



**सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला ।**

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

A	फाइल संख्या/ File No.	S/10-07/ADJ/ADC/SARTHAK/2017-18
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/PMR/23/2017-18
C	पारित कर्ता/ Passed by	SH. PADALA MOHAN RAO, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	20/02/2018
E	जारी करने की दिनांक/Date of issue	20/02/2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	DRI/AZU/GRU/INT-25/2015 Dated 02.05.2017
G	नोटीसी/ पार्टी Noticee/Party	1. M/s. Sarthak Warehousing & Trading Company, Shed No.273 & 274, CIB, Type Sector-III, AS-IV, Sector 1, Kandla Special Economic Zone, Gandhidham(Gujarat) 2. Shri Ajay Godara, Partner of M/s. Sarthak Warehousing & Trading Company, Shed No.273 & 274, CIB, Type Sector-III, AS-IV, Sector 1, Kandla Special Economic Zone, Gandhidham(Gujarat) 3. Shri Rajesh Jha (To be served as per Section 153(b) of the Customs Act, 1962 as whereabouts of him are not known)

1. यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

2. कोई भी व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क नियमावली के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 के धारा 128 A(1) के अंतर्गत प्रपत्र सीए में चार प्रतियों में निचे बताये गए पते पर अपील कर सकता है।
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**"सीमा शुल्क आयुक्त (अपील), कांडला
वीं मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़
अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road
Ahmedabad - 380 009."**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -

- उक्त अपील की एक प्रति और
A copy of the appeal, and
- इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), और सीमा शुल्क अधिनियम 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का %10 भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute

BRIEF FACTS OF THE CASE:-

Intelligence gathered by Directorate of Revenue Intelligence (DRI) indicated that M/s Sarthak Warehousing & Trading Company, (herein after referred to as the “Exporter”/ M/s SWTC) situated at Shed No. 273 & 274, CIB, Type Sector-III, , AS-IV, Sector 1, Kandla Special Economic Zone (“KASEZ”, earlier known as Kandla Free Trade Zone), Gandhidham, having registered office at Plot No. 511, Sector-29, Huda Panipat, Hariyana were engaged in diversion of goods meant for export in domestic tariff area (DTA).

02. On the basis of the above intelligence, Kandla Special Economic Zone and M/s SWTC were requested to provide the documents related to export. As per the documents provided by the office the Development Commissioner, KASEZ, Exporter, Customs and another concerned persons, it was found that the M/s SWTC was involved in the business of the warehousing and trading of various types of imported polyester based fabricated cloths/lot on behalf of their overseas supplier (i.e. Spring International Dubai, UAE) and filed warehousing bills of entry on behalf of the their overseas supplier and warehousing the imported goods without payment of custom duty on it for further export of these goods out of India. Further on the instructions from their overseas supplier they used to export the said consignments to Nepal. During investigation, it came to notice that M/s SWTC filed shipping bills related to export of these warehousing goods mentioning the county of destination as ‘Nepal’ and for confirmation of this they used to submit documents as ‘Proof of Export’ mentioning that the same had been issued by the Land Custom Station at Nepal Border. They had submitted the “Import goods receipt from Nepal Customs” of the shipping bill no. 00005060 dated 07.05.2012 vide invoice no. DWTC/SIL/01/12-13 dated 07.05.2012 through the Land Customs Station Sonauli (U.P.), as a “proof of export” to the office of the Development Commissioner, KASEZ, Gandhidham. In order to get the veracity and authenticity of the same, necessary inquiries were extended with Land Customs Station, Sonauli (U.P.), by DRI vide letter dated 09.02.2017 and the Assistant Commissioner, LCS Sonauli, Maharajganj (UP), in-charge of the port of loading, vide letter F. No. VIII(25)54/ARE-1 Verific.SNL/Pt/121 dated 15.02.2017 had informed that the office records available at their LCS reveal that no export of M/s Sarthak Warehousing & Trading Company, KASEZ, Gandhidam had taken, under the aforesaid shipping bill.

