.2011 and 3.5.2011. We have made a reference to Kandla Customs vide our letter dtd. 30.10.2013 in respect of two shipping bills dtd. 10.4.2013. The A.C. Customs (Exports) vide letter dtd.25.11.2013 informed that there is no provisional duty bond or any other bond available with this section. The screen shots of the Deptt's comments in respect of Shipping Bills dtd. 10.4.2013 only shows that sample drawn, but there is no indication that these two shipping bills were assessed provisionally. Therefore, we addressed another letter to the Ld. Commissioner on 11.12.2013 requesting to furnish screen shots of these two shipping bills dtd.10.4.2013 attested copy. Thereafter, this invoice was provided to the Commissioner of Customs, Kandla vide letter dtd.24.4.2013 by DRI. The Commissioner of Customs, Kandla vide letter dtd.12.3.2014 provided the screen shots in respect of shipping bill No. 8412947 and 8410415 both dtd.10.4.2012 showing the status, it is seen from the screen shots of both shipping bills which were now provided to us showing the two shipping bills were finally assessed and therefore the allegation in the Show Cause Notice that these two shipping bills were assessed provisionally is contrary to the documentary evidence by way of screen shots showing status as 'F' i.e. finally assessed and therefore the Show Cause Notice is issued only on 06.09.2013 in respect of two shipping bills dtd. 10.4.2012 beyond the period of one year is clearly time barred and therefore the demand is not sustainable in law ; that without prejudice, we further submit that after

allowing actual freight remitted by the noticee as indicated in Exhibit -'B', the duty liability in respect of two shipping bills dtd. 10.4.2012 would be only Rs.1,06,63,374.84 and if the FOB value is considered as cum duty value, the differential export duty payable would be Rs. 33,59,160.42. This submission is without prejudice to the main contention of the noticee that the demand is time barred; that consequently, since the demand in respect of 3 shipping bills dtd. 27.9.2011, 25.7.2011 and 3.5.2011 is not sustainable, no penalty is imposable on the main noticee and also on Shri Babulal Singhvi as proposed in the Show Cause Notice. Consequently, no interest is demandable from the main noticee. In fact the noticee had filed refund claim on 29.5.2012 in the prescribed form claiming refund of Rs. 30,87,980/- after taking into consideration, the actual freight remitted and actual FOB value realized foreign exchange and the same is pending before Asst. Commissioner of Customs, Kandla. of They also submitted a paper book containing relevant papers and case laws.

## **15 DISCUSSION & FINDINGS-**

15.1 I have gone through the facts of the case, evidences available on record, investigation report and written submissions made by the noticees in reply to the Show Cause Notice & during the course of personal hearing.

15.2 The main issues for decision in the case are under valuation of the Iron Ore under export and lesser payment of duty at 20 % instead of 30 % on export of Iron Ore fines. I find that the noticee has entered into the contract for supply of Iron Ore at an agreed rate, but has filed the S/Bs at a lower rate i.e. reducing the contracted rate by US \$ 10.00, on account of commission paid to their overseas agents, which is not in accordance with the law, as the arguments put forward by the noticee is without backing of any documentary evidence. Further, I find that the noticee has stated that the contract was renewed on 13.09.2011, but from the records of the case it is proved that the contract comes into effect w.e.f. 08.11.2011, well after the dates of goods leaving the Indian water. Thus, in my opinion, the amendment of sale price in the said contract is nothing but an eye wash and an afterthought. Therefore, I uphold the proposal of re-determination of export value in the Show Cause Notice by taking into account the additional amount of US \$ 10 PDMT in case of each shipment covered by all the three S/Bs.

15.3 In regard to the submission of the noticee that freight actually paid is more than indicated in the S/Bs, I find that they are trying to deviate the entire case from the actual issue in the instant case, as there is no relevancy of this issue. According to law they were at liberty to declare the actual freight in the S/Bs, but they have not done so. Further, by not declaring the actual freight in the S/Bs, they have committed another violation of law, by way of mis-declaration. However, this aspect in not one of the points in the current Show Cause Notice, thus, I refrain myself going deep into it.

