



**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.	F. No. S/10-73/ADJ/ADC/Ambiance/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/05/2019-20
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	21.06.2019
E	जारी करने की दिनांक/Date of issue	21.06.2019
F	एस०सी०एन० सं० एवं दिनांक /SCN No. & Date	F. No. DRI/GRU/INV-4/2009-10 dated 16.03.2010
G	नोटीसी पार्टी /Noticee/Party	<ol style="list-style-type: none"> 1. M/s. Ambiance Traders, Vill. Chapra, Chapara-Dalpatpur Road, Moradabad, Uttar Pradesh- 244001 2. Shri Uzama Qamar, Director of M/s. Ambiance Traders, Vill. Chapra, Chapara-Dalpatpur Road, Moradabad, Uttar Pradesh- 244001 3. Shri Mohd Aqil, Director of M/s. Ambiance Traders, Vill. Chapra, Chapara-Dalpatpur Road, Moradabad, Uttar Pradesh- 244001 4. Shri Tushar, Block No. 127/55, Mulund Colony, Hindustan Chowk, Mulund (W), Mumbai - 82 5. Shri Nilesh Kataria, Block No. 127/55, Mulund Colony, Hindustan Chowk, Mulund (W), Mumbai - 82 6. M/s. Divine Shipping Services, Radha Swami Kripa Building, Room No. 101, Plot No. 261, Ward 12-B, Gandhidham 370201 7. Shri V R Venkatraman, Manager of CHA M/s. Divine Shipping Services, Radha Swami Kripa Building, Room No. 101, Plot No. 261, Ward 12-B, Gandhidham 370201

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. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली के नियम 19823 के साथ पठित सीमा शुल्क अधिनियम 12 धारा की 19628 A - 3के अंतर्गत प्रपत्र सीए (1) में चार प्रतियों में नीचे बताए 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
7^{वीं} मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड
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 दिन के 60 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 -/2रुपए 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 -
 - (i) उक्त अपील की एक प्रति और
A copy of the appeal, and
 - (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम-1870के मद सं० 6-में निर्धारित -/2रुपये 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 ड्यूटिजुर्माना आदि के भुगतान का प्रमाण संलग्न /दण्ड /ब्याज / 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

An intelligence was gathered by the Directorate of Revenue Intelligence indicated that under below mentioned eight Shipping Bills filed by M/s. Ambiance Traders, Moradabad, (PAN No. AAFPQ8024K) (IEC No. 2909001032) (Bank Account No. 01442170000381, IFSC Code KKBK0000144 of Kotak Mahindra Bank, Moradabad) showing description of export goods as "Indian Hand Knotted Woolen Carpets" and classifying the same under Customs Tariff Heading No. 57011000 were attempting to export carpets of inferior quality by mis-declaring its description and quantity and also declaring higher value of the consignment before the Customs, with an intent to avail higher and undue export benefit in the form of duty drawback.

TABLE-1

Details of Shipping Bills

Sr. No	Shipping Bill No.	Date of Shipping Bill	Declared Quantity(in square feet)	Declared FOB Value (in INRs)	Declared DBK amount(in INRs)
1	1155343	01.09.2009	4757.688	2445263.54	268978.99
2	1155346	01.09.2009	4843.800	2489521.68	273847.38
3	1155347	01.09.2009	4919.148	2528247.61	278107.24
4	1155348	01.09.2009	4919.148	2528247.61	278107.24
5	1155350	01.09.2009	4606.992	2367811.67	260459.28
6	1185351	01.09.2009	4757.688	2445263.54	268978.99
7	1155352	01.09.2009	4682.340	2406537.60	264719.14
8	1155353	01.09.2009	5005.260	2572505.75	282975.63
TOTAL			38492.064	19783399	2176173.89

1.1. Based on the intelligence, the consignment being exported from Kandla Port under above eight Shipping Bills was examined on 17.09.2009 by the officers of DRI, in the presence of Shri Uday H. Dave, proprietor of the CHA firm M/s. Devine Shipping Services, Gandhidham under Panchnama dated 17.09.2009 at M/s. A.V. Joshi & Co. CFS, Mithi Rohar, Gandhidham. All copies of above mentioned eight Shipping Bills were taken over by the officers of DRI from Shri Uday H. Dave. In the said Shipping Bills name of the exporter was shown as M/s. Ambiance Traders, Moradabad, description of the export goods was shown as "Indian Hand Knotted Woolen Carpets" and the same were classified under Customs Tariff Heading No. 57011000. During the course of the examination of the export consignment, the goods covered under all the eight Shipping Bills were found stuffed in a single container bearing number TCKU 9747092. The goods were de-stuffed, examined and measured. On examination and measurement, it was revealed that it contained total 487 pieces of carpets packed in 190 bundles and totally measuring 13,925.78 Square feet. No markings were found on the carpets/ bundles to indicate as to which Shipping Bill these bundles/ carpets pertained. Further, it was found that the total numbers of bundles declared in these eight Shipping Bills were 197 but on physical verification only 190 bundles were found. Similarly, it was also found that the total size of the carpets declared in these eight Shipping Bills was 38,492.064 square feet but on physical measurement it was found to be only 13,925.78 square feet, which is drastically less than declared Quality/ exact description and actual value of the same could not be ascertained on the spot for want of

expertise. Therefore for further investigation the consignment was placed under detention vide the Panchanama dated 17.09.2010.

1.2. Enquiries were got conducted through the jurisdictional Central Excise Authorities at the address of M/s. Ambiance Traders, as declared in the above mentioned eight Shipping Bills and IEC, i.e., at Village: Chapara, Dalpatpur Road, Moradabad. After conducting enquiries at the declared address of M/s. Ambiance Traders, Moradabad, the Assistant Commissioner of Central Excise, Central Excise Division, Moradabad issued letter C. No.: 8-Prev/Follow up/MBD/08 dated 29.09.2009. Vide the said letter it was informed that Chapara was a small village located before Dalpatpur, Rampur Road, Moradabad and survey of village was conducted for finding out the exact location of the party but no firm in the name of M/s. Ambiance Traders was found in the said village. It further stated that enquiries were conducted in respect of the both the Directors of the firm namely, Mr. Uzma Qamar and Mr. Mohd. Agil but there were no persons of the said names in the village Chapara. Thus, M/s. Ambiance Traders, Moradabad was non-existent at the addresses declared in the Shipping Bill and IEC.

1.3. From the examination and measurement of the impugned carpets, by the officers of DRI, under Panchanama dated 17.09.2009, it was evident that in the above referred eight Shipping Bills, the quantity of the impugned Carpets was declared significantly less than actual. Further on visual examination, it was clear even to a layman that the goods could not be Hand Knotted Woolen Carpets, as declared, but appeared to be of very inferior quality. It was also clear that the total value of Rs.1,97,83,399/-, declared for the consignment was a grossly overvalued figure in order to avail higher drawback benefit. As the misdeclaration in respect of quantity, value and description of the impugned carpets attempted to be exported was evident, the said 13,925.78 square feet carpets were placed under seizure vide Seizure Memo dated 27.10.2009, under the reasonable belief that the same were liable to confiscation under the provisions of the Customs Act, 1962. The seized goods were handed over to Shri V Selvaraj, Manger of private CFS of M/s AV Joshi and Co. CFS, Mithi Rohar, Gandhidham for safe custody under Supratnama dated 27.10.2009. Subsequently, the Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009, issued by the Indian Institute of Carpet Technology, also confirmed that the major part of the impugned carpets was not of "Hand Knotted Woolen Carpets", as declared by the exporter in the said eight Shipping Bills.

1.4. To ascertain exact nature and value of the carpets being attempted to be exported in the name of M/s. Ambiance Traders, Moradabad under the eight Shipping Bills, mentioned in TABLE-1 above, and detained by DRI, a request was made to the Indian Institute of Carpet Technology, Bhadohi for examination of the same. Shri R. K. Malik, Assistant Professor of Indian Institute of Carpet Technology, Bhadohi visited M/s. A.V. Joshi & Co. CFS, Mithi Rohar, Gandhidham on 04.11.2009 and examined the subject consignment and also took

representative samples. After examination of these 487 carpets of various sizes rolled in 190 bundles on, 04/11/2009, the Indian Institute of Carpet Technology issued their Carpet Inspection and Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009. Vide the said report they informed that out of the said 190 bundles of carpets, only 25 bundles were found "Hand knotted Carpets (Tibbetan technique)" as per the definition laid down in IS: 11205-1984, (reaffirmed 1995), 11 bundles were found "Handloom woven Carpets (Broadloom)" and the remaining 154 bundles were found as "tufted carpets". The said report clearly reflected bundle-wise actual description of all the impugned carpets. However, they did not estimate value of the impugned carpets. On calculation of total areas of all the three types of carpets, it was found that 2532.24 Sq. Ft. carpets were Handknotted Carpets (Tibbetan technique), 638.67 Sq. Ft. carpets were Handloom woven Carpets (Broadloom) and 10754.87 Sq. Ft. carpets were tufted carpets. The detailed calculation was mentioned in Annexure II of the Show Cause Notice.

1.5. Further, during investigation the statements of following persons were recorded:-

- Statement of Shri Uday H. Dave, proprietor of M/s. Devine Shipping Services, 104, Sobhraj Complex Waghawadi Road, Bhavnagar, was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, DRI, Gandhidham on 20.11.2009 wherein he, interalia, stated that :-

He started the CHA firm in November 2007 in the name of M/s. Divine Shipping Services. Earlier the said firm's name was M/s. H. K. Dave which was a partnership firm, later on the said firm became a proprietary concern since 2006, whose name was later changed to M/s. Divine Shipping Services during 2007.

