



सत्यमेव जयते

BHARAT
SARKAR

सीमाशुल्क आयुक्त (निर्यात)का कार्यालय
OFFICE OF COMMISSIONER OF
CUSTOMS, (EXPORT)
EXPORT ASSESSMENT SECTION,
हवाई माल परिसर, सहार, अंधेरी (पूर्व), मुंबई
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INDIAN CUSTOMS

फा.सं. .CUS/ASS/MISC/937/2023-Exp-Assmt Date:19-08-2024

SCN No. - 34/ADC/Exp-Assmt/2024-25/ACC

DIN No. – 20240867VN00006176CD

SHOW CAUSE NOTICE ISSUED UNDER SECTION - 124 OF CUSTOMS ACT, 1962 AND RULE 17 & 18 OF THE CUSTOMS, CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK RULES, 2017

A complaint against an exporter – **M/s. L. G. Enterprise (IEC – 0205021867)** (herein after referred to as the Exporter) was received through e-mail dated 20.12.2021, from Asiatic Marine Exports, Mumbai,. The above said exporter is having registered IEC address at – 234/ 146/, 154/,/60/1, Sarat Bose Lane, Sarat Colony, P.S Airport, 24 Parganas North, Kolkata, West Bengal – 700 081. The allegations are reproduced as follows:

- Illegal export of Live Blood Clam going on from Mumbai International Airport.
- M/s. L.G. Enterprise having address – 234/ 146/, 154/,/60/1, Sarat Bose Lane, Sarat Colony, Kolkata, West Bengal – 700 081; has their live fish handling address at the same address as above. Also, their approval number is 1333 (issued by MPEDA having certificate no. WB1/MT/441/18 dated 22.06.2018)
- M/s. L. G. Enterprise does not have any processing facility in Mumbai and also not having legal tie-up with any authorized live fish handling center in Mumbai.
- Still M/s. L.G. Enterprise purchases live blood clam from Mumbai fisherman, supplier and packs everything un-hygienically without processing in authorized live fish handling center, packing on the road side and exports from Mumbai International Airport (ACC).
- The details of recent shipments by the said exporter from ACC, Mumbai are:

Table-1

S/B no.	S/B Date	Airway Bill No./Date	Q-certificate No./Date	No. of Packets
6744136	15.12.2021	94045426780/14.12.2021	54882/--	22

6802839	17.12.2021	94045426791/15.12.2021	54884/16.12.2021	140
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f.) There is a daily flight from Kolkata to Bangkok, and there is no shortage of space on the flight. So, there is no purpose in sending the shipment from Kolkata to Mumbai to Bangkok because it's such a low-cost item that we can't afford to pay the extra plane fare.

g.) Material needs to be caught one day before export for good report otherwise Blood clams start to smell and cannot get material value. According to it's price, transportation from Kolkata to Mumbai is not workable. It's possible only if the exporter creates fake transportation bills from transporter.

In the end, the complainant – Asiatic Marine Exports, Mumbai has requested to stop this illegal blood clam export from Mumbai International Airport.

2. Accordingly, file was put up by the Export Shed, ACC on 27.12.2021, with the following notes:

a.) The export of Live Blood Clam (Scientific name – '*AndaraGranosa*') is done under CTH – 03073910. Apart from Invoice and Packing List, the two essential certificates required for export of Live Blood Clam are MPEDA certificate & Q-certificate.

b.) MPEDA certificate is issued by the Marine Products Export Development Authority under Rule – 42 of MPEDA Rules, 1972.

c.) Quality of Health & Inspection Certificate (Q-certificate) is issued by the Export Inspection Council of India. The Technician who signs the Q-certificate certifies – “That the consignment has been processed in our processing establishment which has valid approval and is under continuous monitoring by Export Inspection Agency as per the Export of Live Fish (Quality control, inspection and monitoring) rules, 2002 (**RUD-4**)”.

3. Accordingly, in response to the Export Shed letter dated 04.01.2022, the exporter submitted the following documents:

- A) i) Copy of S/B no. 6802839 dated 17.12.2021
 ii) Invoice cum Packing List no. – LG/35/21-22 dated 16.12.2021
 iii) Quality certificate no. 54884 dated 16.12.2021
 iv) Airway Bill No. 94045426791 dated 15.12.2021
 v) MPEDA certificate no. WB1/MT/441/18 dated 22.06.2018
- B) i) Copy of S/B no. 6744136 dated 15.12.2021
 ii) Invoice cum Packing List no. LG/33/21-22 dated 10.12.2021

- iii) Quality Certificate no. 54882 dated 14.12.2021
- iv) Airway Bill No. 94045426780 dated 14.12.2021
- v) MPEDA certificate no. WB1/MT/441/18 dated 22.06.2018

The above-mentioned documents were analyzed w.r.t the complaint received from M/s. – Asiatic Marine Exports by the Export Shed, ACC and the following observations were made by them :-

- a. W.r.t the allegation of the complainant that the Live Fish handling center of the exporter – M/s. L. G. Enterprise is at address: 234/146/154, 60/1 Sarat Bose Lane, Sarat Colony, **Kolkata**, West Bengal and also, the MPEDA certificate no. WB1/MT/441/18 dated 22.06.2018 stating approval no. 1333

>Quality cert. no. 054882 dated 14.12.2021 against Invoice no. LG/033/21-22 dated 10.12.2021 S/B no. 6744136 dated 15.12.2021 are **issued at Kolkata.**

> Quality cert. no. 54884 dated 16.12.2021 against Invoice no. LG/035/21-22 dated 16.12.2021 S/B no. 6802839 dated 17.12.2021 are **issued at Kolkata.**

It was observed that the exporter has neither produced any evidence for any other processing facility in Mumbai nor any legal tie-up with any authorized Live Fish Handling Centre in Mumbai.

1. W.r.t the allegation of the complainant that M/s. L.G.Enterprise is purchasing Live Blood Clams from Mumbai fishermen, suppliers and packing it unhygienically on any jetty/ road-side without processing in authorized live fish handling Centre and also, that the material is caught one day before export for good report otherwise Blood Clams start to smell and cannot get material value. According to its selling price, transportation from Kolkata to Mumbai is not workable. It is only possible if the exporter creates fake transportation bills from the transporter –
2. It was observed that the exporter has not submitted any proof of transport of goods from Kolkata to Mumbai. However, to verify the authenticity of the allegations, the copy of Gate Passes received from the CB as tabulated below were analyzed.

Table-II

Sr. No.	Shipping Bill No.	Vehicle No.
1.	6744136 dated 15.12.2021	MH03-DV-1741
2.	6802839 dated 17.12.2021	MH13-CJ-0060
		MH03-CP-6077
		MH03-DV-1741

3.	6858229 dated 19.12.2021	MH03-DV-1741
		MH14-HU-1154
		MH03-CP-6077

From the above table it was found that some of the vehicles were repeating every 2 days, which was not possible for a vehicle, which was carrying goods from Kolkata to Mumbai. Also, it was observed that the allegations of the complainant were not baseless and that the exporter had purchased goods from Mumbai fishermen & suppliers and the said exporter was issuing Quality certificates from Kolkata but goods were actually not processed at their processing unit.

