



सीमा शुल्क के प्रधान आयुक्त कार्यालय (सामान्य)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
कस्टमब्रोकर अनुभाग, नवीन सीमा शुल्क भवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्ड इस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F.NO. GEN/CB/268/2023-CBS

Date: 26.07.2023

DIN: - 2023077700000000A489

SHOW CAUSE NOTICE No. 21/2023-24

**UNDER REGULATION 17 OF THE CUSTOMS BROKER LICENSING
REGULATION, 2018**

M/s. S.V. Shipping, (PAN: AAAPN8849ECH001), having address registered at B-28, STATION PLAZA, STATION RD., BHANDUP (W), MUMBAI - 400 078 (hereinafter referred as the Customs Broker/CB) are holder of Customs Broker License No. 11/905, issued by the Commissioner of Customs, Mumbai under CHALR, 1984, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. On the basis of specific information about misuse of drawback scheme by entities created specifically for the purpose received by Special Investigation & Intelligence Branch, Export, Air Cargo Complex, Sahar, Mumbai. Investigation was initiated against 37 exporters regarding fraudulent claim of drawback to the tune of multiple crores, involving fake IECs, wherein fly-by night companies were created with sole intention to avail fraudulent and unjust drawback. The syndicate was suspected to involve multiple CHAs and sub-agents. During the investigation, it was found that exporter M/s Austin Impex (IEC No.0316958859) was one of the 37 exporters. The CHAs who had cleared the consignments of M/s Austin Impex were M/s.

Goodluck Forwarders Pvt. Ltd. (erstwhile Ms. G.V. Network Logistics Pvt. Ltd. — 11/1644) and M/s. S.V. Shipping (11/905) wherein in case of CB M/s. Goodluck Forwarders Pvt. Ltd. (11/1644), received offence report i.e. O-in-O was forwarded to CB's Parent policy section Chennai Customs for taking necessary action against Custom Broker.

3. The details of total exports made by the exporter of IEC No. 0316958859 were retrieved from the ICES System and during the scrutiny of the said export details, it was found that the said exporter exported consignments in respect of 43 shipping bills between the period 24.02.2017 to 10.04.2017 with a FOB value of Rs. 741.06 lakhs and total Drawback amount of Rs. 64.96 lakhs.

4. SIIB(X) issued several summonses to said exporter M/s Austin Impex/proprietor under Section 108 of the Customs Act. 1962 for giving evidence and producing all the relevant documents or any other things in respect of enquiry being made in connection with export of readymade garments made by Importer M/s Austin Impex. But the said summonses were returned back /undelivered by postal authorities with a remark as 'Left'/'Not Known'/'Incomplete address'. Further the officers of S.I.I.B. (Exports) conducted address verification of the premises of exporter M/s Austin Impex at the addresses mentioned in the IEC and on verification, it was found that no office of M/s Austin Impex was existed in the said addresses. Further, from the investigation and from the personal visits made by SIIB Officers, it was found that the addresses mentioned in the IECs and other KYC documents were fake and bogus.

5. From the above, it appears that M/s Austin Impex had obtained the IEC illegally and made exports with an intent to avail undue drawback fraudulently. The exporter purportedly gave wrong details and obtained the IEC with fake and bogus documents. Further, from the address verifications conducted by SIIB, it was found that the addresses mentioned in the KYC documents were fictitious and bogus. It also appears that the foreign remittances in respect of exports made by the said exporter were not realized against any of the shipping bill. Further, it cannot be ruled out that the said

exporter grossly overvalued the impugned goods to obtain the higher drawback, as the said exporter is non-existent and never appeared to SIIB office to record his statement, Therefore, from these facts, it appears that the exporter has not made truthful declarations in the filing of the shipping bills. The exporter did not follow the obligation imposed through Regulations and Act and has not made correct declarations, therefore, the exporter has violated the provisions of Section 7 & 11 of FT (D&R Act, 1992 and Rule 11. 12 and 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, by the above mentioned acts of various omission and commission, the said exporter defrauded the government exchequer by fraudulently availing drawback and acted in a manner which rendered the goods liable for confiscation under Section 113 (d) read with Section 2 (33) of the Custom Act, 1962. Further, in absence of truthful declaration, the drawback claimed also become ineligible.

6. Further, Summonses were issued to the Customs Broker M/s. S.V. Shipping under Section 108 of the Customs Act. 1962 for giving evidence and producing all the relevant documents or any other things in respect of enquiry being made in connection with export of readymade garments made by Importer M/s Austin Impex. But the said summonses were returned back / undelivered by postal authorities with a remark as 'Left'/'Not Known'. Further, efforts made by SIIB officers to personally deliver the summons to Customs Broker M/s. S.V. Shipping and at the address of the said Customs Broker. But the worker available at the said address stated that the said firm was not working at the address mentioned from the last one year. As the said CHA was not attended / not cooperated for the investigation, an alert was inserted against the Customs Broker M/s. S.V. Shipping (AAAPN8849ECH001) by SIIB.

Obligation of CB Firm, M/s S.V. Shipping

7. During the investigations it appears that the CHA had not advised his client in the light of direction contained in Regulation 11(d) of CBLR 2013. They have also not paid due diligence towards their work by way of not informing about the unscrupulous activity of the exporter. The Customs

Broker is working as an authorized representative of exporter and takes the responsibility of export / import clearances in favour of exporter after taking due authorization from the exporter. A custom broker is always aware of all the omissions and commissions made by the exporter. It is a business practice that CHA knows on whose behalf they are working as CHA and can face investigation for omission and commission at any time. As per CHA Regulation, the CHA is also required to know—their client. Even, in the absence of such requirement, it is business practice that the CHA knows on whose behalf they are working. As the relation between CHA and exporter is long time relation unlike retail business where customer comes to retail shop and transaction concludes in a moment. So, it is not possible that CHA does not know the details and whereabouts of the exporter. The CHA had been dealing with such individual to collect documents and collect goods. The CHA must have raised his agency charges / fees from same source. Hence, it is not possible for a CHA to deal with a non-existing firm/person.

8. From the investigations conducted by SIIB(X), it appears that the said exporter submitted fake and bogus documents to the CHA and the said CHA did not verify the genuineness of the same. Due to the negligence of CHA, the exporter tried to export the goods illegally to avail undue drawback fraudulently. Therefore, under the facts and such circumstances, it appears that the CHA actively connived with exporter in claiming undue drawback and mis-declaring in Shipping Bill. While dealing with exporter, the CHAs did not care to follow the obligations imposed through the Regulations and Acts.