The work pertaining to that CHA firm at Gandhidham was being looked after by Mr. V. R. Venkatraman. In respect of the parties approaching their Gandhidham office, Mr. Venkatraman looked after the documents and if the documents were to be accepted, he used to refer to him for the same and the documents were being signed by him only and no other person was authorized to sign the documents on his behalf at Gandhidham. Shri Venkatraman was the Branch Manager and handling the documents with the Customs, maintained liaison with the parties and looked after the routine Office work.

The documents in respect of Shipping Bills No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01.09.2009 filed in the name of M/s Ambiance Traders Moradabad before Kandla Customs were not signed by him and only the declaration was signed by Mr. Venkatraman. On inquiry with Mr Venkatraman he came to know that the Shipping Bills were signed by an unknown person, probably by

Mr. Tushar. He was not aware as to when and how the cargo was reached to CFS A.V. Joshi & Co. Gandhidham. He had not seen the cargo attempted to be exported by M/s Ambiance Traders Moradabad. Mr Rajiv Tushar is the person who represented or owned M/s Ambiance Traders Moradabad

He had never met Mr. Tushar. It was the first consignment of M/s Ambiance Traders, Moradabad which was being attended by his CHA firm. He had not received any charges for the services provided to M/s Ambiance Traders, Moradabad. Mr Venkatraman signed the declaration for generating the checklist with the customs.

Mr. Rajiv Tushar, who introduced himself as representative M/s. Ambiance Traders, Moradabad was the contact person for the said export consignment.

One Mr. Sanjay Mathur, having office at 107, Madhuvan Complex, Oslo, Gandhidham and doing business in the name of Global Cargo Movers introduced Mr. Nilesh Kataria in his office to Mr. Venkatraman as CHA working with M/s. Bajaj Enterprises, Mumbai on casual basis during Mr. Venkatraman's visit to the office of Mr. Sanjay Mathur. Thereafter, Mr. Nilesh came to Mr. Venkatraman with Mr. Tushar and informed that Mr. Tushar was his brother and would like to export carpets from Kandla, however Mr. Venkatraman was reluctant in accepting the documents but Mr. Nilesh assured him and stood as guarantor for Mr. Tushar as he was also a CHA and working in name of M/s. Bajaj Enterprises (CHA Licence no11/948).

Mobile number of Mr. Nilesh Kataria was 09321530645 and address was Block No. 127, G-8, Mulund Colony, Hindustan Chock, Mulund, Mumbai. He was not aware that M/S Ambiance Traders was non-existing firm.

- Statement of Shri V. R. Venkatraman, Manager, M/s. Devine Shipping Services, Gandhidham was recorded under Section 108 of the Customs Act, 1962 before the Sr. Intelligence Officer, DRI, Gandhidham on 20.11.2009, wherein he interalia stated that:-

He was working as Manager in M/s. Devine Shipping Services since 1998. When any import/ export documents were received for clearance, he used to seek advice of Mr. Uday Dave and the documents also got signed by him.

In respect of export by M/s Ambiance Traders Moradabad, under Shipping Bill No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01.09.2009, the export declaration format was signed by him and submitted to EDI for generating checklist. The said checklists were directly collected by Mr. Rajiv

Tushar and without informing him he proceeded with the submission of documents with customs and got it processed which was not in his knowledge. He had not communicated the same to Mr. Dave or to Customs authority.

Mr. Sanjay Mathur, having office at 107, Madhuvan Complex, Oslo, Gandhidham, doing business in the name of Global Cargo Movers introduced him to Mr. Nilesh Kataria as CHA working with M/s. Bajaj Enterprises, Mumbai. Thereafter, Mr. Nilesh visited his office with one gentleman named Mr. Tushar and informed that Mr. Tushar was his brother and wanted to export carpets from Kandla. Rests of the formalities were completed by Mr. Rajiv Tushar without his knowledge.

The contact No. of Mr. Rajiv Tushar was 09574184482 and of Mr. Nilesh Kataria was 09321530645, the address of Mr. Nilesh was Block No. 127, G- 8, Mulund Colony, Hindustan Chowk, Mulund, Mumbai. As Mr. Nilesh introduced Mr. Tushar as his brother, he presumed same address for both of them.

The documents for the cargo attempted to be exported by M/s. Ambiance Traders, Moradabad, were for Hand Knotted Woolen Carpets, however the cargo was not physically seen by him at any stage of export.

As only declaration was signed by him and rest of the formalities were completed by Mr Tushar he was not aware as to how and when the cargo reached CFS A.V. Joshi & Co., Gandhidham. He was not aware that M/s Ambiance Traders was a non-existing firm.

Mr. Tushar was representative of the exporter in the case.

1.6. Shri V. R. Venkatraman, in his statement dated 20.11.2009, had named Shri Rajiv Tushar as the person who approached him for the clearance work of the subject export consignment and also completed various Customs formalities without his knowledge. Therefore, Summons dated 20.11.2009 was issued to Shri Rajiv Tushar on the address provided by Shri V. R. Venkatraman, for appearing before the DRI Gandhidham but the same was returned to DRI Gandhidham undelivered with remarks of postal authorities as "Incomplete Address". Further as Shri Nilesh Kataria, who was working as a CHA at Mumbai under name of M/s Bajaj Enterprises, was the person who introduced Shri Rajiv Tushar to Shri Venkatraman. Summonses were issued to him also, on the address provided by himself telephonically to the officers of DRI, on 29.12.2009, 12.01.2010 and 04.02.2010. All the summons were returned by postal authorities with remarks "refused".

1.7. "Indian Hand Knotted Woolen Carpets" which are better in quality and have value higher than other kind of Carpets, except those made of silk and accordingly attracts higher

drawback benefits. Thus, to avail higher benefit of drawback amount the description of the subject Carpets was falsely declared as "Indian Hand Knotted Woolen Carpets". The Indian Institute of Carpet Technology in their Carpet Inspection and Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009 had reported that out of the said 190 bundles of carpets, only 25 bundles were "Handknotted Carpets (Tibbetan technique)", 11 bundles were "Handloom woven Carpets (Broadloom)" and the remaining 154 bundles were "tufted carpets". Therefore, it is clear that major part of the consignment consisted of Tufted Carpets which are termed as Carpets of inferior quality and are amongst cheapest Carpets and thus fetches lesser amount of drawback benefits. It was a clear case of mis-declaration of description of the export goods with intent to avail higher and undue benefit of drawback scheme. The price of Rs. 1,97,83,399/- declared by M/s. Ambiance Traders, Moradabad was for "Hand Knotted Woolen Carpets" which do not appear to be proper in the light of the above discussed mis-declarations and apparently it was declared on the higher side. In any case, once misdeclaration is found, as in the instant case, it is a settled law that the department is not required to prove its case with mathematical precision. All that it requires is the establishment of such a degree of probability that any prudent man, on its basis, believes in the existence of the fact in issue.

1.8. In view of the above, the total value of the impugned export goods declared as Rs.1,97,83,399/- in the eight (8) Shipping Bills, mentioned in TABLE -1 above, could not be accepted as transaction value and was required to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. As no further evidence, was submitted by the exporter/ any concerned person, in order to arrive at the correct value, resort to the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 read with Section 14 of the Customs Act 1962 was made. Going sequentially through Rule 4 to 6 of the said Rules, the applicability of Rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 was considered to arrive at the correct and fair FOB value of the subject goods. This Rule stipulates determination of value on the basis of value of the goods of like kind and quality, exported at or about the same time. It was observed that carpets are made from varying percentage of various materials, which have direct implication on its value. Similarly the designs/ brands etc. has also its bearing on value. Therefore, this rule was not found feasible to determine correct and fair value of the subject goods.

1.9. Therefore, resort to the Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 was made. In view of the reasonable flexibility in its application, it was found to be most suitable. Thus, market survey was done as the value of carpets depends on a number of factors like material of the goods, brand name, designs etc. Shri Mahendra Kumar Bajaj of M/s. Mahendra Woolen Textiles, Panipat and Shri Harmeet Singh of M/s. Om Siddhi Vinayak, KASEZ, Gandhidham, who were dealing in similar goods were called and the impugned goods were got examined by them for the purpose of providing estimated

production value of the said goods. The said proceeding of estimation of value was conducted under Panchanama dated 19.02.2010 (RUD 9). The average of the production value so obtained from both the above mentioned persons is tabulated hereunder:

TABLE-2

ESTIMATION OF PRODUCTION VALUE

Serial No	Type of carpet	Value given by Shri MK Baja]	Value given by Shri HS Koli	Average value
1	Hand knotted carpets by Tibetan technique	Rs.30/- per SQF	Rs.30/- per SQF	Rs.30/- per SQF
2	Carpets woven on hand loom [broad loom]	Rs.36/- per SQF	Rs.40/- per SQF	Rs.38/- per SQF
3	Tufted carpets	Rs.25/- per SQF	Rs.27/- per SQF	Rs.26/- per SQF

1.10. On the basis of the value obtained as above, the value of the said goods was computed in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. In the above obtained production value, the elements such as expenses of transportation, clearance etc. and expected margin of profit were added. The corresponding additions and the FOB Value determined are detailed here in below:

TABLE-3

Calculation of Actual Value of the goods

Sr No.	Type of carpets	Average value determined	Total area of carpets (in Sq. Ft)	Total production value (Rs.)	Expenses @ 10% (Rs.)	Margin of Profit @ 10% (Rs.)	Net Value (Rs.)
1	Hand knotted carpets by Tibetan technique	Rs.30/- per SQF	2532.24	75967	7596.7	8356.37	91920
2	Carpets woven on hand loom [broad loom]	Rs.38/- per SQF	638.67	24269	2426.9	2669.59	29365
3	Tufted carpets	Rs.26/- per SQF	10754.87	279627	27962.7	30758.97	338349
	TOTAL		13925.78	379863	37986.3	41784.93	459634

Accordingly correct drawback amount admissible against exportation of the impugned carpets calculated on the rates and caps declared by the Government in the drawback schedule, on the basis of above determined value comes as detailed below:

TABLE-4

Calculation of Actual Admissible Drawback

Sr No.	Type of carpets	Aggregate value (Rs.)	Tariff Item No.	Rate of Drawback	Drawback admissible (Rs.)
1	Hand knotted carpets by Tibetan technique	91920	570101	11%	10111
2	Carpets woven on hand loom [broad loom]	29365	570201	11%	3230
3	Tufted carpets	338349	570301	12.5%	42294
	TOTAL	459634			55635

1.11. From the facts narrated in the foregoing paras and the material evidence available on record, it emerges that the address of M/s. Ambiance Traders, Moradabad was declared as Village: Chapara, Dalpatpur Road, Moradabad in the eight Shipping Bills, mentioned in TABLE -1 above. In the IEC of the firm Shri Uzama Qamar and Shri Mohd Aqil have been shown as Directors of this firm. Enquiries got conducted through the Central Excise Division, Moradabad has revealed that the Said firm was not situated at the said declared address and that the whereabouts of the Directors of the firm, as declared in the IEC profiles, was also not found at the declared address. These facts clearly show that M/s. Ambiance Traders, Moradabad was in existence only on paper and its exports were not genuine. The persons doing misdeed of mis-declaring the description and quantity of the export goods and also inflating the value with an intention to avail higher export benefit in the form of duty drawback have never appeared before the Directorate of Revenue Intelligence during the course of subject investigation. It is thus evident that to avoid coming before the eyes of the law, some wicked persons behind this misdeed had attempted to defraud the Government in this manner.

1.12. During the examination of the said goods vide panchnama dated 17.09.2009, it was found that the goods declared in the eight Shipping Bills, mentioned in TABLE-1 above, were not in conformity with the declaration made in the export documents in terms of quantity. Quantity of the goods declared as 38,492.064 square feet was enormously excess than actual i.e., 13,925.78 square feet. The fact that the goods were of inferior quality and were not found as declared, is evidenced from the Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009 issued by the Indian Institute of Carpet Technology which clearly states that the major part of the impugned carpets was of "Tufted Carpets" and not "Hand Knotted Woolen Carpets", as declared by the exporter in the said eight Shipping Bills. The value of the impugned seized goods derived under the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 i.e., Rs. 4,59,634/- reveals that the total value declared in the said eight Shipping Bills i.e. Rs. 1,97,83,399/- was extremely higher than actual. This clearly indicates the modus operandi of availing undue benefit of drawback scheme, by over invoicing the export value to defraud the Government. The actual quantity and value vis-a-vis figures falsely declared in the eight Shipping Bills and effect on drawback amount calculated thereon, is detailed below in table-5:

TABLE - 5

Details of excess Declaration of Quantity, Value and Drawback amount

	Quantity (in square feet)	Value (in Indian Rs.)	Drawback amount (Rs.)
Declared	38,492.064	1,97,83,399/-	21,76,174/-
Actual/ ascertained	13,925.780	4,49,634/-	55,635/-
	24,566.284	1,93,33,765/-	21,20,539/-

1.13. From the facts discussed in the foregoing paras and material evidences available on records, it was evident that it was a clear case of mis-declaration of description, size and value of the export goods to avail higher export incentive in the form of drawback, in the name of a non-existing firm to escape from law. As discussed above M/s. Ambiance Traders, Moradabad had claimed drawback of Rs. 21,76,174/- under the said eight Shipping Bills. The drawback amount claimed by them, is in excess by Rs. 21,20,539/- (2176174 - 55635) than the amount lawfully admissible to them i.e., Rs, 55,635/- as mentioned in TABLE-4 above. M/s. Ambiance Traders, Moradabad, by their acts of omission and commission and using fraudulent practices to avail inadmissible drawback have contravened the provisions of Section 50(2) of the Customs Act, 1962 read with Section 7 and 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 2(c), Rule 12 and 14(ii) of the FTDR Rules 1993. Hence, they have rendered the seized 13,925.78 square feet carpets valued at Rs 4,59,634/- (re-determined FOB value) liable to confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962 and have also rendered the goods liable to be treated as smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962. The said acts have rendered M/s. Ambiance Traders, Moradabad liable to penalty under Section 114(iii) of the Customs Act, 1962.

1.14. In the instant case, the total FOB value was falsely declared as Rs. 1,97,83,399/- in the eight Shipping Bills and accordingly the amount of drawback claim was Rs.21,76,174/-. The actual FOB value derived is only Rs. 4,59,634/- for which the admissible drawback claim comes to Rs. 55,635/- which indicates that the drawback amount was claimed in excess of Rs. 21,20,539/-, in the name of M/s. Ambiance Traders, Moradabad, The drawback claim in respect of the eight Shipping Bills, mentioned in TABLE-1: above, is liable to be restricted to the admissible drawback amount of Rs. 55,635/-, payable only in the event of exportation of the impugned goods, if any.

1.15. Shri Uzama Qamar and Shri Mohd Aqil. are the Directors of M/s Ambiance Traders, Moradabad, It appears that they have created the firm M/s Ambiance Traders, Moradabad and obtained IEC from the DGFT authorities by declaring a fake address. Therefore, it appears that, these two persons had malafide intention from the beginning and intentionally mis-declared description, size and value, in the eight Shipping Bills mentioned in TABLE -1 above, of the subject export cargo to avail higher export incentive in the form of drawback, in the name of a non existing firm called M/s. Ambiance Traders, Moradabad. And for adopting such fraudulent practices to avail inadmissible drawback, as discussed supra, have contravened the provisions of Section 90(2) of the Customs Act, 1962 read with Section 7 and 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 2(c), Rule 12 and 14(ii) of the FTDR Rules 1993 which has rendered the seized 13,925.78 square feet carpets valued at Rs 4,59,634/- (re-determined FOB value) liable to confiscation under Section 113(h), (i) & (ii) of the Customs Act,

1962. Therefore, penalty under Section 114(iii) is clearly attracted against both the Directors of the firm i.e., Shri Uzama Qamar and Shri Mohd Aqil.

1.16. Shri V. R. Venkatraman, Manager of M/s. Devine Shipping Services, Gandhidham, in his statement dated 20.11.2009 had admitted that his firm had attended to the Customs clearance in respect of exports of M/s. Ambiance Traders, Moradabad; that he had never met the owner/ Proprietor of the said firm nor inquired about their whereabouts; Shri Rajiv Tushar represented M/s. Ambiance Traders, Moradabad, but he never enquired about his status in the said firm; that the IEC holders of the firm has not authorized them for clearing the said consignments. He had also admitted that the checklists were directly collected by Mr. Rajiv Tushar and he proceeded with the submission of documents with customs and he had not communicated the same to Mr. Dave or to Customs authority. He has not obtained authorization of the exporter for attending their work. It appears that he had conveniently abetted M/s. Ambiance Traders, Moradabad in respect of mis-declaration of description, size and value, in the eight Shipping Bills mentioned in TABLE -1 above, in violation of Section 50(2) of the Customs Act 1962, which has rendered the 13,925.78 square feet carpets liable for confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962. Therefore, penalty under Section 114(iii) is clearly attracted against him.

1.17. No authorization for attending the work pertaining to the export under subject eight Shipping Bills was obtained by the CHA firm M/s Divine Shipping Services from the exporter i.e., M/s. Ambiance Traders, Moradabad, which is violation of Regulation 13(a) of the Customs House Agents Licensing Regulations, 2004. Shri Uday H Dave, proprietor of licensed CHA firm M/s Divine Shipping Service of Gandhidham-Kutch failed to exert due diligence, mandatory for the proprietor of a licensed CHA, and the said eight Shipping Bills, misdeclaring the quality, quantity and value of the impugned goods were filed through his CHA firm. Thus, M/s. Divine Shipping Services, the CHA firm has abetted M/s. Ambiance Traders, Moradabad in violating Section 50(2) of the Customs Act 1962 which has rendered the 13,925.78 square feet carpets liable for confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962. Therefore, penalty under Section 114 (iii) is clearly attracted against M/s. Divine Shipping Services, Gandhidham.

1.18. Shri Nilesh Kataria introduced Shri Rajiv Tushar to Shri V. R. Venkatraman, Manager of Mis. Devine Shipping Services, Gandhidham for attending the work pertaining to the export of subject Carpets. As stated by Shri V. R. Venkatraman in his statement Shri Nilesh Kataria is working as a CHA at Mumbai. Being a CHA Shri Nilesh Kataria was supposed to know and follow the Customs Law and also assist DRI in the subject investigation. However, despite two Summons, he never appeared before DRI and even refused to receive the Summons from postal authorities. Shri Rajiv Tushar attended to the work in Custom House Kandla without any

authority. He had not informed his correct address even to Shri V. R. Venkatraman. These facts indicates that both Shri Nilesh Kataria and Shri Rajiv Tushar had full knowledge in respect of M/s. Ambiance Traders, Moradabad and also in respect of the mis-declaration of description, size and value, in the eight Shipping Bills mentioned in TABLE -1 above, in violation of Section 50(2) of the Customs Act 1962, which has rendered the 13,925.78 square feet carpets liable for confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962. Therefore, penalty under Section 114(iii) is clearly attracted against both of them.