Accordingly, the approval to forward the subject instant file to SIIB (X) for further investigation and necessary action was granted by the Commissioner (X) on 28.02.2022.

4. Summons dated 11.05.2022 was issued to the said exporter – M/s. L.G. Enterprise (IEC – 0205021867) to appear on 09.06.2022 for getting their statement recorded under section – 108 of the Customs Act, 1962. In response to the said Summons, a letter dated 26.05.2022 from the said exporter – M/s. L.G. Enterprise was received in this section on 31.05.2022, wherein the exporter has stated that ‘there is no transport invoices since the goods were sent from Kolkata to Mumbai through vehicles carrying load of agriculture produce.

4.1 The exporter further stated that she had met with an accident which resulted into several fractures and she had to undergo several surgeries and that she was bed-ridden. As such, she prayed for exoneration of her personal appearance (Copies of medical certificate is also attached).

4.2 Subsequently, the exporter had been issued summons on date - 28.08.2022, 15.09.2022, 26.10.2022 and 31.12.2022 for making their appearance in order to get their statement recorded under section – 108 of the Customs Act, 1962. However, despite the five above-mentioned Summons issued to them, neither the exporter nor any of its authorized representatives has appeared till date for getting their statement recorded.

5. In this case, Shipping Bills were filed by two CB’s – (a) M/s. Macro Customs Consultants LLP and (b) M/s. PBC Logistics Pvt. Ltd; on behalf of the said exporter – M/s. L.G. Enterprise. Accordingly, Summons dated 23.08.2022 and another Summons dated 15.09.2022 was issued to the CB – M/s. Macro Customs Consultants LLP requiring their appearance for getting their statement recorded under section – 108 of the Customs Act, 1962.

5.1 The statement of Mr. Brijesh Pandey (**RUD-6**), Partner of CB firm - M/s. Macro

Customs Consultants LLP was recorded on 16.09.2022, wherein he inter-alia stated the following:

- a.) He is a Partner at CB firm – M/s. Macro Customs Consultants LLP since 2018 and the said CB firm is in existence since the last 5 years.
- b.) They have cleared only 02 shipments for the exporter – M/s. L.G. Enterprise (IEC – 0205021867) bearing S/B no. 6802839 dated 17.12.2021 and 6858229 dated 19.12.2021 till date.
- c.) They had taken the KYC documents from the exporter – M/s. L.G. Enterprise. Also, one of his colleagues had **carried out the address verification** of the exporter given in the IEC copy and found it to be correct.
- d.) The exporter used to provide documents like invoices and packing list by hand or by mail. After receiving documents, they used to make checklist and send it to the exporter by hand or by mail for approval. Once they got approval from the exporter, they used to file Shipping Bill on ICEGATE portal.
- e.) Documents i.e. Invoices, Packing Lists, MPEDA Certificate were received in e-mail id of company – Chetan@macrologistics.co.in from just4arupghosh@gmail.com.
- f.) They had verified the classification and description of the goods and filed the same as per the exporter invoice.
- g.) The goods covered under the Shipping Bill no. 6802839 dated 17.12.2021 arrived in the vehicle No. MH13-CJ-0060, MH03-CP-6077 & MH03-DV-1741 and goods covered under Shipping Bill no. 6858229 dated 19.12.2021 arrived in the vehicle no. MH14-HU-1154, MH03-CP-6077 & MH03-DV-1741 directly in Export Shed, ACC for export clearance.
- h.) They did not provide transport facility to the exporter – M/s. L.G. Enterprise. The vehicle owner or transporter was not known to me and had no connection with our company. The details of vehicle were provided by the exporter – M/s. L.G. Enterprise (IEC – 0205021867) on telephone call.
- i.) They did not find any discrepancy in the valuation of the goods.
- j.) Goods i.e. ‘Live Blood Clam’ covered under the said 02 Shipping Bills number – 6802839 dated 17.12.2021 and 6858229 dated 19.12.2021 appeared to be normal and appropriate for export.

5.2. Summons dated 22.08.2022 and another Summons dated 15.09.2022 had been issued to the CB – M/s. PBC Logistics Pvt. Ltd. requiring their presence for recording of their statement under section – 108 of the Customs Act, 1962. Accordingly, the statement of Shri Karmchandra P. Pandey (**RUD-7**) Manager Marketing of CB firm – M/s. PBC Logistics Pvt. Ltd. was recorded on 29.09.2022 wherein he inter-alia stated the following:

a.) He has been working since 2016 as Manager Marketing in M/s. PBC Logistics Pvt. which has been existence since 2016.

b.) They have cleared only 06 shipments for the exporter – M/s. L.G. Enterprise (IEC – 0205021867) till date.

c.) **He had taken the KYC documents of the said exporter – M/s. L.G. Enterprise. Also, one of the employees of their firm carried out the address verification of the exporter given in the IEC copy and found it to be correct.**

d.) Exporter used to provide documents like Invoices and Packing List by hand or by mail. After receiving documents, we used to make checklist and send it to the exporter by hand or by mail for approval. Once they got approval from the exporter, they used to file Shipping Bill on ICEGATE portal.

e.) In this case, GATE PASS (Tax Invoice cum Terminal Challan) was handed over to their employee by M/s. Macro Logistics and Exim (11/5096). After carting of goods in Export Shed, ACC; Examination and LEO of Shipping Bills documents i.e. Handover set was handed over to Airlines. Booking related work was done by M/s. Macro Logistics & Exim.

f.) Documents i.e. Invoices, Packing Lists, MPEDA certificate were received in E-mail of company – export.pbclogistics@gmail.com and dheeraj@pbclogistics.com from e-mail id: just4arupghosh@gmail.com.

g.) They had verified the classification and description of the goods and filed the same as per the exporter invoice.

h.) The goods covered under the Shipping Bill no. 6744136 dated 15.12.2021 filed by the exporter – M/s. L.G. Enterprise (IEC – 0205021867) arrived in the vehicle no. MH03-DV-1741 directly in Export Shed, ACC for Export clearance. Their firm had not generated GATEPASS in this case. They do not generate GATEPASS for any consignment or vehicle. They are only clearing agent and do not deal with freight forwarding.

i.) Vehicle owner or transporter was not known to him and had no connection with his company. The details of vehicle were provided by M/s. Macro Logistics & Exim as GATEPASS was being generated by their firm.

j.) They had verified the goods with related documents while carting the shipment covered under S/B no. 6744136 dated 15.12.2021 filed by the exporter – M/s. L.G. Enterprise.

k.) They did not find any discrepancy in the valuation of the goods.