03. During the investigation, statements of following persons were recorded under section 108 of customs act, 1962. The statements recorded during the investigation are briefly described below:-

3.1 Statement of Shri Ajay Godara, partner of M/s SWTC was recorded under section 108 of the customs act, 1962 on 10.10.2016 wherein he inter-alia stated that they were in the business of warehousing and trading in KASEZ on behalf of the

overseas client. Though they have the license of trading but they never traded the goods in KASEZ, Gandhidham. In 2011, they warehoused the stock lot fabric on behalf of one overseas clients (i.e. M/s Spring International Dubai, UAE) and filed warehousing bills of entry and the overseas client instructed them to export the stock lot fabric to Nepal on behalf of overseas clients. Accordingly they filed shipping bill for the imported duty free consignments. The goods were loaded on the trucks for export and consignee himself taken the possession for cross border of the goods from India to Nepal. The consignee used to give proof of export to them. They used to submit the POE to the Customs, KASEZ. Further he stated that he learnt that a case was booked by DRI against M/s D. P. associates, KASEZ for diversion of goods in DTA local market of India meant for export to Nepal for some consignee of Nepal and therefore, he also assumed that his goods may not have exported.

3.2 Statement of Shri Suraj Prakash Parmar, previously worked as Manager and authorized signatory of M/s. D.P. Associates, KASEZ, Gandhidham, was recorded on 06.03.2017 wherein he inter-alia stated that Shri Ajay Godara provided details and on these basis he had further processed for export of the goods. All bilties of M/s Baba Haridas Transport Company was prepared by him. He was given understanding by Shri Ajay Godara that goods would be transshipped at Badarpur/ Bahadurgarh, there he prepared bilties from Gandhidham to Badarpur instead of Nepal. He learnt through Shri Deepak Kudesia that the said goods had diverted in local market by Shri Rajesh Jha instead exporting the same to Nepal.

3.3 Statement of Shri Umesh Dharamvir Dagar, Proprietor of M/s Baba Haridas Transport Company was recorded under section 108 of the Customs Act, 1962 on 28.02.2017 wherein he inter-alia stated that Shri Suraj Prakash Parmar contacted him for providing vehicles for transportation of goods from KASEZ Gandhidham to Badarpur/Bahadurpur near Delhi. He told him the specific rates/fare for it on which he agreed and started regular business with him. Further he was asked that the export documents meant for export of the goods for Nepal but why had he made billty to Bahadurgarh /Badarpur Delhi. In reply he stated that Shri Suraj Parmar told him that after Bahadurgarh/Badarpur they will arrange other vehicle for transport to Nepal and therefore he did so.

3.4 Further statement of Shri Ajay Godara, partner of M/s SWTC was recorded under section 108 of the customs act, 1962 on 07.04.2017 wherein he inter-alia stated that being an active partner he was wholly responsible for everything that happened at that time and he should have ensure and check the genuineness of export.

4. Confiscation

From the above facts, it appeared that the exports shown to have been made by M/s SWTC under the shipping bills had never taken place. The documents submitted by them as “proof of export” were also found to be forged and as such it

appeared that they had illegally and fraudulently diverted the duty free imported goods, actually meant for export to Nepal, into the domestic tariff area (DTA), instead of exporting the same to Nepal. The details in respect of value of the goods and duty foregone involved under the shipping bill is as under:-

Sl. No.	Shipping Bill No. & Date.	Description of the goods	Value of the goods (in Rs.)	Duty foregone (in Rs.)
01.	00005060 Dated 07.05.2012	Polyester Knitted & Polycotton Fabric	969325	283780
		Total	9,69,325/-	2,83,780/-

Since, the subject goods have been not exported out of India and diverted to DTA without declaring to Customs, without filing bill of entry, without classifying and without paying duty in contraventions of various provisions of the Customs Act, 1962 which render subject goods liable to confiscation as discussed below:-

- (i) Subject goods were cleared and loaded for exportation to Nepal but on account of negligence, willful act or default of exporter which after having been loaded for exportation were unloaded at Delhi without the permission of the proper officer, thus rendering the goods liable to confiscation under section 113(k).
- (ii) Subject goods were diverted in DTA without filing any bill of entry and without payment of duty and without permission, thus rendering the goods liable to confiscation under section 111(j) and 111(k).

5. Role of M/s SWTC, Shri Ajay Godara, partner of M/s SWTC and Shri Rajesh Jha

5.1 M/s SWTC and Shri Ajay Godara, Partner of M/s SWTC were responsible for export of goods to Nepal however on account of negligence, willful act or default of him which goods were unloaded at Delhi and diverted to Indian Market and never exported to Nepal. He also not ensured genuineness of export documents submitted by Shri Rajesh Jha and he also did not make sure that goods have been actually exported. This made goods liable for confiscation under section 111 and 113 of the Customs Act, 1962 and made firm liable for penalty under section 112 and 114A of the Customs Act, 1962. The act and omission on the part of Shri Ajay Godara made himself liable for penalty under section 112 and 114AA of the Customs Act, 1962.