2. Thus, M/s. Ambiance Traders, Moradabad were called upon to show cause to the Additional Commissioner of Customs, Kandla having his office situated at New Custom House, Near Balaji Temple, Kandla within thirty days from the receipt of this notice as to why :-

- (i) The total FOB value of the goods declared under Shipping Bills No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01/09/2009 as Rs. 1,97,83,399/- should not be rejected under Rule 8 of the Customs Valuation (Determination of Value 12 of Export Goods) Rules, 2007 and re-determined it as Rs 4,59,634/- in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (ii) The seized 13,925.78 square feet carpets, attempted to be exported by them through Kandla Port under Shipping Bills No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01/09/2009 totally valued at Rs 4,59,634/- (re-determined FOB value), should not be confiscated under Section 113(h), (i) & (ii) of the Customs Act, 1962.
- (iii) The duty drawback of Rs. 21,76,174/- in respect of the seized goods, claimed by them by way of filing drawback Shipping Bills No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01/09/2009, should not be restricted to Rs. 55,635/- on the re-determined FOB value of Rs. 4,59,634/-
- (iv) Penalty should not be imposed on them under Section 114(iii) of the Customs Act, 1962.

2.1 Following persons/ parties were also called upon to show cause in writing to the Additional Commissioner of Customs, Kandla having his office situated at New Custom House, Near Balaji Temple, Kandla within thirty days from the date of receipt of this notice, as to why penalty should not be imposed on them under Section 114 (iii) of Customs Act, 1962 for the reasons given in the foregoing paras:

- (i) Shri Uzama Qamar, Director of M/s Ambiance Traders, Moradabad,
- (ii) Shri Mohd Agil, Director of M/s Ambiance Traders, Moradabad,
- (iii) Shri Rajiv Tushar,
- (iv) Shri Nilesh Kataria,
- (v) M/s Divine Shipping Services, Gandhidham and
- (vi) Shri VR Venkatraman, Manger of CHA firm M/s Divine Shipping Services, Gandhidham.

3. An opportunity to be heard in person was given to all the noticees on 25.04.2019, 09.05.2019 and 24.05.2019. Only Shri Uday H. Dave, proprietor of M/s. Divine Shipping Services, Gandhidham appeared on 09.05.2019 and reiterated the earlier submission made by them vide letter dated 20.05.2010. He further submitted a fresh submission vide letter dated 29.04.2019 during personal hearing and requested to take a lenient view in the matter. However, no other noticees or any authorized persons appeared or turned up on behalf of the Noticees for personal hearing on the dates given to them.

3.1. Shri Uday H. Dave, proprietor of M/s. Divine Shipping Services, Gandhidham vide submission dated 20.05.2010/ 29.04.2019 submitted that the factual background of the case is that on 17.09.2009, the officers of DRI examined the consignments being exported by M/s. Ambiance Traders, Moradabad under eight shipping bills No.1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 & 1155353 all dated 01.09.2009 for export of total 38492.064 square feet of "Indian Hand Knotted Woolen Carpets" classifying the same under Customs Tariff Heading No.57011000 and declaring total FOB Value of Rs.1,97,83,399/- having total duty drawback amount of Rs.21,76,174/-. During examination, the officers of DRI found that the total number of bundles declared in these eight shipping bills was 197 but on physical verification, it was found to be 190 bundles only. Similarly, size of the carpets was found to be 13925.78 square feet whereas in the said shipping bills, it was declared as 38492.064 square feet.

In the statement recorded on 20.11.2009 by the officers of DRI, the undersigned has clearly stated that –

- (i) Shri V. R. Venkatraman, Branch Manager who looked after the work pertaining to the CHA firm at Gandhidham, used to refer and send the documents, if the same were to be accepted, to him for signature as no one was authorized to sign the documents on his behalf at Gandhidham.
- (ii) The documents in respect of shipping bills No.1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 & 1155353 all dated 01.09.2009 filed in the name of M/s. Ambiance Traders, Moradabad before Kandla Customs were not signed by him.
- (iii) Only the declaration was signed by Shri V. R. Venkatraman who had informed him that the said shipping bills were signed by an unknown person, probably Mr. Rajiv Tusar, who represented and owned M/s. Ambiance Traders. Shri V. R. Venkatraman was not aware as to when and how the cargo reached to CFS A. V. Joshi & Co., Gandhidham.

- (iv) He had never met Mr. Rajiv Tusar and even not seen the cargo attempted to be exported by M/s. Ambiance Traders. It was the first consignment of M/s. Ambiance Traders to be attended by their CHA firm.
- (v) He had not received any charges for the services provided to M/s. Ambiance Traders. Shri V. R. Venkatraman signed the declaration for generating the checklist with the Customs.
- (vi) Shri V. R. Venkatraman was introduced to Mr. Nilesh Kataria of M/s. Bajaj Enterprises, Mumbai by one Mr. Sanjay Mathur of M/s. Global Cargo Movers, Gandhidham. Later, Mr. Nilesh Kataria came to Shri V. R. Venkatraman with Mr. Rajiv Tusar and introduced him as his brother and informed that Mr. Tushar would like to export carpets from Kandla. Shri V. R. Venkatraman was reluctant to accept the documents but he was given assurance as guarantor from Mr. Nilesh Kataria of M/s Bajaj Enterprises (CHA Licence no. 11/948). Shri V. R. Venkatraman was not aware that M/s. Ambiance Traders was a non-existing firm.

3.2. He further submitted that in the statement recorded on 20.11.2009 by the officers of DRI, Shri V. R. Venkatraman has also confirmed that –

- (i) When any import / export documents were received for clearance, he used to seek advice of Mr. Uday Dave and was getting the documents signed from him.
- (ii) In respect of export by M/s. Ambiance Traders, under shipping bills No.1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 & 1155353 all dated 01.09.2009, the export declaration format was signed by him and submitted to EDI for generating check list which was directly collected by Mr. Rajiv Tusar who without informing him, submitted documents with Customs and got it processed. This fact was not in his knowledge and he had not communicated it to Mr. Uday Dave or to Customs Authority.
- (iii) He was introduced to Mr. Nilesh Kataria of M/s. Bajaj Enterprises, Mumbai by one Mr. Sanjay Mathur of M/s. Global Cargo Movers, Gandhidham. Later, Mr. Nilesh Kataria came to Shri V. R. Venkatraman with Mr. Rajiv Tusar and introduced him as his brother and informed that Mr. Tushar would like to export carpets from Kandla. Rest of the formalities was completed by Mr. Rajiv Tusar without his knowledge.
- (iv) He had not physically seen the export cargo and was also not aware as to when and how the cargo reached to CFS A. V. Joshi & Co., Gandhidham. He was also not aware that M/s. Ambiance Traders was a non-existing firm.

3.3. The submission made by Shri Uday H. Dave vide letter dated 29.04.2019, at the very outset, he denied the charges leveled against them. He submitted that from the statements

recorded by the officers of DRI, it is evident that the documents in respect of shipping bills No.1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 & 1155353 all dated 01.09.2009 filed in the name of M/s. Ambiance Traders, Moradabad before Kandla Customs were not signed by hem. Only the declaration was signed by Shri V. R. Venkatraman that too for generating check list and the said shipping bills were signed probably by Mr. Rajiv Tusar, who represented and owned M/s. Ambiance Traders. They were not aware as to when and how the cargo reached to CFS A. V. Joshi & Co., Gandhidham. They had even not received any charges for the services provided to M/s. Ambiance Traders. These facts are on record of the SCN and not rebutted in the SCN and hence, hold its evidential value in the eyes of law.

3.4. Since penalty upon our proprietary CHA firm and Shri V. R. Venkatraman, Branch Manager has been proposed under Section 114(iii) of the Customs Act, 1962 for violating Section 50(2) of the Customs Act, 1962 which rendered seized 13,925.78 square feet carpets liable for confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962 and abetting M/s. Ambiance Traders in mis-declaring quality, quantity and value of the impugned goods, therefore, for better appreciation, Section 114 (iii), Section 50 and Section 113(h), (i) & (ii) of the Customs Act, 1962 are reproduced as under:

SECTION 114. Penalty for attempt to export goods improperly, etc. – Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

[(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.]

SECTION 50. Entry of goods for exportation.–

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. – *The following export goods shall be liable to confiscation:-*

- (h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;
- (ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;

3.5. He submitted that penalty under Section 114 (iii) is imposed upon a person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act. From plain reading of Section 50(2) of the Customs Act, 1962, it is clear that Section 50(2) of the Customs Act casts liability on the exporter of the goods and not upon CHA for truthfulness of the declaration in the shipping bill. Therefore, the allegation of violation of provisions of Section 50(2) of the Customs Act, 1962 upon CHA is bad in law. Thus, there is no violation of Section 50(2) by the CHA firm or by Shri V. R. Venkatraman, Branch Manager of the CHA firm. Therefore, in light of this specific provision of the Customs Act, 1962, they submitted that they have not violated the provisions of Section 50(2) of the Customs Act, 1962 and therefore the goods in question are not liable for confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962 due to us. Hence, the imposition of penalty upon us for violating Section 50(2) of the Customs Act, 1962 is not sustainable.