Sl. No.	Firm Name	Contact person	Phone No.	Mobil No.	Email	Website	Address	Reg. No	Issue Date	Expiry Date	Product Category	Product(s)
80	M/S L.G. ENTERPRISE	Mrs. Lina Ghosh	0332 5141 088	98309 16002	lgenterprise1980@gmail.com		60/1 Sarat Bose Lane, Sarat Colony Kolkata / 700081 700081 West Bengal	WB1 /MT/ 441/ 18	22/06/2018	21/06/2024	Live other than ornamental fish	

8. The Exporter **M/s L G Enterprise has been approved** under the Export of Live Fish (Quality control, Inspection and Monitoring) Rules 2002 issued vide Notification no. 478 dated 1st May, 2002 S.O.478(E) to process Live Fish for Export to Non EU Countries other than Customs Unions & Australia vide No. EIA/KOL/TECH/FFP/10037/1333(A)/2021-22 dated 30.11.2021 (approval number 1333-LF).

8.1 The case was initiated on the basis of complaint received vide email-zuzur9525@yahoo.in from Asiatic Marine Exports, Mumbai. The allegation was of creating fake transport bills which have not been submitted by the exporter till date even after issuance of multiple summons dated 11/05/2022, 28.08.2022, 15.09.2022, 26.10.2022 and 31.12.2022. The Q Certificate submitted by the Exporter has been issued at Kolkata and the goods have been exported from Mumbai. Exporter has not submitted/provided any transport related documents pertaining to goods exported from Mumbai and packed in Kolkata. Apparently Exporter might have submitted incorrect or false Q- Certificate issued at Kolkata in respect of goods procured from Mumbai. Q-certificate might have been issued without verification of quality and proper packaging of the goods.

9. It is evident from the data available in ICES 1.5 system under the category – List of Shipping Bills and FOB Realization (**RUD-1**), the full foreign remittance has not been realized against the Shipping Bills filed by the exporter even after the expiry of the prescribed time-limit. In these shipping bills total FOB was to be realized is 27,978 (in FC) but as on date total FOB which was actually realized was 27,868 (in FC). In the event of non-realization of sale proceeds, the drawback benefit claimed/availed deemed never to have been allowed and becomes rejectable/recoverable under relevant rules of The Customs and Central Excise Duties Drawback Rules, 2017.

9.1 Also, in terms of CBIC Notification No. 76/2021-Customs (N.T.) dated 23rd

September, 2021 as amended, the duty credit allowed under the RODTEP Scheme shall be subject to realization of sale proceeds in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible. Thus, such duty credit allowed under RoDTEP Scheme becomes liable for cancellation and recovery in terms of Para 3,4 and 5 of the notification ibid.

10. **IEC Status:** It is pertinent to mention here that the status of IEC of the exporter i.e. M/s L.G.Enterprise (IEC-0205021867) as available on the website of DGFT (<https://www.dgft.gov.in>) is mentioned as '*Valid*' (**RUD-10**). Still, the exporter has failed to appear before the department despite the number of summonses issued to them.

11. **FOB Realization:** Also, FOB against 07 out of 08 Shipping Bills filed from ACC, Mumbai had been realized and no drawback claimed by the exporter as per data retrieved from ICES 1.5 System. 01 out of 08 shipping bills, the exporter had claimed drawback. In said shipping bill the BRC issued by DGFT is submitted by the exporter (**RUD-5**). **The details of all shipping bills are as mentioned in Table III.**

12. From the above, it appears that as the export **goods have been supplied on fake and bogus supplier invoices, therefore, due to non-production/submission of required documents the department could not verify whether the goods are duty paid.** This appears to be a case of fake and bogus transactions only made with an intention to claim undue and inadmissible drawback and other export benefits viz RODTEP etc. Therefore, it appears that the said exporter had made the illegal exports and thus goods appear not to be qualified for entitlement of any benefit/refund as in absence of actual verifiable invoices. Since the export transaction appears to be fake and bogus from the start of the export activities as said export activities starts from procurement and supply of goods and culminates in proper clearance of goods under section 50 of the Customs Act, 1962. Therefore, it appears that transaction is void ab initio and such transactions do not accrue any benefit or entitlement which is coupled with the elements of fraud as it is squarely covered under doctrine that fraud vitiates everything. Therefore, it appears that no benefit/refund is allowable in respect of exports made vide Shipping Bills as illustrated above in Table I & III. Had they paid any duties in respect of purchasing, producing and manufacturing the goods, they would have provided the necessary documents with regard to duty payment of excise, customs and GST duties.

13. **GST Status:** As per the details available on the website of GST (<https://services.gst.gov.in/>), the status of the GSTIN is mentioned as "*Active*" (**RUD-9**) Whereas in this case, all Shipping Bills were filed after active gst status of registration by GST department. In GSTIN nature of business activities is

- 1) Service Provision
- 2) Retail Business
- 3) Export

However, the exporter is not registered with the same HSN code in which goods had been exported.

14. LEGAL PROVISIONS APPLICABLE IN THE CASE: -

(A) The Circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007- DBK by CBEC inter alia provides that:

“Thus, 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.”

(B) **Section 2(20) of the Customs Act, 1962:**

"exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes ¹⁸[any owner, beneficial owner] or any person holding himself out to be the exporter;

(C) **Section 2(3A) of the Customs Act, 1962:**

“beneficial owner” means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

(D) **Section 50 of the Custom Act, 1962:**

50(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

50(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restrictions and prohibition, if any relating to the goods under this act or under any other law for the time being in force.*

(E) SECTION 75. Drawback on imported materials used in the manufacture of goods which are exported. –

(1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under clause (a) of section 84 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2):

.....

.....

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall except under such circumstances or such conditions as the Central Government may, by rule, specify, be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.

(F) Section 75A(2) of Customs Act 1962:

“Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under ²⁷[section 28AA] and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.”

(G) Section 113 of the Custom Act, 1962:

The following export goods shall be liable to confiscation:

- (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this act or any other law for the time being in force.***
- (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 shall be liable to confiscation.*
- (ia) any goods entered for exportation under a 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."*
- (ja) Section 113 (ja) of the Customs Act, 1962: 'Confiscation of goods attempted to be improperly exported, etc.- The following export goods shall be liable to confiscation- any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;'*

(H) Section 114 of the Customs Act, 1962:

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,-

Section 114 (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"

(I) Section 114AA of the Customs Act 1962:

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

(J) Section 114AC of the Customs Act, 1962: Penalty for fraudulent utilisation of input tax credit for claiming refund- *Where any person has obtained any invoice by fraud, collusion, willful misstatement or suppression of facts to utilise input tax credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of such duty or tax, such person shall be liable for penalty not exceeding five times the refund claimed.*

(K) Section 117 of the Customs Act, 1962:

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

(L) *Regulation 8 of Electronic Duty Credit Ledger Regulations, 2021:*

Suspension or cancellation of duty credit. - *Where a person contravenes any of the provisions of the Act or any other law for the time being in force or the rules or regulations made thereunder in relation to the exports to which the duty credit relates, or in relation to the e-scrip, the said duty credit or e-scrip may be suspended or cancelled in the ledger in the manner as notified by the Central Government under section 51B of the Act.*

(M) *Relevant paras of Notification No. 76/2021-Customs (N.T.) dated 23th September, 2021 for Scheme for Remission of Duties and Taxes on Exported Products(RODTEP)as amended:*

2. Such duty credit shall be subject to the following conditions, namely:-

.....