5.2 Shri Rajesh Jha, so called Owner/Buyer/Agent of the Nepal based consignees from the various statements of persons discussed herein above, it appeared that Shri Rajesh Jha was the person who got himself involved in receiving/taking the delivery of the impugned goods at KASEZ in presence of Ajay Godara and the said goods,

meant for export to Nepal, used to be disposed of, by diverting the same in the DTA. He was the person who used to remain present at the said exporter's unit at KASEZ to examine the imported as well as goods likely to be diverted in DTA sale. He was the active person who arranged to provide fake, fictitious and forged documents to Shri Ajay Godara for submission to the KASEZ, Customs. Thus, by his acts of omission and commission he has rendered the aforesaid goods liable to confiscation under Section 111 and Section 113 of the Customs Act, 1962 and as such has rendered himself liable for penalty under Section 112(a) and 114AA of the Customs Act 1962.

5.3 Further as per the conditions laid down under the legal provisions of Special Economic Zone in respect of removal of goods in the DTA, it is provided that a unit may sell goods and services in the DTA on payment of Customs duties under Section 30 of the SEZ Act, 2005, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy. In the instant case, the polyester based fabricated cloths/lot' was imported by the said unit duty free and after warehousing the same were diverted/sold in DTA instead of export to Nepal.

6. Demand of duty

From the discussion in the foregoing Paras, it is clear that the impugned goods which were initially imported, duty free at the said SEZ unit and subsequently diverted to DTA/local market under the pretext of exportation to Nepal without discharging any Customs duty on it and in order to show a genuine and regular export they managed to produce shipping bills having due endorsements of exportation through Land Customs Station, Sonauli, Maharajganj (UP), before the authorities in KASEZ, as proof of export. It was the enquiries extended with the Land Customs Station, Sonauli, Maharajganj (UP), by the DRI, which had unearthed the modus-operandi and revealed that the subject goods were not exported from there and it came to notice during the investigation that the same were diverted in DTA. The act of producing shipping bills having fake endorsement of exportation clearly shows willful act of evasion of duty on the part of SWTC and its partners. Further it appeared that Shri Ajay Godara partner of SWTC, instead of honestly owing the responsibility for the said fraudulent export had tried to shift the onus/burden on the so called foreign buyer/importer/agent, thereby stating that all kind of fake and fabricated documents were arranged and managed by the said person viz. Shri Rajesh Jha of Nepal but they failed to submit where about of Mr. Jha. The fact remains that they all planned the entire fraudulent operation of bogus export to Nepal with an ulterior motive to evade payment of Customs duty on the duty free imports of electronic goods and in order to hoodwink the department of revenue. Since they were aware of diversion of goods in DTA but suppressed this fact from the authorities in KASEZ and evaded Customs duty to the tune of Rs. 2,83,780/-. Looking to the deliberate act of suppression of material fact of diversion of goods meant for exportation, extended period of demand under Section 28 (4) of the Customs Act,

1962 is attracted in the instant case. In view of the above facts, the customs duty amounting to Rs. 2,83,780/- is liable to be demanded and recovered from M/s. Sarthak Warehousing & Trading Company, KASEZ, Gandhidham under Section 28(4) of the Customs Act, 1962. However, during the investigation, M/s STWC voluntarily made payment of duty of Rs. 2,83,780/-pertaining to KASEZ SB No. 00005060 dated 07.05.2012 vide TR-6 Challan No.01/16-17 dated 24.01.2017.

7.1 Therefore, a Show Cause Notice bearing F. No. DRI/AZU/GRU/INT-25/2015 dated 02.05.2017 was issued to M/s Sarthak Warehousing & Trading Company, Shed No. 273 & 274, CIB, Type Sector-III, , AS-IV, Sector 1, Kandla Special Economic Zone, Gandhidham (Gujarat), having registered office at Plot No. 511, Sector-29, Huda Panipat, Hariyana, whereby they were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Custom House, Near Balaji Mandir, Kandla, within 30 days from the receipt of this notice as to why:-

(a) The polyester knitted & polycotton fabric goods exported under shipping bill no. 00005060 dated 07.05.2012, collectively valued at Rs. 9,69,325/- (FOB), cleared for exportation but illegally diverted to DTA, on 07.05.2012 should not be held liable for confiscation under Section 113(k), 111(j) & 111(k) of the Customs Act, 1962.