Further, he submitted that there is no evidence of any incriminating conduct against us. There is no implicatory allegation in the show cause notice and/or evidence against them so as to attract the provision of Section 113(h), (i) & (ii) of the Customs Act, 1962 as they have not abetted M/s. Ambiance Traders, which is evident from the following facts and evidence on record of the SCN itself:

- (i) The documents in respect of shipping bills No.1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 & 1155353 all dated 01.09.2009 filed in the name of M/s. Ambiance Traders, Moradabad before Kandla Customs were neither signed by us nor presented by us before the Customs Authority.
- (ii) The said shipping bills were signed probably by Mr. Rajiv Tusar, who represented and owned M/s. Ambiance Traders.
- (iii) We were not aware as to when and how the cargo reached to CFS A. V. Joshi & Co., Gandhidham.
- (iv) We had even not received any charges for the services provided to M/s. Ambiance Traders.

3.6. He submitted that the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. v. State of Orissa* reported in 1978 (2) E.L.T. J159 (S.C.) has held that penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. The conduct of the CHA firm or by Shri V. R. Venkatraman, Branch Manager of the CHA firm in the present case does not indicate that they had acted deliberately in defiance of law or were guilty of conduct contumacious or dishonest or acted in conscious disregard of their obligation. It is placed on record that the shipping bill was neither presented by them before the Customs Authority nor signed by them. It is also on record that neither the CHA firm nor Shri V. R.

Venkatraman, Branch Manager of the CHA firm have been benefited in any way in business dealings with M/s. Ambiance Traders. Hence, the imposition of penalty on them is not warranted in the facts and circumstances of the case. In support of their contention, they relied upon the following judicial pronouncements:

KUNAL TRAVELS Versus COMMISSIONER OF CUSTOMS, NOIDA [2005 (183) E.L.T. 299 (Tri. - Del.)]

“Customs House Agent – Mis-declaration in shipping bill - Abetment - Penalty - Goods stuffed in container sealed with customs seal - Shipping bill filed on basis of declaration made by exporter and duly signed by one of the partners of exporter firm - No evidence brought to prove that appellant connived with exporter or abetted exporter in misdeclaration of shipping bill - Imposition of penalty not warranted - Section 114 of Customs Act, 1962. [para 5]”.

Kunal Travels (Cargo) vs Commissioner Of Customs (IMPORT & GENERAL), NEW CUSTOMS HOUSE, IGI AIRPORT, NEW DELHI CUSAA No.1 of 2016 and CUSAA No.12 of 2016, decided 27 March, 2017.

“14. Any act to defraud presupposes the intention to obtain something fraudulently. In the present case, the appellant (through its proprietor) has all along contended that the documents were filed unauthorizedly by a person incompetent to do so; it has not defended the action of Mr LalitKatoch; it claims ignorance and innocence of the contents of the consignment; it objects to the very filing of the two shipping bills by either Mr Katoch or any person authorised on its behalf, hence there cannot be a presumption of its deliberate act/intention to defraud. There is no evidence of active facilitation of clearance of the consignment through customs by the appellant, hence, no mensrea can be inferred to defraud the government for obtaining duty drawback through a fraudulent transaction. Consequently, the appellant cannot be faulted or punished in the manner it has been.”.

RAKESH DHINGRA Versus COMMISSIONER OF CUS., NEW DELHI [2018 (364) E.L.T. 637 (Tri. - Del.)]

“Penalty on employee of Customs House Agent (CHA) - Improper export of goods - Exporters penalized and goods confiscated - No action recorded against CHA for any violation of provisions of Customs House Agents Licensing Regulations, 2004 or Customs Act, 1962 - No investigation done about role and responsibility of CHA, who dealt with many such consignments - No provisions in Regulations could have been applied to an employee of CHA as CHA itself was not proceeded with any offence - Appellant can be brought under category of abettor only and positive evidence of act with knowledge had to be ascertained for such conclusion - No such evidence brought out - Allegation

of lack of due diligence by CHA fastened on appellant as CHA not legally sustainable - Section 114 of Customs Act, 1962. [para 6]".

3.7. Further, he submitted that Shri V. R. Venkatraman, Branch Manager of the CHA firm was on payroll of M/s. Divine Shipping Services till March – 2010 only and his where about thereafter, is not known to them. Therefore, it is prayed that the reply submitted in respect of the CHA firm M/s. Divine Shipping Services may also be considered as defence of Shri V. R. Venkatraman. In view of above, the Noticee submitted that the actions proposed thereby are not sustainable in law and requested to discharge and drop the Notice.

DISCUSSION AND FINDINGS

4. I have carefully gone through the records of cases and evidences, relied upon documents etc and submission made by M/s Divine Shipping services and I find that only Shri Uday H. Dave, prop. of M/s. Divine Shipping Services, Gandhidham appeared for personal hearing and no other noticees nor any other authorized person on behalf of the noticees appeared or turned up for personal hearing on the dates given to them nor they submitted any defense written submission. Hence, I believe that an ample opportunity has already been granted to all the Noticees for the sake of natural justice and thus, I proceed to adjudicate the matter on the basis of available records on merits.

4.1. I find that an intelligence was gathered by the Directorate of Revenue Intelligence indicated that under below mentioned eight Shipping Bills filed by M/s. Ambiance Traders, Moradabad, showing description of export goods as "Indian Hand Knotted Woolen Carpets" and classifying the same under Customs Tariff Heading No. 57011000 were attempting to export carpets of inferior quality by mis-declaring its description and quantity and also declaring higher value of the consignment before the Customs, with an intent to avail higher and undue export benefit in the form of duty drawback.

TABLE-1

Details of Shipping Bills

Sr. No	Shipping Bill No.	Date of Shipping Bill	Declared Quantity(in square feet)	Declared FOB Value (in INRs)	Declared DBK amount(in INRs)
1	1155343	01.09.2009	4757.688	2445263.54	268978.99
2	1155346	01.09.2009	4843.800	2489521.68	273847.38
3	1155347	01.09.2009	4919.148	2528247.61	278107.24
4	1155348	01.09.2009	4919.148	2528247.61	278107.24
5	1155350	01.09.2009	4606.992	2367811.67	260459.28
6	1185351	01.09.2009	4757.688	2445263.54	268978.99
7	1155352	01.09.2009	4682.340	2406537.60	264719.14
8	1155353	01.09.2009	5005.260	2572505.75	282975.63
TOTAL			38492.064	19783399	2176173.89

4.2 I find that based on the intelligence, the consignment being exported from Kandla port under above eight Shipping Bills was examined on 17.09.2009 by the officers of DRI, in the presence of Shri Uday H. Dave, proprietor of the CHA firm M/s. Devine Shipping Services, Gandhidham under panchnama dated 17.09.2009 at M/s. A.V. Joshi & Co. CFS, Mithi Rohar, Gandhidham. During the course of the examination, the goods covered under all the eight Shipping Bills were found stuffed in a single container bearing No. TCKU 9747092. The goods were de-stuffed and on examination and measurement, it was revealed that it contained total 487 pieces of carpets packed in 190 bundles and totally measuring 13,925.78 Square feet. No markings were found on the carpets/ bundles to indicate as to which Shipping Bill these bundles/ carpets pertained. Further, it was found that the total numbers of bundles declared in these eight Shipping Bills were 197 but on physical verification only 190 bundles were found. Similarly, it was also found that the total size of the carpets declared in these eight Shipping Bills was 38,492.064 square feet but on physical measurement it was found to be only 13,925.78 square feet, which is drastically less than declared Quality/ exact description and actual value of the same could not be ascertained on the spot for want of expertise. Therefore, for further investigation the consignment was placed under detention vide the Panchanama dated 17/09/2009.

4.4 I find that inquiries were got conducted through the jurisdictional Central Excise Authorities at the address of M/s. Ambiance Traders, as declared in the above mentioned eight Shipping Bills and IEC, i.e., at Village: Chapara, Dalpatpur Road, Moradabad. The Assistant Commissioner of Central Excise, Central Excise Division, Moradabad vide letter C. No.: 8-Prev/Follow up/MBD/08 dated 29/09/2009 informed that Chapara was a small village located before Dalpatpur, Rampur Road, Moradabad and survey of village was conducted for finding out the exact location of the party but no firm in the name of M/s. Ambiance Traders was found in the said village. It further stated that enquiries were conducted in respect of the both the Directors of the firm namely, Mr. Uzma Qamar and Mr. Mohd. Aqil but there were no persons of the said names in the village Chapara. Thus, I find that M/s. Ambiance Traders, Moradabad was non-existent at the addresses declared in the Shipping Bill and IEC.