(4) that the duty credit allowed under the Scheme against export of goods notified in the Appendix shall be subject to realization of sale proceeds in respect of such goods in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999); failing which such duty credit shall be deemed to be ineligible;

.....

(6) that the exporter has realised the sale proceeds against export of goods made earlier by the said exporter where the period allowed for realization, including any extension of the said period by the Reserve Bank of India, has expired:

Provided that duty credit shall be issued by Customs in excess of the ineligible amount of duty credit pertaining to the unrealised portion of sale proceeds against export of goods made earlier:

Provided further that if the Principal Commissioner of Customs or Commissioner of Customs has reason to believe, on the basis of risk evaluation or on the basis of enquiry, that the claim of duty credit made by an exporter on export goods may not be bona fide, he may direct, for reasons to be recorded in writing, to allow duty credit after realisation of sale proceeds of such exports;

.....

3. Cancellation of duty credit. –

(1) Where a person contravenes any of the provisions of the Act or any other law for the time being in force or the rules or regulations made thereunder in relation to exports to which the duty credit relates, or in relation to the e-scrip, the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction over the customs station of registration of the e-scrip may, after enquiry, pass an order to cancel the said duty credit or e-scrip.

(2) Where the e-scrip is so cancelled, the duty credit amount in the said e-scrip shall be deemed never to have been allowed and the proper officer of Customs shall proceed to recover the duty credit amount used in such e-scrip or transferred from such e-scrip. www.vilgst.com Page - 4 - of 7

(3) The proper officer of Customs may, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, suspend the operation of the said e-scrip or the electronic duty credit ledger of such exporter or any duty credit transferred from such e-scrip, during pendency of the enquiry under sub-clause (1).

4. Recovery of amount of duty credit. - (1) Where an amount of duty credit has, for any reason, been allowed in excess of what the exporter is entitled to, the exporter shall repay the amount so allowed in excess, himself or on demand by the proper officer, along with interest, at the rate as fixed under section 28AA for the purposes of that section, on that portion of duty credit allowed in excess, which has been used or transferred, and where the exporter fails to repay the amount along with interest, as applicable, it shall be recovered in the manner provided in section 142 of the said Act. (2) The duty credit amount that an exporter is so required to repay under subclause (1) shall be deemed never to have been allowed, and if the exporter fails to repay the said amount within a period of fifteen days along with interest so demanded, then the proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of the said duty credit amount from the transferee in the manner as provided in section 142 of the said Act.

5. Recovery of amount of duty credit where export proceeds are not realised. –

(1) Where an amount of duty credit has been allowed to an exporter but the sale proceeds in respect of such export goods have not been realized by the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), the exporter shall, himself or on demand by the proper officer, repay the amount of duty credit, along with interest, at the rate as fixed under section 28AA of the said act for the purposes of that section, within fifteen days of

expiry of the said period.

(2) In case any extension of the said period for realisation of sale proceeds has been given by the Reserve Bank of India and the exporter produces evidence of such extension to the proper officer, and if the said sale proceeds are not realised www.vilgst.com Page - 5 - of 7 in such extended period, the exporter shall repay the said amount of duty credit along with the said interest, within fifteen days of expiry of the said period.

(3) If a part of the sale proceeds has been realized, the amount of duty credit to be recovered shall be the amount equal to that portion of the amount of duty credit allowed which bears the same proportion as the portion of the sale proceeds not realized bears to the total amount of sale proceeds.

(4) Where the exporter fails to repay the duty credit amount within the said period of fifteen days, the said duty credit shall be deemed never to have been allowed and it shall be recovered, along with the said interest, in the manner as provided in section 142 of the said Act.

(5) The proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of said duty credit amount from the transferee in the manner as provided in section 142 of the said Act.

6. During the pendency of any recovery, as provided in clauses 4 and 5, no further duty credit, on any subsequent exports, shall be allowed to such exporter till the time such recovery is made and any unutilised duty credit with the exporter or the transferee shall be suspended pending such recovery.

(N) Section 7 of the Foreign Trade (Development and Regulation) Act, 1992: Importer-exporter Code Number. –

No person shall make any import or export except under an Importer-exporter Code Number granted by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General.

(O) Rule 12 of the Foreign Trade (Regulation) Rules, 1993:

On the importation into or exportation out of any Customs port of any goods the importer or exporter shall in the Bill of Entry or Shipping Bill or, as the case may be, in any other documents prescribed by rules made under the Act or the Customs Act, 1962 (52 of 1962), state the Importer-exporter Code Number allotted to him by the competent authority.

(P) Para 2.05 of the foreign Trade Policy 2015-20:

2.05(II) No Export/Import without IEC:

(i) No export or import shall be made by any person without obtaining an IEC number unless specifically exempted.

(Q) Section 8 of the Foreign Trade (Development and Regulation) Act, 1992:

Suspension and cancellation of Importer-exporter Code Number. - (1) Where-

(a) any person has contravened any law relating to Central excise or customs or foreign exchange or has committed any other economic offence under any other law for the time being in force as may be specified by the Central Government by notification in the Official Gazette, or

(b) the Director General has reason to believe that any person has made an export or import in a manner gravely prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of the country,

the Director General may call for the record or any other information from that person and may, after giving to that person a notice in writing informing him of the grounds on which it is proposed to suspend or cancel the Importer-exporter Code Number and giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires, of being heard, suspend for a period, as may be specified in the order, or cancel the Importer-exporter Code Number granted to that person.

(2) Where any Importer-exporter Code Number granted to a person has been suspended or cancelled under sub-section (1), that person shall not be entitled to import or export any goods except under a special licence, granted, in such manner and subject to such conditions as may be prescribed, by the Director General to that person.

Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992:

Contravention of provisions of this Act, rules, orders and export and import trade policy.

1. No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.

(R) Section 7(1) of the Foreign Exchange Management Act, 1999 provides that every exporter of the goods shall furnish a declaration containing true and correct material particulars including the amount representing the full export value he expects to receive on

sale of goods in a market outside India.

(S) **Section 8 of the Foreign Exchange Management Act, 1999-Realisation and repatriation of foreign exchange.**—Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

(T) **Provisions of Customs and Central Excise Duties Drawback Rules, 2017:**

Rule 3: Drawback – (1) Subject to provisions of -

Provided further that no drawback shall be allowed: -

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid.