9. In view of above, it appears that in the instant case, the CB M/s. S.V. Shipping (11/905) (AAAPN8849ECH001) has failed to comply with following regulations of the Customs Brokers Licensing Regulations, 2018: -

-10(d) i.e., "advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be"

The CB appears to have not advised the exporter and abetted the exporter by declaring the incorrect value of the goods in shipping bills against the fake invoices to avail undue drawback and did not bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Thus, it appears that the CB has violated 10(d) of CBLR, 2018.

-10(e) "exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage"

Had CHA seen these documents relating to meeting the criteria to claim both types of Drawbacks and checked the correctness of relevant declaration, such fraudulent export could not have been possible. The CB failed to exercise due diligence and aided the exporter for availing the undue drawback by the exporters.

-10(n) "verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information"

As per offence report, it is clear that the addresses mentioned in the IECs and other KYC documents were fake and bogus. Thus It is clear that CHA did not verify exporter's antecedents.

-10(o) "inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days"

As per offence report, it is clear that the said CHA was not working at the address available with Customs Authorities and CHA M/s S.V. Shipping did not inform the changes of its communication details such as address, telephone number, e-mail etc.

- 10(q)- "co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees."

As per offence report, it is clear that CB M/s. S.V. Shipping (11/905) (AAAPN8849ECH001) neither responded to the SCN and also nor responded/attended Personal hearings on scheduled date and time.

10. The evidence on record clearly indicates that the CB was working in a serious negligent manner and was in violation of the obligations casted upon them under the CBLR 2018. A Custom Broker occupies a very important position in the customs House and is supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is being kept in CB by the Government Agencies, but by their acts of omission and commission it appears that the said CB has violated Regulations 10(d), (e), (n), (o) and 10(q) of CBLR, 2018 and rendered himself liable for penal action under Regulations 14, 17 & 18 of CBLR, 2018.

11. In view of the above, as per provision of Regulation 17(1) of CBLR, 2018, CB M/s S.V. Shipping (11/905) (PAN- AAAPN8849ECH001) are hereby called upon to show cause, as to why the Customs Broker license bearing no. 11/905 issued to them should not be revoked and security deposit should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018 as elaborated in Para above of this show cause notice within 30 days from the date of issue of this notice. They are directed to appear for personal hearing on the date as may be fixed and to produce proof of evidence/documents, if any, in their defense to the Inquiry Officer **Shri Om Prakash Tiwari, DC** who shall conduct inquiry under Regulation 17 of CBLR, 2018. If no reply is received within the stipulated time period, it will be presumed that they have no explanation to offer and it will be presumed that they do not want personal hearing and the issue will be decided on the basis of facts available on records.

12. This notice is being issued without prejudice to any other action that may be taken against the CB or any other person(s)/firm(s) etc. under the provision of the Customs Act, 1962 and Rules/Regulation framed there under or any other law for the time being in force in the Union of India.


20/7/2023

(SUNIL JAIN)
Principal Commissioner of Customs (G)
NCH, Mumbai - I

To,

M/s. S.V. Shipping (11/905), (PAN: AAAPN8849ECH001)
B-28, STATION PLAZA, STATION RD.,
BHANDUP (W), MUMBAI - 400 078

Copy to:

1. The Pr./Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. The Commissioner of Customs, Mumbai I, II, III Zone.
3. CIU's of NCH, ACC & JNCH.
4. EDI of NCH, ACC & JNCH.
5. Bombay Custom House Agent Association.
6. Office copy.
7. Notice Board.



OFFICE OF THE COMMISSIONER OF CUSTOMS (EXPORT)
EXPORT ADJUDICATION CELL, AIR CARGO COMPLEX
SAHAR, ANDHERI (EAST), MUMBAI - 400 099

फा.सं. F.No. S/10-82/2022-23/Adj. (X) ACC (X) आदेश की तारीख /Date of order: 31/03/2023
S/3-MISC-35/2022-23 Exp. Ass. जारी करने की तारीख /Date of issue 3/04/2023
DIN: 2023 03 79 0 6088000 0 DCCG

जारीकर्ता/ Passed By: PAWAN KUMAR KHETAN
Additional Commissioner of Customs (Export),
ACC, Mumbai.

CAO NO: ADC/PKK/95/2022-23 Adj.(X) ACC

Order-in-Original



1. This copy is granted free of charge for the use of the person to whom it is issued.
यह प्रति उस व्यक्ति के प्रयोग में लाए जाने के लिए निशुल्क दी जाएगी, जिसके लिए इसे जारी किया गया है।
2. Any appeal against this order lies with the Commissioner of Customs (Appeal), Mumbai Zone-III, Awas Corporate Point, 5th & 6th Floor, Makhwana Lane, Andheri Kurla Road, Behind S. M. Centre, Andheri (East), Mumbai - 400059 under Section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order.
इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत आदेश की सूचना की तारीख के 60 दिन के भीतर सीमाशुल्क आयुक्त (अपील) मुंबई जोन 3, आवास कॉर्पोरेट पॉइंट पांचवां ब्लाक तल मकवाना लेन अंधेरी कुर्ला रोड एस एम सेंटर के पीछे अंधेरी (पूर्व) 400059 को की जा सकती है।
3. The appeal should be filed in Form C.A. 1 appended to the Customs (Appeal) Rules, 1982. The appeal should be accompanied by this order or a copy thereof.

अपील सीमाशुल्क (अपील) नियम, 1982 के अनुसार फॉर्म सीए 1 में दायर की जानी चाहिए। अपील के साथ यह आदेश या उसकी एक प्रति होनी चाहिए।

4. The appeal should bear a court fee stamp of Rs. 2/- only as prescribed under Schedule-I of the Court Fees Act, 1970.

अधिनियम, 1970 की अनुसूची-1 के अनुसार अपील पर 2/- रुपये न्यायालय शुल्क का कोर्ट फीस स्टाम्प लगा होना चाहिए।

5. Any person desirous of appealing against this decision or order shall, pending the appeal, deposit the duty demanded or the penalty levied therein and produce proof of such payment along with the appeal failing which the appeal is liable to be rejected for non-compliance with provisions of Section 128 of the Customs Act, 1962.