(b) The Customs duty amounting to Rs. 2,83,780/- (Two Lakhs Eighty Three Thousand Seven Hundred Eighty Only) chargeable on the said offended goods removed/diverted in to DTA should not be demanded under Section 28 (4) of Customs Act, 1962.

(c) The Customs duty amounting to Rs. 2,83,780/- voluntarily paid by them vide challan no. 01/16-17 dated 24.01.2017, should not be appropriated.

(d) Interest at appropriate rate should not be recovered on the duty demanded at (ii) by enforcing bond and letter of Guarantee under Section 28AA of the Customs Act, 1962 read with the provisions of Notification No.133/94-Cus dated 22.06.1994 and sub-section (3) of Section 143 of Customs Act, 1962.

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

7.2 Further, Shri Ajay Godara, partner of M/s Sarthak Warehousing & trading Company, KASEZ, Gandhidham and Shri Rajesh Jha, the so called buyer, owner cum representative/agent of consignee i.e. Nepal based companies were thereby called upon to show cause in writing to the Joint/Additional Commissioner of Customs, Custom House, Near Balaji Mandir, Kandla, within 30 days from the receipt of this notice as to why Penalty should not be imposed on them under Section 112(a) and 114AA of the Customs Act,1962.

8. The Noticee were further informed vide the aforesaid SCN that they have the right to opt for closure of these proceedings under section 28(6) of the Customs Act, 1962. If they so decide, then in terms of section 28(5) of the Customs Act, 1962, they may pay the duty demanded in this Show Cause Notice in full or in part, as may be

accepted by them, and the interest payable thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in this notice or the duty so accepted by them, within 30 days of the receipt of the notice and inform the proper officer of such payment in writing.

9. The copy of above said Show Cause Notice issued to Shri Rajesh Jha, the so called buyer, owner cum representative/agent of consignee i.e. Nepal based companies was served by the DRI in the manner provided under Section 153(b) of the Customs Act, 1962 as whereabouts of him are not known.

PERSONAL HEARING:-

10. The case was taken up for adjudication. Personal hearing in the case matter was granted on 23.11.2017. In this connection, M/s Sarthak Warehousing & Trading Company vide their letter dated 20.11.2017 requested to extend the date of personal hearing for further one month stating the reason that their partner Shri Ajay Godara has gone abroad for business purpose and are unable to attend personal hearing on 23.11.2017. Accordingly, further Personal hearing was granted on 21.12.2017. Now, the Personal Hearing was attended on 21.12.2017 on behalf of M/s Sarthak Warehousing & Trading Company & for self by Shri Ajay Godara, the partner. They requested to decide and close the case on the basis of materials available on records as they have already paid the duty with applicable interest and penalty. However, they requested to give further 07 days time to submit the copy of payment particulars/challans already submitted by them to DRI within 30 days of issuance of SCN. The letter of personal hearing granted on 25.01.2018 to Shri Rajesh Jha, absconding/address not known, was served in the manner prescribed under Section 153(b) of the Customs Act, 1962 i.e. by pasting it on the Notice Board of Custom House, Kandla under regular Panchnama dated 15.01.2018. There is due and sufficient compliance of principle of natural justice to all the noticees covered by the present Show Cause Notice.

11. M/s Sarthak Warehousing & Trading Company vide their letter dated 26.12.2017 produced copy of TR-6/GAR-7 challans in reference to payment of -1. Duty of Rs. 2,83,780/- (TR-6 Challan No. 01/16-17 dated 24.01.2017), 2. Interest of Rs.2,46,515/- (TR-6 Challan No. 02/16-17 dated 24.01.2017) and 3. Penalty of Rs. 42,567/- (TR-6 Challan No. 03/17-18 dated 15.05.2017). They also produced copy of their letter dated 15.05.2017 duly received and acknowledged on 15.05.2017 by the DRI, Gandhidham. They further requested to close the case as they have paid the all the charges within 30 days in terms of instant Show Cause Notice No. DRI/AZU/INT-25/2015 dated 02.05.2017.

DISCUSSION AND FINDINGS:-

12. I have carefully gone through the records of the case, including the Show Cause Notice dated 02.05.2017, the oral submissions made during the Personal Hearing as well as the written reply dated 26.12.2017 as well as the relevant provisions of law. I take up the case on its merit for a decision.