Rule 17: Repayment of erroneous or excess payment of drawback and interest.-

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount, it shall be recovered in the manner laid down in sub-section (1) of the Section 142 of the Customs Act, 1962.

Rule18: Recovery of amount of Drawback where export proceeds not realized. -

- 1. Where an amount of drawback has been paid to an exporter or a person authorised by him(hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall, except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below.*

(U) **Provisions of Customs and Central Excise Duties Drawback Rules, 2017:**

Rule 3: Drawback – (1) Subject to provisions of -

Provided further that no drawback shall be allowed: -

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid.

Rule 17: Repayment of erroneous or excess payment of drawback and interest.-

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount, it shall be recovered in the manner laid down in sub-section (1) of the Section 142 of the Customs Act, 1962.

Rule 18: Recovery of amount of Drawback where export proceeds not realized. -

2. *Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall, except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below.*

(W) Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015:

*“The amount representing the **full** export value of goods/software/services exported shall be realised and repatriated to India within Nine months from the date of export.”*

(X) Provisions of Customs Brokers Licensing Regulations, 2018:**Regulation 10. Obligations of Customs Broker. -**

A Customs Broker shall

- a. *“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”.*
- b. *“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”;*
- c. **(n)** *“verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information”.*

Relevant paras of MPEDA Rules 1972

MPEDA - The Marine Products Export Development Authority was constituted in 1972 under the Marine Products Export Development Authority Act 1972 (No.13 of 1972). The role envisaged for the MPEDA under the statute is comprehensive, covering fisheries of all kind, increasing exports, specifying standards, processing, marketing, extension and training in various aspects of the industry.

The following types of entities are registered by MPEDA;

1. Processing Plants
2. Marine Product Exporters
3. Fishing vessels
4. Storage Premises
5. Conveyance
6. Pre-processing Centers
7. Live Fish Handling Centre
8. Chilled Fish Handling Centre
9. Dried Fish Handling Centre
10. Independent Cold Storages

Following FAQs have been collected for reference from MPEDA website.

- **Processing Plant**

Processing plant is a building / premises constructed as per the standards laid down by the EIC/ MPEDA and approved by the Assessment Panel of Experts (APE), wherein a freezing unit or any other processing machinery is installed for processing marine products in any form.

Conditions for Certificate of Registration of processing plant

1. This certificate of registration is granted subject to the provisions of the Marine Products Export Development Authority Rules, 1972.
2. Any change in the lay-out design or capacity or other matters should be got approved by the Authority.
3. The sanitary and hygienic requirements should conform to the regulations issued in this behalf of the Export Inspection Agency and the Authority from time to time.
4. The owner should use only approved chemicals for preservation, processing and storage of marine products.
5. The owner shall also comply with such other instructions as may, from time to time, be issued by the Authority.
6. The exporters / processing plant will procure raw material only from approved peeling sheds / pre-processing centers registered by MPEDA.

7. Raw material of exotic shrimp species processed in the processing plant / pre-processing centre /handling centre shall be from a farm registered with Coastal Aquaculture Authority / State Department of Fisheries and the plant / centre shall maintain all documents to ensure 100% traceability.
- Registration as an exporter (both merchant and manufacturer exporter) is granted under section 9(2)(h) of Marine Products Export Development Authority (MPEDA) Act 1972 read with rules 40-42 of MPEDA Rules.

Rule 40 (1) “No person shall, after the expiration of two months from the date of coming into force of this rule, export any marine products unless he has been registered as an exporter with the Authority. The applicant will be allowed to export during the period of one month pending issue of the Certificate of Registration. Provided that this Rule shall not apply to the export of marine products:-

1. by or on behalf of the Central Government or the Authority or any person authorized by the Central Government or the Authority to export marine products;
2. by means of gift parcel or sending of samples (maximum ₹ 10,000/-);
3. as personal effects of passengers (maximum ₹ 5000/-);
4. for any non-commercial purposes (maximum ₹ 25,000/-; and
5. for any exhibition abroad (maximum ₹1,00,000/-)

• **Conditions under which Certificate of Registration as an exporter is issued under Rule 42(3)**

Where the application for registration is not refused, the Certificate of Registration is issued in Form X subject to the following conditions:-

1. Certificate of registration is granted subject to the provisions of the Marine Products Export Development Authority Rules 1972, as amended from time to time.
2. The holder will abide by the Guidelines dated 23.07.2004 of MPEDA for issue of Certificate of Registration as an Exporter, as amended from time to time.
3. Only the item(s) permitted to be exported vide Sl.No.4 of the certificate will be exported.
4. The exporter shall ensure that the quality of the marine products exported by him conform to the specifications recognized by the Central Government under Section 6 of the Export (Quality Control and Inspection) Act 1963 (21 of 1963) and Rules, Regulations and instructions there under, as amended from time to time.
5. The exporter shall conform to the Rules, Regulations and instructions issued by the Export Inspection Council of India, Export Inspection Agency and the Authority

from time to time in respect of packing, quality control, pre-shipment inspection and all other matters.

6. The sanitary and other hygienic requirements relating to preservation, processing and storage of marine products should also conform to the regulations issued by the Export Inspection Council, Export Inspection Agency and Authority from time to time.
7. The exporter shall process, handle, pack or store the items allowed for export as above only in premises registered with MPEDA and approved by the EIA.
8. The certificate of registration issued to an exporter will be valid for a period of 3 years unless other specified.
9. The certificate is liable to be cancelled for any act of omission or commission by the holder or by any person utilizing the surplus capacity of a processing plant or live fish or dried fish or chilled fish handling facility owned/operated by the holder, either in respect of quality issues or for trade related issues, including cheating, whether or not the complaint can be attributed to the processing unit or handling facility.
10. The registration shall cease to have validity if the holder becomes no longer entitled to such registration under the provisions of the Guidelines dated 23.-07.2004 of MPEDA for issuing Certificate of Registration as an Exporter, as amended from time to time.
11. The exporter shall indicate in every invoice and shipping bill the name and the MPEDA registration number of the processing plant or handling facility where the marine product being exported has been processed/handled.
12. The exporter shall comply with such other instructions as may, from time to time, be issued by the Government of India, the Authority, the Export Inspection Council of India and the Export Inspection Agency.
13. The exporters / processing plant will procure raw material only from approved peeling sheds / pre-processing centers registered by MPEDA.

Registration of exporters and processing entities is one of the statutory functions of MPEDA under Section 9(2)(b) and 9(2)(h) respectively of the MPEDA Act 1972. Production/Processing entities are registered under section 11 (1). of the MPEDA Act, 1972 read with rules 33 –34 of the MPEDA Rules, 1972.

As per Rule 42 of Marine Products Export Development Authority Rules, 1972 Certificate of Registration is granted:

42. Grant of a Certificate of Registration:-

- (1) On receipt of an application for the grant of a certificate of registration, the Secretary or other officer may, after making such inquiry as he deems necessary, either grant

or by order refuse such registration.