4.5 I find that from the examination and measurement of the impugned carpets, by the Officers of DRI, under Panchanama dated 17.09.2009, it was evident that in the above referred eight Shipping Bills, the quantity of the impugned Carpets was declared significantly less than actual. Further on visual examination, it was clear even to a layman that the goods could not be "Hand Knotted Woolen Carpets", as declared, but appeared to be of very inferior quality. It was also clear that the total value of Rs.1,97,83,399/-, declared for the consignment was a grossly overvalued figure in order to avail higher export incentives in the form of drawback. I find that as the mis-declaration in respect of quantity, value and description of the impugned carpets attempted to be exported was evident, the said 13,925.78 square feet carpets were placed

under seizure vide Seizure Memo dated 27.10.2009, under the reasonable belief that the same were liable to confiscation under the provisions of the Customs Act, 1962. The seized goods were handed over to Shri V Selvaraj, Manger of private CFS of M/s AV Joshi and Co. CFS, Mithi Rohar, Gandhidham for safe custody under Supratnama dated 27.10.2009. Subsequently, the Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009, issued by the Indian Institute of Carpet Technology, also confirmed that the major part of the impugned carpets was not of "Hand Knotted Woolen Carpets", as declared by the exporter in the said eight Shipping Bills.

4.6 Further, I find that to ascertain exact nature and value of the carpets being attempted to be exported in the name of M/s. Ambiance Traders, Moradabad under the eight Shipping Bills, mentioned in TABLE-1 above and detained by DRI, a request was made to the Indian Institute of Carpet Technology, Bhadohi for examination of the same. Shri R. K. Malik, Assistant Professor of Indian Institute of Carpet Technology, Bhadohi visited M/s. A.V. Joshi & Co. CFS, Mithi Rohar, Gandhidham on 04.11.2009 and examined the subject consignment and also took representative samples. After examination of these 487 carpets of various sizes rolled in 190 bundles on, 04/11/2009, the Indian Institute of Carpet Technology issued their Carpet Inspection and Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009. Vide the said report they informed that out of the said 190 bundles of carpets, only 25 bundles were found "Handknotted Carpets (Tibbetan technique)" as per the definition laid down in IS: 11205-1984, (reaffirmed 1995), 11 bundles were found "Handloom woven Carpets (Broadloom)" and the remaining 154 bundles were found as "tufted carpets". The said report clearly reflected bundle-wise actual description of all the impugned carpets. However, they did not estimate value of the impugned carpets. On calculation of total areas of all the three types of carpets, it was found that 2532.24 Sq. Ft. carpets were Hand knotted Carpets (Tibbetan technique), 638.67 Sq. Ft. carpets were Handloom woven Carpets (Broadloom) and 10754.87 Sq. Ft. carpets were tufted carpets. The detailed calculation was mentioned in Annexure II of the Show Cause Notice.

4.7. I also find that during investigation the statements of Shri Uday H. Dave, proprietor of M/s. Devine Shipping Services, Bhavnagar and Shri V. R. Venkatraman, Manager, M/s. Devine Shipping Services, Gandhidham was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, DRI, Gandhidham on 20.11.2009 wherein they, interalia, submitted that the work pertaining to Gandhidham was being looked after by Mr. V. R. Venkatraman and the documents were being signed by him only and no other person was authorized to sign the documents on his behalf at Gandhidham. The documents in respect of Shipping Bills No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01.09.2009 filed in the name of M/s Ambiance Traders Moradabad before Kandla customs were not signed by Mr. Venkatraman and only the declaration was signed by

him; that Mr Venkatraman came to know that the Shipping Bills were signed by an unknown person, probably by Mr. Rajiv Tushar who represented M/s. Ambiance Traders, Moradabad; that they were not aware as to when and how the cargo was reached to CFS A.V. Joshi & Co. Gandhidham; that he was introduced to Mr. Nilesh Kataria of M/s. Bajaj Enterprises, Mumbai by one Mr. Sanjay Mathur of M/s. Global Cargo Movers, Gandhidham. Later, Mr. Nilesh Kataria came to Shri V. R. Venkatraman with Mr. Rajiv Tushar and introduced him as his brother and informed that Mr. Tushar would like to export carpets from Kandla; that they had not seen the cargo attempted to be exported by M/s Ambiance Traders Moradabad; that they had never met Mr. Rajiv Tushar, it was the first consignment of M/s Ambiance Traders, Moradabad which was being attended by his CHA firm; that Mr Venkatraman signed the declaration for generating the checklist with the customs; that Mr. Nilesh assured him and stood as guarantor for Mr. Rajiv Tushar as he was also a CHA and working in name of M/s. Bajaj Enterprises (CHA Licence No. 11/948); that the documents for the cargo attempted to be exported by M/s. Ambiance Traders, Moradabad, were for Hand Knotted Woolen Carpets; that they were not aware M/s Ambiance Traders was a non-existing firm.

4.8. I find that Shri V. R. Venkatraman, in his statement dated 20.11.2009, had named Shri Rajiv Tushar as the person who approached him for the clearance work of the subject export consignment and also completed various customs formalities without his knowledge. Therefore, Summons dated 20.11.2009 was issued to Shri Rajiv Tushar on the address provided by Shri V. R. Venkatraman, for appearing before the DRI Gandhidham but the same was returned to DRI Gandhidham undelivered with remarks of postal authorities as "Incomplete Address". Further as Shri Nilesh Kataria, who was working as a CHA at Mumbai under name of M/s Bajaj Enterprises, was the person who introduced Shri Rajiv Tushar to Shri Venkatraman. Summonses were issued to him also, on the address provided by himself telephonically to the officers of DRI, on 29.12.2009, 12.01.2010 and 04.02.2010. All the summons were returned by postal authorities with remarks "refused".

4.9. With regards to the statements of the noticees recorded under Section 108 of the Customs Act, 1962, I rely on the case of *Surjeet Singh Chhabra v. Union of India, 1997 (89) E.L.T. 646 (S.C.)*, wherein the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers in terms of Section 25, Evidence Act, 1973. The Madras High Court in the case of *Assistant Collector of Customs v. Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.)* held that confessional statement made under Sec. 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. **It is settled legal proposition that statement recorded under section 108 of the Act is admissible unlike a statement recorded by a Police Officer. Even noticees have not retracted/rebutted from their confessional statements. Hence, their admitted facts need not be required to be proved.**

4.10. I also find that summons under section 108 of the Customs Act, 1962, were issued to all the noticees. All these summonses were returned undelivered by the postal department, except Shri Uday H. Dave prop. of M/s. Divine Shipping Services, Gandhidham and Shri V. R. Venkatraman, manager of M/s. Divine Shipping Services, Gandhidham, stating the reason as "Not claimed". I find that efforts were also made to deliver the summons to all of them through the officials of Central Excise Division, Moradabad having jurisdiction over the mentioned address. However, it was informed that the summoned persons were not available at the mentioned addresses. Thus, I find that they have not co-operated in the investigation.

4.11. I find that "Indian Hand Knotted Woolen Carpets" are better in quality and have value higher than other kind of Carpets, except those made of silk and accordingly attract higher drawback benefits. Thus, to avail higher benefit of drawback amount the exporter has deliberately declared the export goods as "Indian Hand Knotted Woolen Carpets". The Indian Institute of Carpet Technology in their Carpet Inspection and Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009 had reported that out of the said 190 bundles of carpets, only 25 bundles were "Hand knotted Carpets (Tibetan technique)", 11 bundles were "Handloom woven Carpets (Broadloom)" and the remaining 154 bundles were "tufted carpets". Therefore, it is clear that major part of the consignment consisted of Tufted Carpets which are termed as Carpets of inferior quality and are amongst cheapest Carpets and thus fetches lesser amount of drawback benefits. It was a clear case of mis-declaration of description of the export goods with intent to avail higher and undue benefit of drawback scheme. The price of Rs.1,97,83,399/- declared by M/s. Ambiance Traders, Moradabad was for "Hand Knotted Woolen Carpets" which do not appear to be proper in the light of the above discussed mis-declarations and apparently it was declared on the higher side. I find that in any case, once mis-declaration is found, as in the instant case, it is a settled law that the department is not required to prove its case with mathematical precision. All that it requires is the establishment of such a degree of probability that any prudent man, on its basis, believes in the existence of the fact in issue.

4.12. I find that in view of above, total value of the impugned export goods declared as Rs.1,97,83,399/- in the eight Shipping Bills, mentioned in TABLE -1 above, could not be accepted as transaction value and was required to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. As no further evidence, was submitted by the exporter/ any concerned person, in order to arrive at the correct value, resort to the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 read with Section 14 of the Customs Act 1962 was made. Going sequentially through Rule 4 to 6 of the said Rules, the applicability of Rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 was considered to arrive at the correct and fair FOB value of the subject goods. This Rule stipulates determination of value on the basis of value of the goods

of like kind and quality, exported at or about the same time. It was observed that carpets are made from varying percentage of various materials, which have direct implication on its value. Similarly the designs/ brands etc. has also its bearing on value. Therefore, this rule was not found feasible to determine correct and fair value of the subject goods.