13. The issue in the present proceedings which are to be decided are (i) confiscation of the polyester knitted & polycotton fabric goods exported under shipping bill no. 00005060 dated 07.05.2012, collectively valued at Rs. 9,69,325/- (FOB), cleared for exportation but illegally diverted to DTA, on 07.05.2012, under Section 113(k), 111(j) & 111(k) of the Customs Act, 1962, (ii) demand of Customs duty of Rs. 2,83,780/- chargeable on the said offended goods removed/diverted in to DTA under Section 28 (4) of Customs Act, 1962, (iii) Appropriation of the Customs duty amounting to Rs. 2,83,780/- voluntarily paid by M/s SWTC vide challan no. 01/16-17 dated 24.01.2017, (iv) demand and recovery of Interest at appropriate rate under Section 28AA of the Customs Act, 1962, (v) imposition of Penalty on M/s SWTC, KASEZ, Gandhidham under Section 112 (a) and 114A of the Customs Act, 1962, (vi) Imposition of penalty under Section 112(a) and 114AA of the Customs Act, 1962 upon Shri Ajay Godara, partner of M/s SWTC and (vii) imposition of penalty upon Shri Rajesh Jha (whose whereabouts are not known), the so called buyer, owner cum representative/agent of consignee i.e. Nepal based companies under Section 112(a) and 114AA of the Customs Act, 1962.

14. The facts of the case indicate that M/s SWTC was involved in the business of the warehousing and trading of various types of imported polyester based fabricated cloths/lot on behalf of their overseas supplier (i.e. Spring International Dubai, UAE). The Intelligence had indicated DRI that M/s SWTC were engaged in diversion of goods meant for export in domestic tariff area (DTA). M/s SWTC had filed warehousing bills of entry on behalf of their aforesaid overseas supplier and warehousing the imported goods without payment of custom duty on it for further export of these goods out of India. Further they used to export the said consignments to Nepal as per the instructions from their overseas supplier. During investigation, it revealed that M/s SWTC used to file shipping bills related to export of these warehousing goods mentioning the county of destination as 'Nepal' and for confirmation of this they used to submit documents as 'Proof of Export' mentioning that the same had been issued by the Land Custom Station at Nepal Border. They had submitted the "Import goods receipt from Nepal Customs" of the shipping bill no. 00005060 dated 07.05.2012 vide invoice no. DWTC/SIL/01/12-13 dated 07.05.2012 through the Land Customs Station Sonauli (U.P.), as a "proof of export" to the office of the Development Commissioner, KASEZ, Gandhidham. In order to get the veracity and authenticity of the same, necessary inquiries were extended with Land Customs Station, Sonauli (U.P.), by DRI vide letter dated 09.02.2017. In pursuance of the same, the Assistant Commissioner, LCS Sonauli, Maharajganj (UP), in-charge of the port of loading, vide letter F. No. VIII(25)54/ARE-1 Verific.SNL/Pt/121 dated 15.02.2017 had informed that the office records available at their LCS reveal that no export of M/s Sarthak Warehousing & Trading Company, KASEZ, Gandhidam had taken, under the aforesaid shipping bill. During the investigation, statements of various persons were recorded under section 108 of customs act, 1962. The statements dated 10.10.2016 and 07.04.2017 of Shri

Ajay Godara, partner of M/s SWTC, Statement dated 06.03.2017 of Shri Suraj Prakash Parmar, ex- Manager and authorized signatory of M/s. D.P. Associates, KASEZ, Gandhidham, Statement dated 28.02.2017 of Shri Umesh Dharamvir Dagar, Proprietor of M/s Baba Haridas Transport Company, recorded under Section 108 of the Customs Act, 1962 during the course of investigation also reveal that the exports of Polyester Knitted & Polycotton fabric valued at Rs.9,69,325/- shown to have been made by M/s SWTC under the shipping bill no. 00005060 dated 07.05.2012 had never taken place. The documents which were submitted by M/s SWTC as "proof of export" were also found to be fake and forged and as such it was found that they had illegally and fraudulently diverted the duty free imported goods, actually meant for export to Nepal, into the domestic tariff area (DTA), instead of exporting the same to Nepal. Further as per the conditions laid down under the legal provisions of Special Economic Zone in respect of removal of goods in the DTA, it is provided that a unit may sell goods and services in the DTA on payment of Customs duties under Section 30 of the SEZ Act, 2005, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy. In the instant case, the polyester based fabricated cloths/lot' was imported by M/s SWTC duty free and after warehousing the same were diverted/sold in DTA instead of export to Nepal. I find that in the instant case the subject goods were cleared and loaded for exportation to Nepal but on account of negligence, willful act or default of M/s SWTC which after having been loaded for exportation were unloaded at Delhi without the permission of the proper officer, thus rendering the goods liable to confiscation under section 113(k) of the Customs Act, 1962. Simultaneously, subject goods were diverted in DTA without filing any bill of entry and without payment of duty and without permission, thus rendering the goods liable to confiscation under section 111(j) and 111(k) of the Customs Act, 1962. However, I refrain to hold the subject goods liable for confiscation, in the circumstances of the present case as no such confiscation is warranted as there was no seizure of the goods involved in the case.