- (2) Where the application for registration is refused, the reasons for such refusal shall be recorded in writing and a copy of the same along with the order of refusal shall be furnished to the applicant, and the fees paid by the applicant shall be refunded to him.
- (3) Where the application for registration is not refused, the Secretary or other officer shall grant the applicant a certificate of registration in Form X which shall be subject to such conditions as are mentioned in the certificate thereof

Export policy for CTH 03073910 : it is submitted that:

CHAPTER 3 “FISH AND CRUSTACEANS, MOLLUSCS AND OTHER AQUATIC INVERTEBRATES” of SCHEDULE 2 – EXPORT POLICY ITC (HS), 2018 , The term “Marine Products” in this Chapter covers all the eight digit Exim Codes in the Chapter of the ITC(HS) Classification of Export and Import items. All marine species that have been included in the Schedules of the Wild Life (Protection) Act, 1972 are prohibited for exports and other species listed in CITES are subject to the provisions of the CITES

S.No	Tariff Item HS Code	Unit	Item Description	Export Policy	Policy Conditions
28	0300 00 00	Kg	Marine species and products except the following	Free	Subject to pre shipment quality inspection as may be specified by the Government
29	0300 00 00	Kg	Those species (and their parts, products and derivatives) mentioned in the Schedules of the Wild Life (Protection) Act, 1972	Prohibited	Not permitted to be exported

Summary of Investigation

15. From the above stated facts and extant legal provisions, it appears that:-

Role of the Exporter:

- 16.1 The Exporter - M/s. L. G. Enterprise (IEC- 0205021867) having address

234/146/154,60/1 Sarat Bose Lane, Sarat colony Kolkata West Bengal had filed their Shipping Bill by CB firm PBC Logistics Pvt Ltd. bearing no. 6744136 dated 15.12.2021 of Live Blood Clam as detailed in Table-I with declared FOB value of Rs. 88149.6/-, claiming benefit of drawback of Rs. NIL ROSCTL of Rs. NIL and RoDTEP amount of Rs. NIL.

16.2 The exporter had filed a total of 08 Shipping Bills as detailed in Table-III having declared FOB of Rs. 21.99/- (In lakhs). Against the said 01 Shipping Bills, the total drawback claimed by the exporter in shipping bill no. 6802839 dated 17.12.2021 Rs. 636/- and RoDTEP amount of Rs. 45,520/- (**RUD-2**) (In all shipping bills which were mentioned in Table-III) which had already been disbursed to the exporter.

16.3 The exporter had claimed Drawback under the said shipping bills under the provisions of Section 75 of the Customs Act, 1962 read with The Customs and Central Excise Duties Drawback Rules, 2017. The Section 75(1) of the Customs Act, 1962 makes it mandatory, for claiming drawback on any goods, to receive the sale proceeds in respect of such goods by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999).

16.4 As per the data available in ICES 1.5 System for the exporter, under the category – List of Shipping Bills Without Extension and without full FOB Realization (**RUD-1**), for the period since the issuance of IEC i.e. 29.11.2005 (amended 18.06.2022) to till date, it appears that the foreign remittance has not been fully realised even after the expiry of the prescribed time-limit in respect of all the 8 Shipping Bills as mentioned above in Table – I & III. In the event of non-realization of sale proceeds, the drawback benefit claimed/availed deemed never to have been allowed and becomes rejectable/ recoverable under relevant rules of The Customs and Central Excise Duties Drawback Rules, 2017.

16.5 Also, in terms of CBIC Notification No. 76/2021-Customs (N.T.) dated 23rd September, 2021 as amended, the duty credit allowed under the RODTEP Scheme shall be subject to realization of sale proceeds in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible. Thus, such duty credit allowed under RoDTEP Scheme becomes liable for cancellation and recovery in terms of Para 3, 4 and 5 of the notification *ibid*.

17. From the investigation as far carried out, non-appearance of the exporter despite various summonses & non providing E-way bill or any documentary evidence for movement of goods from Kolkata to Mumbai, it appears that the goods were procured locally from Mumbai only. It also appears that the Quality Certificates (Q- certificates) in respect of goods exported from ACC, Mumbai (INBOM4) were apparently issued at Kolkata which appears to be the violation of Allied Acts.

18. The Exporter has not submitted any proof of transport of goods from Kolkata to Mumbai. The copy of gate passes received from the CB as tabulated below were analysed.

Sr. No.	Shipping Bill No.	Vehicle No.
1.	6744136 dt. 15.12.2021	MH03-DV-1741
2.	6802839 dt. 17.12.2021	MH13-CJ-0060
		MH03-CP-6077
		MH03-DV-1741
3.	6858229 dt. 19.12.2021	MH03-DV-1741
		MH14-HU-1154
		MH03-CP-6077

From the table above it is found that some of the vehicles are repeating every 2 days which is impossible for a vehicle which is carrying goods from Kolkata to Mumbai. By these observation it was found that the exporter had purchased goods from Mumbai fisherman & suppliers and export the said goods without processing (Also the Q-certificate is issued by the Export Inspection Agency with the Declaration :- The above consignment has been processed in our processing establishment which has valid approval and is under continuous monitoring of Export Inspection Agency, Kolkata as per the Export of Live fish (Quality control, Inspection and Monitoring) Rules 2002)). The exporter had submitted incorrect or false Q-certificates issued at Kolkata in respect of goods procured from Mumbai. Q-certificates might have been issued without verification of quality and proper packaging of the goods.

19. Various Summons dated 11.05.2022, 22.08.2022, 15.09.2022, 26.10.2022 and 31.12..2022 were issued u/s - 108 of the Customs Act, 1962 and sent through Speed-Post to the Proprietor of exporter firm - M/s. L. G. Enterprise at their registered address i.e.: 234/ 146/, 154/,/60/1, Sarat Bose Lane, Sarat Colony, P. S. Airport,24 Parganas North, Kolkata; for their appearance on 09-06-2022,

01.09.2022, 28-09-2022,14.11.2022 and 09.01.2023 respectively in the office of SIIB (X) in the instant matter. A letter dated 26.05.2022 was received (31.05.2022) in SIIB(X), ACC with an envelope consisting documents of medical treatment and shipping bills, MPEDA, EIA etc. However no one i.e. neither exporter nor any authorized representative from IEC holder has appeared in SIIB(X),ACC, SAHAR, Mumbai. In view of the above, it appeared that exporter and its address both are existing but the exporter is deliberately avoiding to appear for statement under section-108 of the Customs Act,1962.

20. Aso, as per the details available on the website of GST (<https://services.gst.gov.in/>), the status of the GSTIN – 19AITPG7670D1ZU (**RUD-9**) of exporter – M/s. L. G. Enterprise is mentioned as *Active*. Exporter has filed Shipping Bill in HSN Code 03073910, however Exporter is not registered for the same HSN in GST.