इस निर्णय या आदेश के खिलाफ अपील करने का इच्छुक कोई भी व्यक्ति, अपील के लंबित होने पर, मांगे गए शुल्क या उसमें लगाए गए दंड को जमा करेगा और अपील के साथ ऐसे भुगतान का सबूत पेश करेगा, जिसके विफल होने पर अपील को गैर-अनुपालन के लिए खारिज कर दिया जाएगा। सीमाशुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों के साथ।

BRIEF FACTS OF THE CASE:

The proceeding in the present case, are drawn in pursuance to the Show Cause Notice dated 22.07.2022 issued to M/S. AUSTIN IMPEX (IEC: 0316958859), (hereinafter referred to as the exporter) having office at Ground Floor, Mishra Compound, Vishwadeep Compound, Babrekar Nagar, Charkop, Kandivali West, Mumbai — 400067, Shri Udaybhan K. Mishra, Proprietor of M/S. AUSTIN IMPEX (hereinafter referred to as the Noticee No. 2), M/s. S.V. Shipping, B-28, Station Plaza, Station Road, Bhandup (West), Mumbai — 400 078 (hereinafter referred to as the Noticee No. 3), M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644) Shop No. 23, Ground Floor, Block No. 13 A, Sector-25, Seawoods, Navi Mumbai 400 706 (hereinafter referred to as the Noticee No. 4) vide F. No. S/3-Misc-35/2022-23/Exp. Ass./ACC by the Additional Commissioner of Customs, Export, ACC, Mumbai, (hereinafter referred to as 'said SCN').

2. On the basis of specific information about misuse of drawback scheme by entities created specifically for the purpose received by Special Investigation & Intelligence Branch, Export, Air Cargo Complex, Sahar, Mumbai, investigation was initiated against 37 exporters regarding fraudulent claim of drawback to the tune of multiple crores, involving fake IECs, wherein fly-by-night companies were created with sole intention to avail fraudulent and unjust drawback. The syndicate was suspected to involve multiple CHAs and sub-agents. During the investigation, it was found that one exporter M/s Austin Impex (IEC No.0316958859) was one of the 37 exporters. The CHAs who had cleared the consignments of M/s Austin Impex were M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644) & M/s. S.V. Shipping (11/905).

3. The details of total exports made by the exporter of IEC No. 0316958859 were retrieved from the ICES System and during the scrutiny of the said export details, it was found that the said exporter exported consignments in respect of 43 shipping bills between the period 24.02.2017 to 10.04.2017 with an FOB value of Rs. 741.06 lakhs and total Drawback amount of Rs. 64.96 lakhs.

4. During the investigation in this matter, in order to safeguard the government revenue under Section 75 (1) of the Customs Act, 1962, a letter dated 25.04.2017 was written to Drawback Section and a letter dated 27.04.2017 was written to SBI, ACC Branch to withhold payment of drawback to the exporter involved in this fraudulent case of unjust drawback including the present exporter M/s. Austin Impex, until NOC is given by this office. All this was done to safeguard the government revenue. By this immediate action, it was found that out of total drawback amount of Rs. 64.96 lakhs, (i) the scroll was generated for an amount of drawback of Rs. 37,62,139/-; (ii) an amount of drawback of Rs. 27.34 lakhs was hold with Department and (iii) for an amount of drawback of Rs. 15,07,118/- was hold with Bank. Further, on investigation, it was verified from Drawback EDI Section that the drawback amount of Rs. 37,62,139/- in which the scrolls were generated, the same were returned back to Customs with a remark as 'invalid account details'.

5. During the investigations, Summons No. JSK/155/2017-18 dated 02.08.2017 for his attendance on 16.08.2017 were issued to the Proprietor of export firm M/s Austin Impex under Section 108 of the Customs Act, 1962 for giving evidence and / or producing all the relevant documents and / or any other things, in respect of enquiry being made in connection with export of readymade garments made by M/s. Austin Impex. But the said summons undelivered / returned back by the postal authorities with a remark as 'Not Known' / 'Left' / 'Incomplete address'.

6. Further Summons No. JSK/366/2017-18 dated 30.11.2017 for his attendance on 12.12.2017; Summons No. JSK/408/2017-18 dated 05.01.2018 for his attendance on 16.01.2018 and

Summons No. MTK/250/2021-22 dated 20.12.2021 for his attendance on 30.12.2021 were issued to the said exporter M/s. Austin Impex under Section 108 of the Customs Act, 1962 for giving evidence and / or producing all the relevant documents and / or any other things, in respect of enquiry being made in connection with export of readymade garments made by M/s. Austin Impex. But all the above-mentioned summons were returned back / undelivered with a remark as 'Not Known' / 'Left' / 'Incomplete address'.

7. Further, the officers of S.L.I.B. (Exports), ACC, Sahar, Mumbai conducted Address verification of the premises of exporter M/s. Austin Impex on 23.09.2017 at their address mentioned in the IEC at Ground Floor, Mishra Compound, Vishwadeep Compound, Babrekar Nagar, Charkop, Kandivali West, Maharashtra — 400067 to verify whether the exporter M/s. Austin Impex is in existence at the said address. On verification, it was found that there was no Mishra Compound in Vishwadeep Society. Further enquiries made with the President of Vishwa Deep CHA SRA, Babrekar Nagar, Charkop, Kandivali West building, wherein the said President informed that there was neither the Mishra Compound nor the office of Austin Impex existed in Vishwadeep compound.

8. Further, the officers of S.L.I.B. (Exports), ACC, Sahar, Mumbai conducted Address verification of the exporter M/s. Austin Impex on 20.11.2017 at their Branch address mentioned in the IEC at Mata Ramabai Ambedkar Nagar, Aadharwadi Chowk, Near Andhra Bank, Opp. Subhash Nagar, Kalyan West, Mumbai, Maharashtra — 421301 to verify whether the exporter M/s. Austin Impex is in existence at the said address. On verification, it was found that there was no building name, office / shop number of M/s. Austin Impex was existed in the said address and further enquiries made with the local people and found that there was no such office in the name of M/s. Austin Impex was situated in the given area.

9. Further, during the investigation this office made several efforts to find out/trace out the said exporter through addresses mentioned in the IEC and in various KYC documents. The officers of SIIB personally visited the addresses mentioned in the KYC documents, but it was found that there was no such address exists as mentioned. Also made several efforts to contact the exporter on telephone numbers mentioned in KYC documents, but in futile. Several summons were issued to the said exporter, but in all the times, the said summons returned back / undelivered by the postal authorities with a remark as Left / Not Known. All out efforts made to find out /trace the exporter, but it was found that the said addresses were not existence. Further, an Alert N0.12963 dated 22.04.2017 was inserted in ICES System vide File No. SIIB/Gen-08/2017-18 against IEC No. 0316958859 of the said exporter M/s. Austin Impex. From the investigations, it appears that the said exporter purportedly given wrong details and obtained the IEC illegally with an intent to avail undue drawback illegally and fraudulently. The said exporter purposely not attended this office to give his statement. Further, from the investigations and from the personal visits made by the officers of this unit, it was found that the addresses mentioned in the IECs and other KYC documents were fake and bogus.