15.4 The valuation of goods like Iron Ore, meant for export, is determined by the Fe percentage. I find that the contract between the buyer and the noticee is for the goods on dry basis quantity in the case of shipments at Kandla, thus, the export sale price should have been declared correctly by the noticee after due chemical examination to ascertain Fe percentage, which they have not done, which proves that the contract itself is in doubt. I therefore, summarily dismiss the contention of the noticee.

15.5 I find the timing of amendment of contract is amusing, as it appears that noticee got an indication of investigation being carried out by DRI on their wrong doing and amended the existing contract, even after the shipment of export goods only with an intention to cover up the wrong doing and to evade the export duty.

15.6 The argument put forward by the noticee in their written submission in regard to *'if the noticee had encashed the price of amendment, the customs authority would have asked to pay export duty on higher contract price by way of amendment'*, is merely assumption and the Tax department doesn't work on assumptions, the department's work is bound under the ambit of law, thus, it is observed that, the noticee is simply giving vague reasons, so as wriggle out of the case.

15.7 On the issue of *'confession of co-accused or co-noticee cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible thereon'*, I observed that the Hon'ble Apex Court has held in the case of K.I. Pavunny V/s Asstt. Coll., Ce. Ex., Cochin [1997 (90) ELT 341 (SC)]– (a) *Confessional statement of accused, if found to be voluntary can form the sole basis for conviction and if retracted, the court is required to examine whether it was obtained by threat, duress or provision and whether confession is truthful; (b) If found to be voluntary and truthful, inculpatory portion of retracted confession could be relied upon to base conviction, however prudence and practice require that court should seek assurance by way of corroboration from other evidences adduced by prosecution and for this purpose, general corroboration would suffice, not for each detailed contained in the confessional statement; and (c) wealth of details by itself is not an assurance of its voluntary character – the totality of facts and circumstances should be taken into account.* I find that in the instant case no charges of taking statement involuntarily against the investigating officer is levied, which otherwise should have been proved wrong. Thus, the contention of the noticee falls short on this ground, as the confessional statement given by Shri Babulal Singhvi, should have been enough to prove the under valuation of exported goods, but to be on the fairer side of justice, the DRI has thoroughly investigated the case and I am convinced that under valuation by way of mis-declaration of value has indeed taken place.

15.8 In regard to the judgment quoted by Hon'ble Supreme Court judgment in the case of Mohtesham Mohd. Ismail V/s Spl. Director, Enforcement Directorate [2007 (220) ELT (SC)], I find the judgment is in relation to remittance of money by a person from outside India to India, which is having no relevancy in the instant case, on going

through the judgment it is observed that the said judgment is in regard to- (i) Power to file appeal & (ii) Confession of co-accused.

15.9 The noticee relied upon the judgment in the case of Motilal Lalchand Shah V/s L.M. Kaul & others [1984(17) ELT 294 (Guj.)] and contended that if subsequent statement is improved upon the contents of the statement are not legal or cogent and cannot be considered as evidence, I find that the judgment in the case of K.I. Pavunny V/s Assistant Collector, Central Excise, Cochin [1997 (90) ELT 341 (SC)] the Hon'ble Supreme Court, not only negates the judgment quoted by the noticee but vindicated the view of the department, so far as this instant case is concerned. In regard to Shri Babulal Singhvi not stating anything regarding payment of commission of US \$ 10, in his first 3 statements dtd. 12.6.2012, 21.11.2012 and 22.11.2012, I find that in the subsequent statement he has confessed about the payment of commission of US \$ 10 to the foreign agents. Thus, the investigation carried out by the DRI is conclusive and I uphold all the charges revealed against the exporter & director of export firm, in the Show Cause Notice.