21. Also, M/s. L. G. Enterprise being a merchant exporter was required to furnish declarations in terms of Circular No. 16/2009-Customs dated 25.05.2009 at the time of export. However, they failed to declare the name and complete address of the traders from whom export goods had been purchased.

22. The exporter has not submitted past Local Tax Invoices, Audited Financials of the firm, Balance Sheet, Profit & Loss statement, Income Tax Return, copy of 26-AS statement, copies of the past shipping bill & documents related to Authorized Dealer Code Registration. The documents submitted by them through a letter dated 26.05.2022 received in section on 31.05.2022 i.e., Bank Realization Certificate (issued by DGFT), Air way bill, Certificate for export (issued by Export Inspection Agency-Kolkata), MPEDA Certificate, Invoice cum Packing list for the goods exported by M/s. L. G. Enterprise.

23. In view of the said facts, it appears that the address of the exporter - M/s. L. G. Enterprise is operative in respect of business activities. It appears that the firm was existing and was conducting business on paper only with the mala-fide intention of effecting fraudulent exports to avail ineligible export incentives/benefits. It further appears that the exporter has adopted same modus-operandi of goods exported in their past export clearance also as the exporter has neither provided the proof of genuine purchase & payment proof of their export goods nor provided the duty payment proof on their purchase goods & Proof of transport. Therefore, it appears that the exporter deliberately packed their export consignments from Mumbai i.r.o Kolkata for effecting fraudulent exports and to avail undue

drawback and other export incentives like RoSCTL, RoDTEP etc. The exporter has failed to produce any document to prove his genuineness of business transactions and the supply chain of goods.

24. This attempt of mis-classification of the HSN (as registered in GSTIN) of the goods by the exporter along with their act of non-appearance and non-submission of export related documents as mentioned above to prove genuineness of their business transactions shows the complete non-cooperation of the Exporter and has resulted into non-disclosure of correct material particular and thereby attracting the provisions of Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962.

25. As per Section 113(ja) of the Customs Act, 1962, *any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force shall be liable to confiscation.* In the instant case, it appears that the said exporter has filed the shipping bills for export by two cha firms as mentioned above and availed the ITC credit though the supply chain seems non-existent, and availed undue drawback and other export benefits like RoDTEP, etc without producing any relevant document to prove their genuineness of Business transactions. The supplier of the exporter has been found to be fake and the invoices submitted by the exporter also appear to be fake. Thus, it appears that the exporter was consciously involved in this whole racket of exporting the goods with malafide intention to avail undue drawback & other export benefits like RoSCTL, RoDTEP, etc. and availment of wrongful ITC credit and subsequently claim the same as remission or refund and thereby attracting the provisions of Section 113(d) & Section 113 (ja) of Customs Act, 1962.

26. The above acts of omission and commission by M/s L.G. Enterprises resulted in violation of provisions of Section 50(2), 50(3) & 75(1) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development And Regulation) Act, 1992, Section 7(1) & 8 of the Foreign Exchange Management Act, 1999, Rule 11 of the Foreign Trade (Regulations) Rules, 1993 and Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015, Rule 42 'Grant of a certificate of Registration' of the Marine Products Industry Development Control(MEPDA) & Export Inspection Agency as per the export of live fish (Quality control, inspection and Monitoring) Rules 2002 . Thus, the goods attempted to be exported vide Shipping Bill No. 6744136 dated 15.12.2021 and the goods already exported vide 7 Previous Shipping Bills (as illustrated in Table – III) are liable for confiscation under Section 113(d) Section

113(i) and 113(ia) and 113 (ja) of the Customs Act, 1962 and Smt. Lina Ghosh, Proprietor of M/s L. G. Enterprise is liable for penal action under Section 114 (iii) and/or Section 114AA and 114AC of the Customs Act, 1962.

27. As per Rule 2(a) of the Customs and Central Excise Duties Drawback Rules, 2017, the “drawback” in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under subsection (9) respectively of section 3 of the Customs Tariff Act, 1975 (51 of 1975) chargeable on any imported materials or excisable materials used in the manufacture of such goods. It is pertinent to mention that during investigation, the proprietor of the exporter firm - M/s. L. G. Enterprise or any other persons concerned with the firm did not produce any documents like Tax-Invoices, E-way bill or transport details etc, in respect of impugned export goods covered under the present Shipping Bill (as mentioned in Table – I) and the past Shipping Bills (as illustrated in Table – III), which could support genuine purchase and to prove payment of duty/tax, though they were offered enough opportunity through Summons under Section- 108 of the Customs Act, 1962.

28. Therefore, it appears from the investigation that necessary ingredient of second proviso to Rule 3(1) of the Customs and Central Excise Duties Drawback Rules, 2017 is attracted in this case which does not permit any amount of drawback in such cases where no duty has been paid. Due to non-production/ submission of required documents/information, it appears that no statutory duty was levied on the purchase of the exported goods by the Exporter as the same were procured from Local Unregistered Suppliers. Thus, the drawback claimed vide Shipping Bills mentioned in TABLE-I & III appear rejectable / recoverable with interest under the provisions of Rule 17 and Rule 18(1) of the Customs and Central Excise Duties Drawback Rules, 2017 read with Section 75(1) & 75A(2) of the Customs Act, 1962. Further, the exporter appears to have violated the provisions of Customs Act, 1962 and other allied acts as enumerated above.

29. The exporter intended to claim rewards by mentioning YES in present Shipping Bill as well as previous Shipping Bills. The duty credit under RoSCTL & RoDTEP Scheme is allowed subjected to realization of sale proceeds in respect of such goods in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible. The sale proceeds in respect of goods exported vide present Shipping Bill as mentioned in TABLE-I as well as past Shipping Bills as mentioned in TABLE-III have not been realised completely so far.

29.1 Also, the exporter's claim of Rs. NIL against present Shipping Bill no. 6744136 dated 15.10.2021 and of Rs. 45,520/- against past 7 Shipping Bills (as shown in Table – III) under RoDTEP Scheme Rs. 636/- against drawback disbursed appears liable for cancellation and recovery under Notification No. 76/2021-Customs (N.T.) dated 23rd September, 2021, as amended, read with Regulation 8 of Electronic Duty Credit Ledger Regulations, 2021.

30. Role of the Customs Broker:

30.1 The Customs Broker (CB) is an agent authorized by the exporter to work on their behalf. As per regulation 10(d) & 10(e) of the CBLR, 2018, it is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information he imparts to a client and to advise the client accordingly 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. Also, as per regulation 10(n), it is mandatory for a Customs Broker to verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

30.2 These CBLR Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty. A Customs Broker occupies a very important position in the customs House and is supposed to safeguard the interests of both the exporter and the Customs department.

30.3 Further, in a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the exporters. Failure to comply with regulation by the CB mandated in the CBLR gives room for unscrupulous persons to get away with import-export violations and revenue frauds.