10. Further, vide this office letter F. No. SIIB/Gen-35/2017-18 ACC (X) dated 17.04.2018 requested the Superintendent, DBK (EDI) to provide the drawback details i.e. total amount of drawback released, drawback on hold etc. of the exporter M/s. Austin Impex. In reply, the DBK (EDI) provided the details of exports made by M/s. Austin Impex (IEC No. 0316958859). On scrutiny of the said details, it was found that the said exporter exported 43 consignments / shipping bills for an FOB amount of Rs. 741.06 lakhs and drawback amount of Rs. 64.96 lakhs.

11. Further, vide this office letter F. No. SIIB/Gen-35/2017-18 ACC (X) dated 04.07.2019 addressed to the Deputy Commissioner, DBK (X0S) informed that the said exporter M/s. Austin Impex was claiming of ineligible drawback by not receiving foreign remittance willingly and requested to inform whether any Demand cum Show Cause Notice has been issued against the said exporter, if so, the details of the same may be forwarded to this office. Assistant

Commissioner, Drawback (XOS) vide their letter dated 06.07.2019 informed this office that as per available records, no Demand cum Show Cause Notice was issued to the exporter M/s. Austin Impex.

12. The Asstt./Dy. Commissioner of Customs, MCD (Export) has been requested vide this office letter dated 11.04.2018 to provide the dockets of the shipping bills in respect of M/s. Austin Impex (IEC No. 0316958859) with respect to investigation of fraudulent export to earn undue drawback, they informed that they could not provide any details of the shipping bills filed by the exporter M/s. Austin Impex, as the same were not submitted by the said CHA.

13. A letter dated 23.05.2017 was forwarded to the Branch Manager, Bank of India, Chakala Branch Mumbai, Maharashtra with a request to provide account statements and realisations made in respect of exporter M/s. Austin Impex having account no. 00820110002948, Bank of India vide their letter dated 24.05.2018 submitted the bank account statement of M/s Austin Impex for the period 01.01.2017 to 24.05.2017 and it was found from the said statement that there was only Rs 761.00 balance amount was remaining in the said account.

14. Further, on scrutiny of the documents / IEC registered copy, it was found that the exporter declared mobile number 7045740447. Accordingly, letters dated 10.10.2019 and 09.12.2019 were addressed to the Nodal Officer, Vodafone, Mumbai with a request provide the copies of KYC documents and details of the subscriber in respect of mobile number 7045740447 of the exporter M/s. Austin Impex, Vodafone Idea Limited vide their letter dated 27.11.2019 provide the name and address in respect of mobile number 7045740447 along with KYC documents. From the scrutiny of the said documents, it was found that the said number is registered in the name of Mr. Rupak Arora and the same was obtained by M/s. Loreal India Pvt. Ltd. in the name of said Mr. Rupak Arora.

15. Details of defaulting IECs (FOB yet to be Realised) in respect of the exporter M/s. Austin Impex for the period 01.01.2010 to 31.12.2020 were retrieved from ICES System to check whether the remittance has been received by the exporter or not. On scrutiny of the data, it was found that the foreign remittances have not been realised against any shipping bill in which the exporter exported the goods.

16. Further, attempts were made to retrieve the details of export documents from DMS (Document Management System), however the same turned out to be futile as not a single shipping bill was found to have been scanned in DMS (Document Management System). DMS has been implemented in Air Cargo Complex and vide public Notice No. 06/2015-16 dated 11.06.2015 to ensure proper storage and retrieval of BEs and Shipping Bills. In this regard, all the Customs Brokers are required to attach the EDI copy of the coupon in the Shipping Bill document set while handing over the same to the concerned officers of the department after LEO and this was mandatory for all dockets effective from 22nd June, 2015. From the investigations, it appears that the exporter in connivance with the CHA purportedly not returned a single "Dockets" of Shipping Bills to the Export Shed after Let Export Order (LEO).

17. Exports of M/s. Austin Impex were taken up for investigation. In this regard, the printouts of all the exports data were taken out from the EDI System. On scrutiny of the details, it was found that M/s Austin Impex totally made exports in respect of 43 shipping bills with an FOB value of Rs. 741.06 lakhs and drawback amount of Rs.64.96 lakhs. The remittance details has also been checked and verified from DGFT website and found that no remittance has been received against any shipping bills. Further, the same was confirmed from the ICES system that the foreign remittances are not realized against any of the shipping bill.

18. The Exporter M/s. Austin Impex was sanctioned drawback under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. As per Rule 16(A) Sub-Rule (1) (2) of Customs,

Central Excise Duties and Service Tax Drawback Rules, 1995, the exporter is under obligation to produce evidence to show that the sales proceeds (Foreign exchange) in respect of the goods exported have been realised within the time limit prescribed under the Foreign Exchange Management Act, 1999. However, it is evident from the ICES System that the foreign inward remittance involved in the goods exported under the Shipping Bills has not been realised even after the expiry of the prescribed time-limit. Further, no any relevant documents to support the genuine purchase, valuation and exportation of the goods were presented by the exporter.

19. During the investigation, this office made several efforts to locate the address of the exporter mentioned in the IEC as well as in other KYC documents. The officers made personal visits to the addresses mentioned in the IEC, but all were found to be fake and non-existence. From the investigations and scrutiny of documents gathered, it appears that the said exporter M/s. Austin Impex obtained the IEC with an intention to export the goods illegally without following the proper procedure under Customs Act, 1962 and claimed the drawback by deliberate misrepresentation, wilful mis-statement and suppression of facts, hence, under the provisions of Section 50(2), 75(1), 75A(2) of the Customs Act, 1962 read with Rule 16A(1) &(2) of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995, the drawback claimed by the exporter, which was lying with the Department should be rejected.

20. It appears from investigation that the goods were procured from Domestic Tariff Area (DTA) without any invoices, so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties has been paid or otherwise. This Office issued several summonses to appear for the statement and submit any relied documents. But the said exporter never appeared to this office to record his statement and further not submitted any documents in respect of manufacturing, production or use of any imported material in impugned export goods, though he was given number of opportunities to present himself for recording of his statement but he failed to produce any such details. Therefore, it appears from the investigation that necessary ingredient of clause (ii) to second proviso to Rule 3(1) of Drawback Rule, 1995 is attracted in this case, which does not permit any amount of drawback in such cases where no duty has been paid.

21. M/s. Austin Impex were required to furnish declarations at the time of exports in format annexed with the circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007- DBK by CBEC inter alia provides that the merchant exporters who purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However, such merchant exporters shall have to declare at the time of export, the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the Shipping bills under which they are exporting the goods. The merchant exporters who purchase goods from traders may therefore furnish the declaration, at the time of export, in the format annexed with this circular. This is issued in supersession of para (vi) of Circular No. 64/98-Cus dated 01.09.1998. As per the said format, M/s. Austin Impex were inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. They were also required to declare that they were not the manufacturer of the export goods and were not registered with central excise and they had purchases these goods from a trader who was also not registered with the central excise. They were also required to declare that no rebate (input rebate or/and final product rebate) would be taken against the export(s) made against this Shipping bill. However, during the course of investigation, M/s. Austin Impex failed to produce any such declaration.