15.10 I agree that there is a specific provision to add commission and brokerage but excluding buying commission and that Rule 10 of Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 provide that for determining the transaction value shall be added to the price actually paid or payable for the imported goods the commissions and brokerage except buying commissions incurred by the buyer, but, as stated / agreed upon by the noticee, the Customs Valuation (Determination of Value of Exported Goods), Rules, 2007 are silent regarding addition of commission paid to overseas agents. If any exporter intends to deduct the commission paid to overseas buying agent from the transaction value, he should have declared the same beforehand in the S/B concerned. In this case the exporter has failed to declare the commission paid to foreign buying agent at the time of filing S/Bs, which only shows the intent to evade the export duty.

15.11 The plea of the noticee in regard to re working of export value, doesn't appears to be correct as the export has already taken place and such plea could have been considered had the exporter declared the commission aspect at the time of filing the S/Bs, but in the instant case, the aspect of commission paid to the foreign agents and by way of doing so, effecting or lowering the export value had been brought into light only after investigation was carried out by DRI. Thus, I find that the export value worked out on the basis of investigation is just and proper and I tend to accept the same.

15.12 They have also relied upon the Hon'ble Calcutta High Court in the case of Bird And Co. (Pvt.) Ltd. V/s Kalyan Kumar Sen Gupta reported in 1988 (37) ELT 70 (Cal.), I find that the facts of the instant case is different from the case involving the said judgment, as in the present case the element of commission is totally missing in

the contract No. 1000/ZIRO/14001844/2012 dated 15.07.2011. Thus, the cited case law is not applicable in the instant case.]

15.13 During the course of investigation it was also gathered by the investigating agency that the noticee has exported Iron Ore fines, covered under CTH 26011130, vide two S/B Nos. 8410415 and 8412947 both dated 10.04.2012 to M/s Express Well International Ltd., Kong Kong, wherein export duty was paid @ 20 % ad valorem, while the effective rate of duty, on the exported goods, at the relevant period of time was 30 % ad valorem. On pointing out the same M/s TFL voluntarily paid an amount of Rs. 1,04,95,378/-, towards differential duty and Rs. 3,62,307/-, towards interest on differential duty on 03.07.2012. The amount paid towards differential duty and interest, qualifies to be appropriated against the demand of differential duty and interest made in the Show Cause Notice, in the instant case.

15.14 In regard to argument put forward by the noticee in their reply to the Show Cause Notice that as the S/Bs are finally assessed and the Show Cause Notice is issued after one year, making the same time barred, I find that the exporter has got their facts wrong, as this is a case of wilful suppression and mis-declaration of value and hence, the provision for extended period of 05 years is rightly invoked. Thus, I find that the Show Cause Notice is well within the time and not time barred.

15.15 The objection raised by the noticee for invoking extended period in regard to the concerned S/Bs, I find that the contention of the noticee is not correct, as in the instant case the core issue is undervaluation by mis-declaring the value of the goods so exported by means of not declaring the correct price to the Customs at the time of export of impugned goods. Thus, I find that the extended period is rightly invoked.

15.16 The noticee also argued that the impugned goods cannot be confiscated in view of the Tribunal decision in the case of K. Kamala Bai V/s CC of C. Ex., Trichy [2005 (186) ELT 459 (Tri.-Chennai)]. I have carefully gone through the quoted the judgment and found that the Tribunal has held that Section 113 is clear and the exported goods cannot be confiscated and only goods attempted for export alone can be confiscated under Section 113. In the instant case also goods have been exported and not available physically for confiscation of the same.

15.17 I find that the exporter's contention that if the FOB value is considered as cum duty value, the differential export duty payable would be lesser than the one demanded in the Show Cause Notice is not acceptable. In the instant case it was already held that no deductions can be permitted at this stage i.e. after shipment of goods, as already held by me that the duty demanded in the Show Cause Notice is just, proper & legal. In the case of export duty is on FOB value and it is not inclusive of FOB.