15. The second issue raised in SCN is demand of Customs duty of Rs. 2,83,780/- under Section 28 (4) of Customs Act, 1962, chargeable on the said offended goods alleged to have been removed/diverted in to Domestic Tariff Area(DTA). In the instant case, I find that the impugned goods were initially imported, duty free at the KASEZ and subsequently were diverted to DTA/local market under the pretext of exportation to Nepal without discharging any Customs duty on it and in order to show a genuine and regular export they managed to produce shipping bill having due endorsements of exportation through Land Customs Station, Sonauli, Maharajganj (UP), before the authorities in KASEZ, as proof of export. The enquiries extended with the Land Customs Station, Sonauli, Maharajganj (UP), by the DRI, had unearthed the modus-operandi and revealed that the subject goods were not exported from there and it came to notice during the investigation that the same were diverted in Domestic Tariff Area (DTA). The act of producing shipping bills having fake

endorsement of exportation clearly shows willful act of evasion of duty on the part of SWTC and its partners. Further Shri Ajay Godara partner of M/s SWTC, instead of honestly owing the responsibility for the said fraudulent export had tried to shift the onus/burden on the so called foreign buyer/importer/agent, thereby stating that all kind of fake and fabricated documents were arranged and managed by the said person viz. Shri Rajesh Jha of Nepal but they failed to submit where about of Shri Rajesh Jha. The fact remains that they all planned the entire fraudulent operation of bogus export to Nepal with an ulterior motive to evade payment of Customs duty on the duty free imports of impugned goods and in order to hoodwink the department of revenue. I find that they were aware of diversion of goods in DTA but suppressed this fact from the authorities in KASEZ and evaded Customs duty to the tune of Rs. 2,83,780/-. Looking to the deliberate act of suppression of material fact of diversion of goods meant for exportation, extended period of demand under Section 28 (4) of the Customs Act, 1962 is attracted in the instant case. In view of the above facts , M/s. Sarthak Warehousing & Trading Company, KASEZ, Gandhidham is liable to pay the customs duty of Rs. 2,83,780/-under Section 28(4) of the Customs Act, 1962. However, I find that during the investigation, M/s STWC have already voluntarily made payment of duty of Rs. 2,83,780/-pertaining to KASEZ Shipping Bill No. 00005060 dated 07.05.2012 vide TR-6 Challan No.01/16-17 dated 24.01.2017. The said amount of duty of Rs. 2,83,780/-is liable to be appropriated against the aforesaid Customs duty liability.

16. In context of demand and recovery of Interest at appropriate rate under provision of Section 28AA of the Customs Act, 1962, I find that Section 28AA of the Customs Act, 1962 stipulates that when M/s STWC are liable to pay duty in accordance with the provisions of Section 28 ibid, they in addition to such duty are also liable to pay interest as well. The said Section provides for payment of interest automatically along with the duty. In view of the above, M/s SWTC are liable to pay interest involved on the said amount of Rs.2,83,780/-under the provisions of Section 28AA of the Customs Act,1962. However, I find that, M/s SWTC have already deposited **Rs.2,46,515/- (Rupees Two Lakh Forty Six Thousand Five Hundred Fifteen only)** vide TR-6 Challan no.02/16-17 dated 09.05.2017 towards interest liability and the same is liable to be appropriated against the interest liability.

17. I find that M/s SWTC have contended in their written reply dated 26.12.2017 that they have paid all the charges i.e. duty of Rs.2,83,780/- vide TR-6 Challan No. 01/16-17 dated 24.01.2017 , applicable interest of Rs.2,46,515/- vide TR-6 Challan No. 02/16-17 dated 09.05.2017 and penalty of Rs.42,567/- @ 15% of the duty vide TR-6 Challan No. 03/17-18 dated 15.05.2017 within 30 days of issuance/receipt of the instant Show Cause Notice dated 02.05.2017. Accordingly, they have requested to close and conclude the proceedings, as duly provided under the provisions of Section 28(5) and 28(6) of the Customs Act,1962.