22. From the above, it appears that M/s. Austin Impex had obtained the IEC illegally and made exports with an intent to avail undue drawback fraudulently. The exporter purportedly given wrong details and obtained the IEC with fake and bogus documents to avail undue drawback fraudulently. Further, from the address verifications conducted by this office, it was found that

the addresses mentioned in the KYC documents were fictitious and bogus. It also appears that the foreign remittances in respect of exports made by the said exporter were not realized against any of the shipping bill. Further, it cannot be ruled out that the said exporter grossly overvalued the impugned goods to obtain the higher drawback, as the said exporter is non-existence and never appeared to this office to record his statement. Therefore, from these facts, it appears that the exporter has not made truthful declarations in the filing of the shipping bills. The exporter did not follow the obligation imposed through Regulations and Act and has not made correct declarations, therefore, the exporter has violated the provisions of Section 7 & 11 of FT (D&R) Act, 1992 and Rule 11, 12 and 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, by the above mentioned acts of various omission and commission, the said exporter defrauded the government exchequer by fraudulently availing drawback ad acted in a manner which rendered the goods liable for confiscation under Section 113 (d) read with Section 2 (33) of the Customs Act, 1962. Further, in absence of truthful declaration, the drawback claimed also becomes ineligible. Hence, the goods become liable for confiscation under Section 113(i) and 113(ia) of Customs Act, 1962. Further, the exporter and its proprietor by their acts of omission and commission rendered themselves liable for penalty action under Section 114(i) and / or 114 (iii) and also under 114AA of Customs Act, 1962.

23. Further, during the investigation it came on record that the consignments of the said exporter M/s. Austin Impex were cleared by the Customs Brokers M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644) & M/s. S.V. Shipping (11/905).

24. Accordingly, (i) Summons No. SRG/160/2019-20 dated 16.10.2019 for his attendance on 24.10.2019 and (ii) Summons No. 244/19-20 dated 18.01.2020 for his attendance on 31.01.2020 were issued to the Customs Broker M/s. Goodluck Forwarders Pvt. Ltd. under Section 108 of the Customs Act, 1962 for giving evidence and / or producing all the relevant documents and / or any other things, in respect of enquiry being made in connection with export of readymade garments made by M/s. Austin Impex. But the said summons was returned back / undelivered by postal authorities with a remark as 'Left'. While inserting an alert against M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644 — PAN No. AADC3944RCHO05), it was found that the said Customs Broker number does not exist as per EDI records. Further, during the investigations, it was found that the said Customs broker license was obtained from Chennai Customs Commissionerate and Chennai Customs Commissionerate vide their letter dated 20.01.2022 informed that the said Customs Broker has surrendered their license and consequent to the acceptance by the Commissionerate on 20.12.2019, the database of the said Customs Broker was deleted in EDI System.

25. Further, Summons No. SSP/101/2017-18 dated 30.05.2017 for his attendance on 31.05.2017; Summons No. JSK/154/2017-18 dated 02.08.2017 for his attendance on 09.08.2017 and Summons No. JSK/43/2018-19 dated 24.04.2018 for his attendance on 08.05.2018 were issued to the Customs Broker M/s. S.V. Shipping under Section 108 of the Customs Act, 1962 for giving evidence and / or producing all the relevant documents and / or any other things, in respect of enquiry being made in connection with export of readymade garments made by M/s. Austin Impex. But all the above-mentioned summonses were returned back/ undelivered by postal authorities with a remark as 'Left' / 'Not Known'. Further, efforts made by SIIB officers to personally deliver the summons to Customs Broker M/s. S.V. Shipping and at the address of the said Customs Broker. But the worker available at the said address stated that the said firm was not working at the address mentioned from the last one year and he promised that he will find out the address of the exporter and deliver the summons to the Customs Broker M/s. S.V. Shipping. As the said CHA was not attended / not cooperated for the investigation, an alert has been inserted against the Customs Broker M/s. S.V. Shipping (AAAPN8849ECH001).

26. Several summonses issued to both the CHAs M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644) & M/s. S.V. Shipping (11/905), but in all the

times, the said summonses undelivered. Efforts were also made to trace out the CHAs at the addresses registered, but all the efforts were futile. During the investigations it appears that the CHAs have not advised his client in the light of direction contained in Regulation 11(d) of CBLR 2013. They have also not paid due diligence towards their work by way of not informing about the unscrupulous activity of the exporter.

27. The Customs Broker is working as an authorized representative of exporter and takes the responsibility of export / import clearances in favour of exporter after taking due authorization from the exporter. A custom broker is always aware of all the omissions and commissions made by the exporter. It is a business practice that CHA knows on whose behalf they are working as CHA and can face investigation for omission and commission at any time. As per CHA Regulation, the CHA is also required to know their client. Even, in the absence of such requirement, it is business practice that the CHA knows on whose behalf they are working. As the relation between CHA and exporter is long time relation unlike retail business where customer comes to retail shop and transaction concludes in a moment. So, it is not possible that CHA does not know the details and whereabouts of the exporter. The CHA had been dealing with such individual to collect documents and collect goods. The CHA must have raised his agency charges / fees from same source. Hence, it is not possible for a CHA to deal with a non-existing firm/person.

28. This is a case where the exporter is non-existent. The officers of SIIB (Exports) made several efforts to trace out the address of the said exporter, but the same were not fruitful. Even several summonses were issued to CHAs, but never they appeared to this office to give their statement. From the investigations, it appears that the said exporter submitted fake and bogus documents to the CHAs and the said CHAs not verified the genuineness of the same. Due to the negligence of CHAs, the exporter tried to export the goods illegally to avail undue drawback fraudulently. Therefore, under the facts and such circumstances, it appears that the CHAs actively connived with exporter in claiming undue drawback and mis-declaring in Shipping Bill. While dealing with exporter, the CHAs did not care to follow the obligations imposed through the Regulations and Acts. Therefore, CHAs has rendered themselves liable for Penal action under Section 114 (i) and or 114(iii) and also under Section (114AA) of Customs Act, 1962 read with Regulations 11(d) (e) (n) of CBLR, 2013.