15.18 In regard to filing of refund claim of Rs. 30,87,980/- after taking into consideration, the actual freight remitted and actual FOB value realized in foreign exchange, I find that the claim was filed on 29.05.2012, which is now nearly 03 years back and on enquiry from the Assistant Commissioner (Refund), CH, Kandla, it is gathered that the refund claim is not sanctioned, as a Deficiency Memo was issued against the refund claim and no reply by the noticee has been filed so far. Thus, this plea of the noticee, justifying their claim, also falls flat on its face.

15.19 It is a settled law that without challenging the assessment order the noticee cannot file a refund claim as held in the case of Priya Blue Industries Ltd. V/s Commissioner of Customs (Preventive) [2004 (172) ELT 145 (SC)] and CCE, Kanpur V/s Flock (India) Pvt. Ltd. [2000 (120)ELT] 285 (SC)]. As I find that there was no appeal against the assessment order of impugned goods, no refund arises in the matter.

15.20 In the further statement of Shri Babulal Singhvi, Director – M/s Terapanth Foods Ltd., dated 03.01.2013, has clearly stated that ‘the export value was declared only by reducing the commission paid to their overseas agent for getting them export order at good rate; that as per the agreement with their agents, such commission was to be paid in their designated overseas bank accounts against the export orders received through them; that such payments were made by the buyer on their advice in the designated bank accounts of their agents viz. M/s Reliance Shipping and Trading Limited, Hong Kong and M/s Amkey Company Limited, Hong Kong, either as ‘Freight Charter Arrangement Charges’ or as ‘Commission’. He admitted that these commissions were not declared to the Customs and the value declared to the customs was reduced to the extent of commissions paid to these overseas agents; that if any export duty liable to be paid on these commissions, they were ready to pay the same. Thus, the plea of the exporter / noticee that the amount paid to a third party is not even commission doesn’t hold any water and deserved to be rejected.

15.21 From the facts of the case, I find that in the contract dated 13.09.2011, in regard to S/B No. 5599529 dated 27.09.2011, has no provision of an inbuilt clause within the contract, outlining the circumstances for reducing base price. I also find that changing a major clause of a contract without plausible reason, that too after a month of being the acts were performed as per the original contract, is not in consonance with the law.

15.22 I also find that the transaction / export value is to be fixed by adding US \$ 10 PDMT to the declared value, by which the duty on differential amount of US \$ 10 PDMT is to be paid by the exporter and differential duty so arises out of the re-fixing the value to be recovered alongwith applicable interest, under Section 28 and 28 AA of the Customs Act, 1962, respectively.

15.23 It is also revealed during the course of investigation that the so called mutual agreement to pay US \$ 10 PDMT as commission to their overseas agents, was never disclosed to the department. I find that the exporter has failed to provide the proof of the same.

15.24 In view of the above, I find that the impugned goods exported vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, are liable for confiscation, under Section 113 (i) of the Customs Act, 1962. Since goods are not physically available, I refrain from imposing any redemption fine in view of the settled legal position

15.25 I also find that Shipping Bill Nos. 8410415 & 8412947 both dated 10.04.2012, should be re-assessed and differential duty, on after such re-assessment is recoverable alongwith interest at appropriate rate under Section 28 and 28 AA of the Customs Act, 1962, respectively.

15.26 I also find that Shri Babulal Singhvi, Director – M/s Terapanth Foods Ltd., Gandhidham, is liable for penalty under Section 114AA of the Customs Act, 1962, for his acts of omission and commission discussed above, since he knew that the contract was incorrect and as regard to the value of the goods.

15.27 Shri Babulal Singhvi, Director – M/s Terapanth Foods Ltd., Gandhidham, is also liable for penalty under Section 114 (ii) of the Customs Act, 1962, in as much he has rendered the goods liable to confiscation.