17.1 In this regard, I refer to Section 28(5) and 28(6) of the Customs Act, 1962. They are reproduced as under-

Section 28(5) of the Customs Act, 1962

(5) “ Where any [duty has not been levied or has been short -levied or short-paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to [fifteen percent] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing”

Section 28(6) of the Customs Act, 1962

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section(5), the proper officer shall determine the amount of duty or interest and on determination , if the proper officer is of the opinion-

- (i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4) shall, without prejudice to the provisions of Section 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or
- (ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (5)”.

17.2 I find that the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance has issued (i) Customs Circular No.11/2016-Customs dated 15.03.2016 from F.No. 450/190/2015-CusIV and (ii) Master Circular No. 1053/02/2017-CX dated 10.03.2017 from F.No.96/1/2017-Cx.I, with regard to the deemed conclusion of proceedings as per the provisions of Section 28(5) and Section 28(6) of the Customs Act, 1962.

18. I find that the Noticee have been given an option in Para 12 of the instant Show Cause Notice that they have the right to opt for closure of these proceedings under section 28(6) of the Customs Act, 1962. If they so decide, then in terms of section 28(5) of the Customs Act, 1962, they may pay the duty demanded in this Show Cause Notice in full or in part, as may be accepted by them, and the interest payable thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by them, within 30 days of the receipt of the notice and inform the proper officer of such payment in writing.

18.1 I find that in the instant case it has been mentioned at Para 6 of the SCN that during the investigation, M/s STWC voluntarily made payment of Customs duty of Rs. 2,83,780/- pertaining to KASEZ SB No. 00005060 dated 07.05.2012 vide TR-6 Challan No.01/16-17 dated 24.01.2017. I further find that they have paid the applicable interest of Rs.2,46,515/- vide TR-6 Challan No. 02/16-17 dated 09.05.2017 and penalty of Rs. 42,567/-@ 15% of the Customs duty vide TR-6 Challan No.03/17-18 dated 15.05.2017 within 30 days of issuance/receipt of the Show Cause Notice. I also find that M/s SWTC have informed the Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch) vide their letter dated 15.05.2017. From above stated facts available on record, I find that in compliance of aforesaid option given to them vide the instant Show Cause Notice, the Noticee have accordingly availed the benefit of Section 28(5) and 28(6) of the Customs Act,1962 and they have paid the entire Customs duty of Rs. 2,83,780/- during the course of investigation and applicable Interest of Rs.2,46,515/- and penalty of Rs.42,567/- @ 15% of the Customs duty within 30 days with reference to the present Show Cause Notice in order to avoid legal proceedings. In such a favourable situation, proposal for imposition of penalty on M/s Sarthak Warehousing and Trading Corporation under Section 112(a) and 114A and upon their partner Shri Ajay Godara, under Section 112(a) and 114AA of the Customs Act,1962 is legally not justified and sustainable. Thus in view of the provisions of Section 28(5) and 28(6) of the Customs Act, 1962 and current legal provisions, the present proceedings initiated against M/s Sarthak Warehousing and Trading Corporation, Shed No. 273 & 274, CIB, Type Sector-III, AS-IV, Sector 1, KASEZ, Gandhidham (Gujarat)and Shri Ajay Godara, partner of M/s Sarthak Warehousing and Trading Corporation vide the impugned 'Show Cause Notice' are liable to be concluded in terms of the provisions of Section 28(5) and 28(6) of Customs Act,1962.

Imposition of Penalty on Shri Rajesh Jha under Section 112(a)and Section 114AA of the Customs Act,1962

19. Finally, in regards to proposal in SCN regarding Imposition of Penalty on Shri Rajesh Jha under Section 112(a) and Section 114AA of the Customs Act,1962, I refer to the penal provisions involved in the said Sections.

SECTION 112: Penalty for improper importation of goods, etc. - Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

- (i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- (ii) *in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;*
- (iii) *in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*
- (iv) *in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- (v) *in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.*

Section 114AA of the Act reads as under-

SECTION 114AA. Penalty for use of false and incorrect material. - *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