WRITTEN SUBMISSION & PERSONAL HEARING:

29. The noticees have not responded to the said SCN and didn't provide any written submission. Following the principles of natural justice, the noticees were given opportunities to be heard personally or virtually vide Personal Hearing intimation letters dated 07.12.2022, 07.01.2023 and 20.01.2023 vide which PH was scheduled on 06.01.2023, 19.01.2023 and 04.02.2023 respectively, but the noticees neither responded to the aforesaid PH letters nor attended Personal Hearing on scheduled date and time.

DISCUSSIONS AND FINDINGS

30. I have carefully gone through the Show Cause Notice No. dated 22.07.2022, evidence on record and facts of the case. Accordingly, I am proceeding to adjudicate the SCN on the basis of available evidence on record.

31. In the instant case, after going through the facts of the case available on record, I find that that the case was investigated by SIIB (X), ACC, Mumbai on the basis of specific intelligence received On the basis of specific information about misuse of drawback scheme by entities created specifically for the purpose received by Special Investigation & Intelligence Branch, Export, Air Cargo Complex, Sahar, Mumbai, investigation was initiated against 37 exporters

regarding fraudulent claim of drawback to the tune of multiple crores, involving fake IECs, wherein fly-by-night companies were created with sole intention to avail fraudulent and unjust drawback. The syndicate was suspected to involve multiple CHAs and sub-agents. During the investigation, it was found that one exporter M/s Austin Impex (IEC No.0316958859) was one of the 37 exporters. The CHAs who had cleared the consignments of M/s Austin Impex were M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644) & M/s. S.V. Shipping (11/905).

32. During the investigation, details of total exports made by the exporter were retrieved from the ICES System and during the scrutiny of the said export details, it was found that the said exporter exported consignments in respect of 43 shipping bills between the period 24.02.2017 to 10.04.2017 with an FOB value of Rs. 741.06 lakhs and total Drawback amount of Rs. 64.96 lakhs.

33. Further, during the course of investigation, several summonses were issued to the exporter for his attendance. Summons No. JSK/155/2017-18 dated 02.08.2017 for his attendance on 16.08.2017; Summons No. JSK/366/2017-18 dated 30.11.2017 for his attendance on 12.12.2017; Summons No. JSK/408/2017-18 dated 05.01.2018 for his attendance on 16.01.2018 and Summons No. MTK/250/2021-22 dated 20.12.2021 for his attendance on 30.12.2021 were issued to the said exporter M/s. Austin Impex under Section 108 of the Customs Act, 1962 for giving evidence and producing all the relevant documents or any other things, in respect of enquiry being made in connection with export of readymade garments made by M/s. Austin Impex. But all the above-mentioned summonses were returned back / undelivered with a remark as 'Not Known' / 'Left' / 'Incomplete address'.

34. It is seen from the investigation, because all the summonses were received back, the officers of S.L.I.B. (Exports), ACC, Sahar, Mumbai conducted Address verification of the exporter M/s. Austin Impex on 20.11.2017 at their Branch address mentioned in the IEC at Mata Ramabai Ambedkar Nagar, Aadharwadi Chowk, Near Andhra Bank, Opp. Subhash Nagar, Kalyan West, Mumbai, Maharashtra — 421301 to verify whether the exporter M/s. Austin Impex is in existence at the said address. On verification, it was found that there was no building name, office / shop number of M/s. Austin Impex was existed in the said address and further enquiries made with the local people and found that there was no such office in the name of M/s. Austin Impex was situated in the given area.

35. It is observed that multiple efforts have been made to reach out to the noticees. During the investigation, the officers of the SIIB made several efforts to find out/trace out the said exporter through addresses mentioned in the IEC and in various KYC documents. Also made several efforts to contact the exporter on telephone numbers mentioned in KYC documents, but in futile. All out efforts were made to find out /trace the exporter, but all in vain.

36. During the investigation, details of defaulting IECs (FOB yet to be Realised) in respect of the exporter M/s. Austin Impex for the period 01.01.2010 to 31.12.2020 were retrieved from ICES System to check whether the remittance has been received by the exporter or not. On scrutiny of the data, it was found in the investigation that the foreign remittances have not been realised against any shipping bill in which the exporter exported the goods.

37. Further, during the investigation it came on record that the consignments of the said exporter M/s. Austin Impex were cleared by the Customs Brokers M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644) & M/s. S.V. Shipping (11/905).

37.1 Accordingly, many summonses were issued to the Customs Broker M/s. Goodluck Forwarders Pvt. Ltd. under Section 108 of the Customs Act, 1962 for giving evidence and producing all the relevant documents or any other things. But the said summonses was returned

back / undelivered by postal authorities with a remark as 'Left'. Further, during the investigations, it was found that the said Customs broker license was obtained from Chennai Customs Commissionerate and Chennai Customs Commissionerate vide their letter dated 20.01.2022 informed that the said Customs Broker has surrendered their license and consequent to the acceptance by the Commissionerate on 20.12.2019, the database of the said Customs Broker was deleted in EDI System.

37.2 Further, many summonses were issued to the Customs Broker M/s. S.V. Shipping under Section 108 of the Customs Act, 1962 for giving evidence and produce all the relevant documents or any other things. But all the above-mentioned summonses were returned back/undelivered by postal authorities with a remark as 'Left' / 'Not Known'. Further, efforts made by SIIB officers to personally deliver the summons to Customs Broker M/s. S.V. Shipping at the address of the said Customs Broker. But the worker available at the said address stated that the said firm was not working at the address mentioned from the last one year.

38. Based on these facts and evidences, M/s. Austin IMPEX (IEC: 0316958859), Shri Udaybhan K. Mishra, Proprietor of M/S. AUSTIN IMPEX, M/s. S.V. Shipping and M/s. Goodluck Forwarders Pvt. Ltd. were issued instant Show Cause Notice. I find that following issues are required to be looked into and to be decided in present adjudication proceedings.

- a) The exported goods covered by 43 Shipping Bills collectively valued at Rs. 741.06 lakhs (Rs. Seven Hundred Forty One Lakhs Six thousand only) found to be exported by using fraudulent documents should be held liable to confiscation under Section 113(d), (i) & (iii) of the Customs Act, 1962.
- b) The sanctioned drawback amount of Rs. 64.96 lakhs, which was held with the department, should be denied and rejected as per the Clause (ii) to the second proviso to Rule 3(1) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.
- c) The drawback of Rs. 64.96 lakhs for the goods exported vide 43 shipping bills should be denied and rejected as per the provisions of Rule 16(A) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as the export realizations have not been received.
- d) The penalty should be imposed on M/s. Austin Impex and its Proprietor Shri Udaybhan K. Mishra, for the various acts of omission and commission under Section 114(i) and/or 114 (jii) and also under Section 114AA of the Customs Act, 1962 read with Section 7 & 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 11, 12, 14 of the Foreign Trade (Regulation) Rules, 1993.
- e) The penalty should be imposed on Customs Brokers M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644) & M/s. S.V. Shipping (11/905) for the various acts of omission and commission under Section 114(i) and/or 114(iii) and also under Section 114AA of the Customs Act, 1962 read with the provisions of CBLR 2013.