16 On the basis of above findings, I pass the following order-

**ORDER**

- 1 I reject the declared value in respect of shipment of Iron Ore exported vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (2) ibid and Section 14 (1) of the Customs Act, 1962.
- 2 I order to determine the value in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, by taking into account additional amount of US \$ 10 PDMT, under the provisions of Section 14 (1) of the Customs Act, 1962, filed by M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201.
- 3 I order recovery of differential export duty of customs amounting to Rs. 39,86,320/- (Rupees Thirty Nine Lakhs Eighty Six Thousand and Three

- Hundred and Twenty only) in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, under Section 28 (4) of Customs Act, 1962, from M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201.
- 4 I order recovery of interest on differential export duty of customs amounting to Rs. 39,86,320/-, in respect of Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, under Section 28 AA of the Customs Act, 1962, filed by M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201.
- 5 I order to appropriate the amount of Rs. 40,06,380/- (Rupees Forty Lakhs Six Thousand Three Hundred and Eighty only), voluntarily deposited during the course of investigation, towards differential duty and interest, demanded as above from M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201..
- 6 I order confiscation of exported goods i.e. Iron Ore, exported vide Shipping Bill Nos. 5599529 dated 27.09.2011, 4696772 dated 25.07.2011 and 3508730 dated 03.05.2011, by M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201, under Section 113 (i) of the Customs Act, 1962, but as the goods are not physically available for confiscation, I refrain from imposing any redemption fine on the same.
- 7 I order re-assessment of exported goods, exported vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, by charging the export goods totally valued at Rs. 10,84,95,532.20 (as detailed in Annexure – A to the Show Cause Notice), to customs duty @ 30 % ad valorem, under section 17 (4) of Customs Act, 1962, exported by M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201.
- 8 I order recovery of differential customs duty of Rs. 1,15,60,439/- (Rupees One Crore Fifteen Lakhs Sixty Thousand Four Hundred & Thirty Nine only), arising due to re-assessment of exported goods vide Shipping Bill Nos. 8410415 and 8412947 both dated 10.04.2012, filed by M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201, totally valued at Rs. 10,84,95,532.20, under Section 28 of the Customs Act, 1962.
- 9 I order recovery of interest on differential customs duty of Rs. 1,15,60,439/- (Rupees One Crore Fifteen Lakhs Sixty Thousand Four Hundred & Thirty Nine only), under Section 28 AA of the Customs Act, 1962, from M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201.

- 10 I order to appropriate an amount of Rs. 1,08,57,685/- (Rupees One Crore Eight Lakhs Fifty Seven Thousand Six Hundred & Eighty Five only), voluntarily deposited by M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201, during the course of investigation, towards differential duty and interest.
- 11 I impose penalty of Rs. 1,55,46,759/- (Rupees One Crore Fifty Five Lakhs Forty Six Thousand Seven Hundred and Fifty Nine only), on M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201, under section 114 A of the Customs Act, 1962, **provided** that the duty, as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid by M/s Terapanth Foods Ltd., under this section shall be twenty-five per cent of the duty and interest.
- 12 I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on Shri Babulal Singhvi, Director - M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201, under section 114 AA of the Customs Act, 1962.
- 13 I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on Shri Babulal Singhvi, Director - M/s Terapanth Foods Ltd., Maitri Bhawan, Plot No. 18, Sector – 8, Gandhidham – 370 201, under section 114 (ii) of the Customs Act, 1962.

**(P.V.R. REDDY)**  
**COMMISSIONER**

Place : Ahmedabad

Date : 31.03.2015

To,

1. M/s Terapanth Foods Limited,  
Maitri Bhawan, Plot No.18,  
Sector- 8, Gandhidham-Kutch,  
Gujarat-370 201.

2. Shri Babulal Singhvi,  
Plot No.99, Sector -2,  
Gandhidham-Kutch,  
Gujarat-370 201.

**Copy to:**

1. The Chief Commissioner of Customs, Custom House, Ahmedabad, alongwith copy of a SCN for information please.
2. The Additional Director General, DRI, Zonal Unit, Mumbai.
3. The Asstt. Deputy Commr. (RRA / RECOVERY), Custom House, Kandla.
4. Guard File.