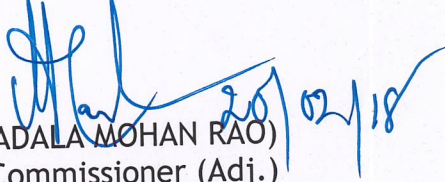
It is observed that Shri Rajesh Jha (so called Owner/Buyer/Agent of the Nepal based consignees), has been absconding ever since the detection of offence, and he has not come forward to file defence reply or attend personal hearing despite service of the SCN and letter of Personal hearing upon him in the manner as provided under Section 153(b) of the Customs Act, 1962. The allegations made against him are enumerated in para 5 of the Show Cause Notice . I find from the various statements of persons mentioned herein above that Shri Rajesh Jha was the key person who got himself involved in receiving/taking the delivery of the impugned goods at KASEZ and the said goods, meant for export to Nepal, used to be disposed of, by diverting the same in the DTA. He was the person who used to remain present at the said exporter's unit at KASEZ to examine the imported as well as goods likely to be diverted in DTA sale. He was the active person who arranged to provide fake, fictitious and forged documents to Shri Ajay Godara for submission to the KASEZ, Customs. The above stated acts of omission and commission by Shri Rajesh Jha has rendered the aforesaid goods liable to confiscation under Section 111 and Section 113 of the Customs Act, 1962 and as such Shri Rajesh Jha has rendered himself liable for penalty under Section 112(a) and 114AA of the Customs Act 1962. Accordingly, Shri

Rajesh Jha (so called Owner/Buyer/Agent of the Nepal based consignees) is held as liable for penalty under Section 112(a) and 114AA of the Customs Act ,1962.

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

ORDER

- (i) The proceedings initiated in the Show Cause Notice F.No.DRI/AZU/GRU/INT-25 /2015 dated 02.05.2017 against M/s. Sarthak Warehousing & Trading Company, Shed No. 273 & 274, CIB, Type Sector-III, AS-IV, Sector 1, KASEZ, Gandhidham (Gujarat) & Shri Ajay Godara, Partner of M/s. Sarthak Warehousing & Trading Company, Shed No. 273 & 274, CIB, Type Sector-III, AS-IV, Sector 1, KASEZ, Gandhidham (Gujarat) are hereby ordered to be concluded in terms of the provisions of Section 28(5) and 28(6) of the Customs Act, 1962 for the reason that :
- (a) they have paid Customs duty of Rs. 2,83,780/- (Rupees Two Lakh Eighty Three Thousand Seven Hundred Eighty only), vide TR-6 Challan No.01/16-17 dated 24.01.2017 and interest of Rs.2,46,515/-(Rupees Two Lakh Forty Six Thousand Five Hundred Fifteen only) vide TR-6 Challan No. 02/16-17 dated 09.05.2017, and
- (b) they have also paid penalty of Rs.42,567/- (Rupees Forty Two Thousand Five Hundred Sixty Seven only) vide TR-6 Challan No.03/17-18 dated 15.05.2017, towards penalty @ 15% of the Customs duty in terms of Section 28(5) and 28(6) of the Customs Act, 1962.
- (ii) I impose penalty of Rs.2,00,000/-(Rupees Two Lakhs only) on Shri Rajesh Jha under Section 112(a) and I also impose penalty on him of Rs.30,00,000/- (Rupees Thirty Lakhs only) under Section 114AA of the Customs Act,1962.


(PADALA MOHAN RAO)
Additional Commissioner (Adj.)
Custom House, Kandla.
Dated: 20.02.2018

F. No. S/10-07/ADJ/ADC/SARTHAK/2017-18

BY REGISTERED POST/HAND DELIVERY

1. M/s Sarthak Warehousing & Trading Company,
Shed No. 273 & 274, CIB, Type Sector-III,
AS-IV, Sector 1, Kandla Special Economic Zone,
Gandhidham (Gujarat)
2. Shri Ajay Godara,
Partner of M/s Sarthak Warehousing & Trading Company,
Shed No. 273 & 274, Type Sector-III, AS-IV, Sector 1,
Kandla Special Economic Zone,
Gandhidham(Gujarat)
3. Shri Rajesh Jha, (To be served as per Section 153 (b) of the Customs Act, 1962
as whereabouts of them are not known.)

Copy to:-

1. The Additional Director, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Unit No.15, Magnet Corporate Park, S.G. Highway, Thaltej, Ahmedabad-380059 w.r.to SCN F.No. DRI/AZU/GRU/INT-25/2015 dated 02.05.2017.
2. The Development Commissioner, KASEZ, Gandhidham .
3. The Deputy Director, Directorate of Revenue Intelligence, GRU, Gandhidham.
4. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla
5. The Deputy/Assistant Commissioner(Recovery), Custom House, Kandla
6. The Deputy/Assistant Commissioner(Gr-II), Custom House, Kandla
7. Guard File