39. To decide the above-mentioned issues, the noticees were given opportunities to be heard personally or virtually vide Personal Hearing intimation letters dated 07.12.2022, 07.01.2023 and 20.01.2023 vide which PH was scheduled on 06.01.2023, 19.01.2023 and 04.02.2023 respectively. But the noticees neither responded to the aforesaid PH letters nor attended Personal Hearing on scheduled date and time. It is observed that sufficient opportunities have been given to the Noticees but they chose not to join adjudication proceedings. Considering the scenario, there is no option but to proceed with the adjudication proceedings in terms of merit of the case ex-parte.

40. With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws;

40.1 In this regard, it is observed that Hon'ble High Court of Allahabad in its decision in the case of Modipon Ltd. vs CCE, Meerut reported in 2002 (144) E.L.T 267 (All.) effectively dealt with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference.

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

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

40.2. It is further observed that Noticees did not participate in the adjudication proceedings in spite of the fact of service of letters for personal hearings in terms of Section 153 of Customs Act. Section 153 of the Customs Act reads as under;

SECTION 153. Modes for service of notice, order, etc. — (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely :—

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence

40.3 Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the Noticees, but they did not respond as they did not have anything to submit in their defence. It pertinent to refer to the case of *Sumit Wool Processors vs CC, Nhava Sheva* 2014 (312) E.L.T. 401 (Tri. - Mumbai) wherein the Hon'ble CESTAT, Mumbai has observed that Natural justice not violated when opportunity of being heard given and Notices sent to addresses given by the noticees. If appellants fail to avail such opportunity, mistake lies on them - Principles of natural justice not violated.

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard." 2014 (312) E.L.T. 401 (Tri. - Mumbai)"

40.4. In this regard, reliance is also placed upon judgement of Hon'ble Delhi Tribunal reported as 2012 (286) E.L.T. 79 (Tri. - Del.): COMMISSIONER OF C. EX., CHANDIGARH Versus PEE IRON & STEEL CO. (P) LTD. [Final Order No. A/883/2012-EX(BR)(PB), dated 24-7-2012 in Appeal No. E/6066/2004] wherein it has been held that:

Hearing - Notice to assessee - Received back undelivered with report that address was not correct - No other address of assessee found to be available on record - In that view, as assessee could not be served the notice without undue delay and expense, matter proceeded ex parte against assessee. [para 9]

41. I find that the Noticees have failed to reply to the SCN within stipulated time as well as failed to appear for PH. This shows non-cooperation on part of the Noticees.

42. I find that the exporter has purportedly given wrong details and obtained the IEC illegally with an intent to avail undue drawback illegally and fraudulently. The said exporter purposely not attended this office to give his statement. Further, it is concluded from the investigations and from the personal visits made by the officers of this SIIB (X), ACC that the addresses mentioned in the IECs and other KYC documents were fake and bogus.

43. I find that the Exporter M/s. Austin Impex had to produce evidence to show that the sales proceeds (Foreign exchange) in respect of the goods exported have been realised within the time limit prescribed under the Foreign Exchange Management Act, 1999. However, it is evident from the ICES System that the foreign inward remittance involved in the goods exported under the Shipping Bills has not been realised even after the expiry of the prescribed time-limit. Further, no any relevant documents to support the genuine purchase, valuation and exportation of the goods were presented by the exporter.

44. I find that the officers of SIIB (X), ACC made several efforts to locate the address of the exporter mentioned in the IEC as well as in other KYC documents. The officers made personal visits to the addresses mentioned in the IEC, but all were found to be fake and non-existence. From the investigations and scrutiny of documents gathered, it is clear that the said exporter M/s. Austin Impex obtained the IEC with an intention to export the goods illegally without following the proper procedure under Customs Act, 1962 and claimed the drawback by deliberate misrepresentation, wilful mis-statement and suppression of facts.

45. I find that the goods were procured from Domestic Tariff Area (DTA) without any invoices, so no details of its manufacturing, production, using imported material or excisable material therein were available so it could not be ascertained whether any duties have been paid or otherwise. The officers of SIIB (X), ACC issued several summonses to appear for the statement and submit any relied documents. But the said exporter never appeared to this office to record his statement and further not submitted any documents in respect of manufacturing, production or use of any imported material in impugned export goods, though he was given number of opportunities to present himself for recording of his statement but he failed to produce any such details. Further, the exporter didn't respond to the said SCN and PH intimation letters issued by the department. Therefore, it is concluded that necessary ingredient of clause (ii) to second proviso to Rule 3(1) of Drawback Rule, 1995 is attracted in this case, which does not permit any amount of drawback in such cases where no duty has been paid.

46. I find the exporter was required to furnish declarations at the time of exports in format annexed with the circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007- DBK by CBEC inter alia provides that the merchant exporters who purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However, such merchant exporters shall have to declare at the time of export, the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall

be taken against the Shipping bills under which they are exporting the goods. The merchant exporters who purchase goods from traders have to furnish the declaration, at the time of export, in the format annexed with this circular. As per the said format, M/s. Austin Impex were inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. However, M/s. Austin Impex failed to produce any such declaration.

47. Further, I agree with the findings of the investigation that it cannot be ruled out that the said exporter grossly overvalued the impugned goods to obtain the higher drawback, as the said exporter is non-existent and neither appeared to the office of SIIB (X), ACC to record his statement nor joined adjudication proceedings, Therefore, from these facts, it is clear that the exporter has not made truthful declarations in the filing of the shipping bills. The exporter has not made correct declarations, therefore, the exporter has violated the provisions of Section 7 & 11 of FT (D&R) Act, 1992 and Rule 11, 12 and 14 of the Foreign Trade (Regulation) Rules, 1993.

48. I find that by the above-mentioned acts of various omission and commission, the said exporter attempted to defraud the government exchequer by fraudulently availing drawback and acted in a manner which rendered the goods liable for confiscation under Section 113 (d) read with Section 2 (33) of the Customs Act, 1962. Further, in absence of truthful declaration, the drawback claim also becomes ineligible. Hence, the goods become liable for confiscation under Section 113 (i) and (ii) of Customs Act, 1962. Accordingly, the exporter by his acts of omission and commission has rendered itself liable for penal action under Section 114(i) and 114 (iii) and also under 114AA of Customs Act, 1962.