4.13. Therefore, I find that resort to the Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 was made. In view of the reasonable flexibility in its application, it was found to be most suitable. Thus, market survey was done as the value of carpets depends on a number of factors like material of the goods, brand name, designs etc. Shri Mahendra Kumar Bajaj of M/s. Mahendra Woolen Textiles, Panipat and Shri Harmeet Singh of M/s. Om Siddhi Vinayak, KASEZ, Gandhidham, who were dealing in similar goods were called and the impugned goods were got examined by them for the purpose of providing estimated production value of the said goods. The said proceeding of estimation of value was conducted under Panchanama dated 19.02.2010 (RUD 9). The average of the production value so obtained from both the above mentioned persons is tabulated hereunder:

TABLE-2

ESTIMATION OF PRODUCTION VALUE

Serial No	Type of carpet	Value given by Shri MK Bajaj	Value given by Shri HS Koli	Average value
1	Hand knotted carpets by Tibetan technique	Rs.30/- per SQF	Rs.30/- per SQF	Rs.30/- per SQF
2	Carpets woven on hand loom [broad loom]	Rs.36/- per SQF	Rs.40/- per SQF	Rs.38/- per SQF
3	Tufted carpets	Rs.25/- per SQF	Rs.27/- per SQF	Rs.26/- per SQF

I find that on the basis of the value obtained as above, the value of the said goods was computed in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. In the above obtained production value, the elements such as expenses of transportation, clearance etc. and expected margin of profit were added. The corresponding additions and the FOB Value determined are detailed here in below:

TABLE-3

Calculation of Actual Value of the goods

Sr No.	Type of carpets	Average value determined	Total area of carpets (in Sq. Ft)	Total production value (Rs.)	Expenses @ 10% (Rs.)	Margin of Profit @ 10% (Rs.)	Net Value (Rs.)
1	Hand knotted carpets by Tibetan technique	Rs.30/- per SQF	2532.24	75967	7596.7	8356.37	91920
2	Carpets woven on hand loom [broad loom]	Rs.38/- per SQF	638.67	24269	2426.9	2669.59	29365
3	Tufted carpets	Rs.26/- per SQF	10754.87	279627	27962.7	30758.97	338349
	TOTAL		13925.78	379863	37986.3	41784.93	459634

4.14. I find that accordingly correct drawback amount admissible against exportation of the impugned carpets calculated on the rates and caps declared by the Government in the drawback schedule, on the basis of above determined value comes as detailed below:

TABLE-4

Calculation of Actual Admissible Drawback

Sr No.	Type of carpets	Aggregate value (Rs.)	Tariff Item No.	Rate of Drawback	Drawback admissible (Rs.)
1	Hand knotted carpets by Tibetan technique	91920	570101	11%	10111
2	Carpets woven on hand loom [broad loom]	29365	570201	11%	3230
3	Tufted carpets	338349	570301	12.5%	42294
	TOTAL	459634			55635

4.15. I find that from the facts narrated in the foregoing paras and the material evidence available on record, the address of M/s. Ambiance Traders, Moradabad was declared as Village: Chapara, Dalpatpur Road, Moradabad in the eight Shipping Bills, mentioned in-table -1 above. In the IEC of the firm Shri Uzama Qamar and Shri Mohd Aqil have been shown as Directors of this firm. Enquiries got conducted through the Central Excise Division, Moradabad has revealed that the Said firm was not situated at the said declared address and that the whereabouts of the Directors of the firm, as declared in the IEC profiles, was also not found at the declared address. These facts clearly show that M/s. Ambiance Traders, Moradabad was exist only on papers and its exports were not genuine. The persons doing misdeed of mis-declaring the description and quantity of the export goods and also inflating the value with an intention to avail higher export benefit in the form of duty drawback have never appeared before the Directorate of Revenue Intelligence during the course of subject investigation. It is thus evident that to avoid coming before the eyes of the law, some wicked persons behind this misdeed had attempted to defraud the Government in this manner.

4.16. Further, I find that during the examination of the said goods vide panchnama dated 17.09.2009, it was found that the goods declared in the eight Shipping Bills, mentioned in TABLE-1 above, were not in conformity with the declaration made in the export documents in terms of quantity. Quantity of the goods declared as 38,492.064 square feet was enormously excess than actual i.e., 13,925.78 square feet. The fact that the goods were of inferior quality and were not found as declared, is evidenced from the Technical Service Report No. 6/Physical Lab/4/IICT/2009/ dated 16.11.2009 issued by the Indian Institute of Carpet Technology which clearly states that the major part of the impugned carpets was of "Tufted Carpets" and not "Hand Knotted Woolen Carpets", as declared by the exporter in the said eight Shipping Bills. The value of the impugned seized goods derived under the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 i.e., Rs. 4,59,634/- reveals that the total value declared in the said eight Shipping Bills i.e. Rs. 1,97,83,399/- was extremely higher than actual. This clearly

indicates the modus operandi of availing undue benefit of drawback scheme, by over invoicing the export value to defraud the Government. The actual quantity and value vis-a-vis figures falsely declared in the eight Shipping Bills and effect on drawback amount calculated thereon, is detailed below in table-5:

TABLE - 5

Details of excess Declaration of Quantity, Value and Drawback amount

	Quantity (in square feet)	Value (in Indian Rs.)	Drawback amount (Rs.)
Declared	38,492.064	1,97,83,399/-	21,76,174/-
Actual/ ascertained	13,925.780	4,49,634/-	55,635/-
	24,566.284	1,93,33,765/-	21,20,539/-

4.17. Thus, from the facts discussed in the foregoing paras and material evidences available on records, I find that it is a clear case of mis-declaration of description, size and value of the export goods to avail higher export incentive in the form of drawback, in the name of a non-existing firm to escape from law. As discussed above M/s. Ambiance Traders, Moradabad had claimed drawback of Rs. 21,76,174/- under the said eight Shipping Bills. The drawback amount claimed by them, is in excess by Rs. 21,20,539/- (2176174 - 55635) than the amount lawfully admissible to them i.e., Rs, 55,635/- as mentioned in table-4 above. M/s. Ambiance Traders, Moradabad, by their acts of omission and commission and using fraudulent practices to avail inadmissible drawback have contravened the provisions of Section 50(2) of the Customs Act, 1962 read with Section 7 and 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 2(c), Rule 12 and 14(ii) of the FTDR Rules 1993. Hence, they have rendered the seized 13,925.78 square feet carpets valued at Rs 4,59,634/- (re-determined FOB value) liable to confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962 and have also rendered the goods liable to be treated as smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962. The said acts have rendered M/s. Ambiance Traders, Moradabad liable to penalty under Section 114(iii) of the Customs Act, 1962.

4.18. I find that the Tribunal, Mumbai in the case of CC Mumbai Vs Multimetal Ltd.-2002(144) ELT 574 (Tri-Mumbai) has held that when mis-declaration is established, goods are liable to confiscation irrespective of whether there was malafide or not. This case has upheld by the Apex court in 2003(151) ELT A309(SC).

4.19. Further, I find that there is a difference between "confiscation" and "liable to confiscation". It is settled law that the goods which are liable to confiscation can be ordered for to be confiscated, and fine in lieu of confiscation can be imposed. In cases, where proper declaration of the goods are not made for some purpose, then it would amount to violation of the conditions for import/export of the goods and it would certainly amount to illegal/

unauthorized and against the statute. There is violation of provisions of section 113(i) of the Customs Act, 1962 since there was a mis-declaration of the value of the subject goods, therefore, M/s Ambiance Traders have acted deliberately cannot be ruled out for the reason that they have mis-declared the value of the subject goods. Accordingly, confiscation of the goods under the Section 113 of the Customs Act, 1962 is justified; therefore, imposition of redemption fine is also warranted under law. Therefore, I find that M/s. Ambiance Traders, Moradabad is liable for redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

The Section 125 of the Customs Act, 1962 -Option to pay fine in lieu of confiscation stipulates as under-

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit: Provide that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. 2(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods]

4.20. Further, Hon'ble Supreme Court in case of M/s. Jain Exports Pvt. Ltd. Vs. UOI[1993(66) ELT 537] has held that quantum of redemption fine depends on facts and circumstances of each case and no hard and fast rules may be laid down. Fine could be imposed even in cases of bonafide imports. However, Section 125 of the Customs Act, 1962 provides that such fine shall not exceed the market price of the goods less the duty chargeable thereon and working rule could be to levy redemption fine so as to neutralize any benefit that may accrue to the importer from such illegal act of importation of impugned goods. In view of the above narrated facts, I hold that M/s. Ambiance Traders, Moradabad is liable for redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

4.21. In the instant case, I find that the exporter has deliberately declared total FOB value as Rs.1,97,83,399/- in the eight Shipping Bills to avail drawback claim of Rs.21,76,174/-. However, actual FOB value derived is only Rs. 4,59,634/- for which the admissible drawback claim comes to Rs. 55,635/- only which indicates that the drawback amount was claimed in excess of Rs.21,20,539/- in the name of M/s. Ambiance Traders, Moradabad. Thus, I find that drawback

claim in respect of eight Shipping Bills, mentioned in TABLE-1 above, is liable to be restricted to the admissible drawback amount of Rs. 55,635/-, payable only in the event of exportation of the impugned goods, if any.

4.22. Further, I find that besides confiscation, the Show Cause Notice has also proposed imposition of penalty under Section 114(iii) of the Customs Act, 1962. I find that Shri Uzama Qamar and Shri Mohd Aqil are the Directors of M/s Ambiance Traders, Moradabad and they have created the firm M/s Ambiance Traders, Moradabad by obtaining IEC from the DGFT authorities by declaring a fake address. Thus, I find that these two persons with malafide intention had intentionally mis-declared description, size and value, in the eight Shipping Bills mentioned in TABLE-1 above, of the subject export cargo to avail higher export incentive in the form of drawback, in the name of a non existing firm called M/s. Ambiance Traders, Moradabad. And for adopting such fraudulent practices to avail inadmissible drawback, as discussed supra, have contravened the provisions of Section 50(2) of the Customs Act, 1962 read with Section 7 and 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 2(c), Rule 12 and 14(ii) of the FTDR Rules 1993 which has rendered the seized 13,925.78 square feet carpets valued at Rs 4,59,634/- (re-determined FOB value) liable to confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962. Therefore, I find that penalty under Section 114(iii) is clearly attracted against both the Directors of the firm i.e., Shri Uzama Qamar and Shri Mohd Aqil.