49. I find that both CHAs, namely, M/s. Goodluck Forwarders Pvt. Ltd. (erstwhile M/s. G.V. Network Logistics Pvt. Ltd. 11/1644) & M/s. S.V. Shipping (11/905) were issued several summonses, but the said summonses undelivered every time. Efforts were also made to trace out the CHAs at the addresses registered, but all the efforts were futile. None of the CHAs joined adjudication proceedings to present their side. They have also not paid due diligence towards their work by way of not informing about the unscrupulous activity of the exporter to the department. CHAs didn't verify the genuineness of the exporter. Therefore, under the facts and such circumstances, it is concluded that the CHAs actively connived with exporter in claiming undue drawback and mis-declaration in the Shipping Bill. While dealing with exporter, the CHAs did not bother to follow the obligations imposed through the CBLR, 2013 and Customs Act 1962. Therefore, CHAs have rendered themselves liable for Penal action under Section 114 (i) and 114(iii) and also under Section 114AA of Customs Act, 1962 read with Regulations 11(d) (e) (n) of CBLR, 2013.

50. Vide the instant SCN penal provisions sought to be imposed on the noticee firm M/s. Austin Impex as well as Shri Udaybhan K. Mishra, Proprietor of M/S. Austin Impex, under Section 114(i), 114(iii) and also under Section 114AA of the Customs Act, 1962. It is settled position of law that no separate penalty can be imposed on Proprietor and Proprietorship Firms, and same has been held in number of cases. I also rely upon case law reported in 2015 (321) E.L.T. 199 (Bom.) in the case of Commissioner of Cus., CSI Airport, Mumbai Versus Gyanchand Jain [Customs Appeal No. 59 of 2013, decided on 27-3-2014], wherein it has been held that:

Penalty - Customs - Separate penalties not imposable on sole proprietorship firm and its proprietor - No infirmity in Tribunal's order setting aside penalty imposed separately on proprietor - No substantive question of law - Sections 114 and 130 of Customs Act, 1962. [para 3]

50.1 Hence, I hold that no separate penalty is imposable on M/s. Austin Impex and Shri Udaybhan K. Mishra, Proprietor of M/s. Austin Impex under Section 114(i), 114 (iii) and Section

114AA of the Customs Act, 1962, as in the eye of law Proprietor and Proprietorship Firm are one and same and has no distinct identity.

Redemption fine under section 125 of Customs Act 1962.

51.1 In the instant case, the impugned goods having FOB of Rs. 741.06 lakhs have already been exported and LEO was given. The goods are not physically available for confiscation.

51.2 As per the judgment in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai, the Hon'ble High Court of Chennai has held that *availability of goods is not necessary for imposing redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.*

51.3. In view of above judgement, I held that the redemption fine is imposable on the said goods exported by M/s Austin Impex which are not physically available for confiscation.

52. In view of the findings and observations as made above, I pass following order.

Order

- a) I order for confiscation of the exported goods covered under 43 Shipping Bills collectively valued at Rs. 741.06 lakhs (Rs. Seven Hundred Forty One Lakhs Six thousand only) under Section 113(d), (i) & (ii) of the Customs Act, 1962. However, I give an option to the exporter to redeem these goods under provisions of Section 125(1) of the Customs Act, on payment of Redemption Fine of Rs. 75,00,000/- (Rs. Seventy Five Lakh only).
- b) I deny and reject the drawback amount of Rs. 64.96 lakhs as per the Clause (ii) to the second proviso to Rule 3(1) & Rule 16(A) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.
- c) I impose penalty of Rs. 50,00,000/- (Rs. Fifty Lakh Only) under section 114 (i) of Customs Act 1962, penalty of Rs. 50,00,000/- (Rs. Fifty Lakh Only) under section 114 (iii) of Customs Act 1962 and penalty of Rs. 25,00,000/- (Rs. Twenty Five Lakh Only) under section 114 AA of the Customs Act 1962 read with Section 7 & 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 11, 12, 14 of the Foreign Trade (Regulation) Rules, 1993 on the M/s Austin Impex.
- d) I impose penalty of Rs. 2,00,000 /- (Rs. Two Lakh only) under section 114 (i) of Customs Act 1962, penalty of Rs. 2,00,000/- (Rs. Two Lakh only) under section 114 (iii) of Customs Act 1962 and penalty of Rs. 1,00,000/- (Rs. One Lakh Only) under section 114 AA of the Customs Act 1962 read with the provisions of CBLR 2013 on M/s. Goodluck Forwarders Pvt. Ltd.
- e) I impose penalty of Rs. 2,00,000/- (Rs. Two Lakh only) under section 114 (i) of Customs Act 1962, penalty of Rs. 2,00,000/- (Rs. Two Lakh only) under section 114 (iii) of Customs Act 1962 and penalty of Rs. 1,00,000/- (One Lakh Only) under section 114 AA of the Customs Act 1962 read with the provisions of CBLR 2013 on M/s. S.V. Shipping (11/905).



53. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962 and/or any other law for the time being in force in the Republic of India.



(Pawan Kumar Khetan)

Additional Commissioner of Customs
ACC(Export), Mumbai

To,

1. M/S. AUSTIN IMPEX (IEC: 0316958859), Ground Floor,
Mishra Compound, Vishwadeep Compound,
Babrekar Nagar, Charkop, Kandivali West,
Mumbai — 400067
2. Shri Udaybhan K. Mishra, Proprietor of
M/S. AUSTIN IMPEX (IEC: 0316958859),
Ground Floor, Mishra Compound, Vishwadeep
Compound, Babrekar Nagar, Charkop, Kandivali West,
Mumbai — 400067
3. M/s. S.V. Shipping, B-28, Station Plaza,
Station Road, Bhandup (West), Mumbai — 400 078
4. M/s. Goodluck Forwarders Pvt. Ltd.
(erstwhile M/s. G.V. Network Logistics Pvt. Ltd. — 11/1644)
Shop No. 23, Ground Floor, Block No. 13
A, Sector-25, Seawoods, Navi Mumbai 400 706

Copy to:

1. The Assistant/Deputy Commissioner of Customs, Review Cell (Exports), ACC, Sahar, Mumbai.
2. The Assistant/Deputy Commissioner of Customs, Export Assessment, ACC, Sahar, Mumbai.
3. The Assistant/Deputy Commissioner of Customs, Drawback, ACC, Sahar, Mumbai.
4. The Assistant/Deputy Commissioner of Customs, TRC (Exports), ACC, Sahar, Mumbai.
5. The Addl. Commissioner of Customs, Customs Broker Section, Mumbai Customs Zone-I with a request to take appropriate action against the Customs Brokers M/s. Goodluck Forwarders Pvt. Ltd. and M/s. S.V. Shipping (11/905), 11/1936, under CBLR 2013.
6. Notice Board
7. Office Copy