4.23 I find that Shri V. R. Venkatraman, Manager of M/s. Devine Shipping Services, Gandhidham, in his statement dated 20.11.2009 had admitted that his firm had attended to the Customs clearance in respect of exports of M/s. Ambiance Traders, Moradabad; that he had never met the owner/ Proprietor of the said firm nor inquired about their whereabouts; Shri Rajiv Tushar represented M/s. Ambiance Traders, Moradabad, but he never enquired about his status in the said firm; that the IEC holders of the firm has not authorized them for clearing the said consignments. He had also admitted that the checklists were directly collected by Mr. Rajiv Tushar and he proceeded with the submission of documents with customs and he had not communicated the same to Mr. Dave or to Customs authority. He has not obtained authorization of the exporter for attending their work. Thus, I find that he had conveniently abetted M/s. Ambiance Traders, Moradabad in respect of mis-declaration of description, size and value, in the eight Shipping Bills mentioned in TABLE -1 above; in violation of Section 50(2) of the Customs Act 1962, which has rendered the 13,925.78 square feet carpets liable for confiscation under Section 113(h), (i) & (ii) of the Customs Act, 1962. Therefore, I find that Shri V. R. Venkatraman, Manager of M/s. Devine Shipping Services, Gandhidham with this act of omission and commission has rendered himself for penalty under Section 114(iii) of the Customs Act, 1962.

4.24. I find that no authorization for attending the work pertaining to the export under subject eight Shipping Bills was obtained by the CHA firm M/s Divine Shipping Services from the exporter i.e., M/s. Ambiance Traders, Moradabad, which is in violation of Regulation 13(a) of the Customs House Agents Licensing Regulations, 2004. Shri Uday H Dave, proprietor of licensed CHA firm M/s Divine Shipping Service of Gandhidham-Kutch failed to exert due diligence, mandatory for the proprietor of a licensed CHA, and the said eight Shipping Bills, misdeclaring the quality, quantity and value of the impugned goods were filed through his CHA firm. Thus, M/s. Divine Shipping Services, the CHA firm has abetted M/s. Ambiance Traders, Moradabad in violating Section 50(2) of the Customs Act 1962 which has rendered the 13,925.78 square feet carpets liable for confiscation under Section 113(h), (i) & (ii) (erstwhile) of the Customs Act, 1962. Thus, I find that M/s. Divine Shipping Services, Gandhidham has rendered themselves liable for penalty under Section 114 (iii) of the Customs Act, 1962.

4.25. Further, I find that Shri Nilesh Kataria introduced Shri Rajiv Tushar to Shri V. R. Venkatraman, Manager of M/s. Devine Shipping Services, Gandhidham for attending the work pertaining to the export of subject Carpets. As stated by Shri V. R. Venkatraman in his statement Shri Nilesh Kataria is working as a CHA at Mumbai. Being a CHA Shri Nilesh Kataria was supposed to know and follow the Customs Law and also assists DRI in the subject investigation. However, despite two Summonses, he never appeared before DRI and even refused to receive the Summons from postal authorities. Shri Rajiv Tushar attended to the work in Custom House Kandla without any authority. He had not informed his correct address even to Shri V. R. Venkatraman. These facts indicates that both Shri Nilesh Kataria and Shri Rajiv Tushar had full knowledge in respect of M/s. Ambiance Traders, Moradabad and also in respect of the mis-declaration of description, size and value, in the eight Shipping Bills mentioned in TABLE -1 above, in violation of Section 50(2) of the Customs Act 1962, which has rendered the 13,925.78 square feet carpets liable for confiscation under Section 113(h), (i) & (ii) (erstwhile) of the Customs Act, 1962. Thus, I find that Shri Nilesh Kataria and Shri Rajiv Tushar both of them have rendered themselves liable for penalty under Section 114(iii) of the Customs Act, 1962.

4.26. I find that in the present case, from the ongoing discussion and findings, it is well established that Shri V. R. Venkatraman, Manager of M/s. Devine Shipping Services, Gandhidham and Shri Uday H. Dave, prop of M/s. Devine Shipping Services, Gandhidham knowingly abetted M/s. Ambiance Traders, Moradabad to export goods by highly overvaluing to claim higher incentives from the Government exchequer in the form of drawback, ROSL etc. Thus, I find that various case laws relied upon by Shri Uday H. Dave, prop of M/s. Devine Shipping Services, Gandhidham is not squarely applicable in the present case. Further, I am of the view that the conclusions arrived may be true in cases relied upon by Shri Uday H. Dave, prop M/s. Divine Shipping Services, Gandhidham but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Those

decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. However, while applying the ratio of one case to that of the other, the decisions of the Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170)ELT 135(SC)] has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC (Port), Chennai Vs Toyota Kirloskar [2007(2013)ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.


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

ORDER

- (i) I reject the total FOB value of the goods declared under Shipping Bills No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01.09.2009 as Rs.1,97,83,399/- under Rule 8 of the Customs Valuation (Determination of Value 12 of Export Goods) Rules, 2007 and order to re-determined the same to Rs 4,59,634/- (Rupees Four Lakh Fifty Nine Thousand Six Hundred Thirty Four only) in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (ii) I order to confiscate the seized export goods 13,925.78 square feet carpets, attempted to be exported by M/s. Ambiance Traders, Moradabad through Kandla Port under Shipping Bills No. 1155343, 1155346, 1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01.09.2009 totally valued at Rs.4,59,634/- (re-determined FOB value), under Section 113 of the Customs Act, 1962. However, I give an option to the exporter M/s. Ambiance Traders, Moradabad to redeem the export goods on payment of redemption fine of Rs.10,00,000.00 (Rupees Ten Lakh only) under Section 125 of the Customs Act, 1962.
- (iii) I order to restrict the duty drawback of Rs. 21,76,174/- in respect of the seized goods, claimed by them under drawback Shipping Bills No. 1155343, 1155346,

1155347, 1155348, 1155350, 1155351, 1155352 and 1155353 all dated 01/09/2009 to Rs. 55,635/- (Rupees Fifty Five Thousand Six Hundred Thirty Five only) on the re-determined FOB value of Rs. 4,59,634/-.

- (iv) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on M/s. Ambiance Traders, Moradabad under Section 114(iii) of the Customs Act, 1962, for their aforesaid acts of omissions and commissions.
- (v) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on Shri Uzama Qamar, Director of M/s Ambiance Traders, Moradabad under Section 114(iii) of the Customs Act, 1962, for their aforesaid acts of omissions and commissions.
- (vi) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on Shri Mohd Aqil, Director of M/s Ambiance Traders, Moradabad under Section 114(iii) of the Customs Act, 1962, for their aforesaid acts of omissions and commissions.
- (vii) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on Shri Rajiv Tushar under Section 114(iii) of the Customs Act, 1962, for their aforesaid acts of omissions and commissions.
- (viii) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on Shri Nilesh Kataria under Section 114(iii) of the Customs Act, 1962, for their aforesaid acts of omissions and commissions.
- (ix) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on M/s Divine Shipping Services, Gandhidham under Section 114(iii) of the Customs Act, 1962, for their aforesaid acts of omissions and commissions.
- (x) I impose a penalty of Rs. 3,00,000.00 (Rupees Three Lakh only) on Shri VR Venkatraman, Manger of CHA firm M/s Divine Shipping Services, Gandhidham under Section 114(iii) of the Customs Act, 1962, for their aforesaid acts of omissions and commissions.


(AJAY KUMAR)
Additional Commissioner,
Custom House, Kandla.
Date: 21.06.2019

F. No. S/10-73/ADJ/ADC/Ambiance/2018-19

BY RPAD/ BY Hand Delivery;

To,

1. M/s Ambiance Traders, Village Chapra, Chapara-Dalpatpur Road, Moradabad, Uttar Pradesh-244001.
2. Shri Uzama Qamar, Director of M/s Ambiance Traders, Village-Chapra, Chapara-Dalpatpur Road, Moradabad, Uttar Pradesh-244001.
3. Shri Mohd Aqil, Director of M/s Ambiance Traders, Village-Chapra, Chapara- Dalpatpur Road, Moradabad, Uttar Pradesh-244001.
4. Shri Rajiv Tushar, Block No: 127/55, Mulund colony, Hindustan Chowk, Mulund (W), Mumbai — 82.
5. Shri Nilesh Kataria, Block No: 127/55 Mulund Colony, Hindustan Chowk, Mulund (W), Mumbai — 82.

6. M/s Divine Shipping Services, Radha Swami Kripa Building, Room No: 101, Plot 261, Ward 12-B, Gandhidham-Kutch 370201.
7. Shri VR Venkatraman, Manger of CHA firm M/s Divine Shipping Services, Radha Swami Kripa Building, Room No: 101, Plot 261, Ward 12-B, Gandhidham-Kutch 370201.

Copy to :-

1. The Pr. Commissioner of Customs, Custom House, Kandla.
2. The Additional Director, DRI, Gandhidham Regional Unit, Plot No.193, Sec-4, Oslo, Gandhidham.
3. The Deputy/Assistant Commissioner (Export)/ (Disposal)/(Drawback), Custom House, Kandla.
4. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.
5. The Deputy/Assistant Commissioner (TRC), Custom House, Kandla.
6. The Joint Commissioner (EDI), Custom House, Kandla. For uploading on website.
7. Guard File.

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