30.4 In this case, it appears that the Customs Broker being aware about Customs Act, Rules, Regulations, etc. failed to advise his client comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and non-complied the same and did not exercise due diligence to ascertain the correctness of any

information even though it was mandated by the regulation 10(d) & 10(e) of the CBLR, 2018. They have also failed to file the Shipping Bills with correct classification of goods. As such, it appears that the CB aided, abetted and connived with the exporter in effecting fraudulent exports through M/s. L. G. Enterprise for availing ineligible export incentives.

30.5 The above act of omissions and commissions by the Customs Broker has resulted in contravention of the provisions of Regulation 10(d) and 10(e) of the CBLR, 2018; 50(2), 50(3) & 75(1) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development And Regulation) Act, 1992, Section 7(1) & 8 of the Foreign Exchange Management Act, 1999, Rule 17 & 18 of the Customs and Central Excise Duties Drawback Rules, 2017, Rule 11 of the Foreign Trade (Regulations) Rules, 1993 and Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. Thus, the goods exported vide present Shipping Bill No. 6744136 dated 15.12.2021 and the goods exported vide past Shipping Bills (as illustrated in Table – III) are liable for confiscation under Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 and the CB - M/s. Macro Customs Consultants LLP & M/s PBC Logistics Pvt. Ltd. liable for penal action under Section 114 (iii) and/or Section 114AA and/or Section 117 of the Customs Act, 1962.

31. Now, therefore the exporter - M/s. L. G. Enterprise (IEC – 0205021867) and Customs Broker - M/s. Macro Customs Consultants LLP (11/2302) & M/s PBC Logistics Pvt. Ltd. (CHA No. 11/2234) are hereby called upon to show cause before the Additional/ Joint Commissioner of Customs (Export), Air Cargo Complex, Andheri (E), Mumbai – 400 099 within 30 days of receipt of this notice, as to why:-

- i. The declared FOB value of goods i.e., Rs. 88149.6/- (Rupees Eighty-eight Thousand one Hundred forty-nine Only) against Shipping Bill no. 6744136 dt.15.12.2021 and FOB value of goods i.e. Rs. 423760/- (four lakhs twenty-three thousand seven hundred sixty only) against shipping bill no. 6802839 dated 17.12.2021 and all shipping bills mentioned in table -III should not be rejected as the exporter did not produce any proof of the movement of the goods from Kolkata to Mumbai.
- ii. The export goods covered under Shipping Bill No. 6744136 dated 15.12.2021 & all past shipping bill having declared FOB value of Rs. 21.99/- (In Lakhs) which was released, should not be confiscated under the provisions of Section 113(d), 113(i), 113(ia) and Section 113(ja) of the Customs Act, 1962.
- iii. The total duty drawback amount of Rs. 636/- Table-III, should not be rejected under the provisions of Sections 75 (1) of the Customs Act, 1962 read with Clause (ii) to

the second proviso to Rule 3(1) of the Customs and Central Excise Duties Drawback Rules, 2017 as against such export goods no duty/tax appears to have been paid on procurement of the goods, therefore required to be recovered from the exporter (to the extent of amount already disbursed) under Rule 17, 18(1) & 18(2) of Customs and Central Excise Duties Drawback Rules, 2017, along with applicable interest as applicable under Section 75A(2) of the Customs Act, 1962.

- iv. The export benefits of Rs. 45,520/- under RoDTEP Scheme claimed/ availed under the past Shipping Bills as mentioned in Table – III should not be cancelled and recovered (to the extent of amount already disbursed) along with applicable interest under Notification No. 76/2021-Customs (N.T.) dated 23rd September, 2021, as amended, read with Regulation 8 of Electronic Duty Credit Ledger Regulations, 2021.
- v. Penalty should not be imposed on exporter – M/S L. G. Enterprise (IEC – 0205021867) its proprietor Smt. Lina Ghosh, for their various acts of omission and commission under Section 114(iii) and/ or Section 114AA and 114AC of the Customs Act, 1962.
- vi. Penalty should not be imposed on Customs Broker - M/s. Macro Customs Consultants LLP & M/s PBC Logistics Pvt. Ltd. for their various acts of omission and commission under Section 114(iii) and/or Section 114AA and/or Section 117 of the Customs Act, 1962 read with regulation No. 10 of the Customs Brokers Licensing Regulation, 2018 for their above stated acts of omission and commission.

32. Any representation, oral or written, against this notice shall be made to the Addl./Joint Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East) Mumbai-400099 within 30 days of receipt of this notice. If the Exporter desires to be heard in person, they may accordingly mention the same in their reply / submissions. If no reply is received within 30 days from the receipt of this notice or if they fail to appear before the adjudicating authority, whenever the case is posted for personal hearing, the case may be adjudicated on the basis of evidence on record without any further notice to them.

33. This notice is issued without any prejudice to department's right to amend, modify, supplement and revise the show cause notice with additional facts in support of allegations contained in the show cause notice. This notice is issued without prejudice to any other action that may be initiated against the noticees or any other person under the provisions of the Customs Act, 1962 or any other law for the time being in force in the Republic of India.

34. In case the noticees wish to inspect any of the documents relied upon by the Department in this Show Cause Notice and if they desire to obtain copies thereof, they may do so by prior appointment with Addl./ Joint Commissioner of Customs

(Exports), Mumbai Customs, Zone-III, Air Cargo Complex, Andheri (East),
Mumbai - 400099.

(SAROJ SAMAIYA)
ADDITIONAL COMMISSIONER
Export, ACC, Mumbai

Encl: All RUDs as mentioned above.

To,

1. M/s. L. G. Enterprise (IEC – 0205021867)
Add: 234/146, 154,60/1 Sarat Bose Lane,
Sarat Colony Kolkata
West Bengal-700081
(E-mail id: just4arupghosh@gmail.com)
2. M/s. Macro Customs Consultants LLP (11/2302),
Add: 5 B-60, AKSHAYY MITTAL INDL
ESTATE, ANDHERI-KURLA ROAD
ANDHERI EAST, MUMBAI-400059.
(E-mail id: Chetan@macrologistics.com)
3. M/s PBC Logistics Pvt. Ltd. (CHA No. 11/2234),
Add: 43, KAGALWALA BUILDING, 3 RD FLOOR
256/58 NARSHI NATHA STREET,
MASJID, MUMBAI-400009.
(E-mail id: export.pbclogistics@gmail.com & dheeraj@pbclogistics.com)
4. M/s Macro Logistics and Exim Pvt. Ltd.
Add: 5 B-60, AKSHAYY MITTAL INDL
ESTATE, SAKINAKA,ANDHERI(E)
ANDHERI EAST, MUMBAI-400059
(E-mail id: Chetan@macrologistics.com)

Copy to:

1. The Commissioner of CGST, (Central), Kolkata(West Bengal), with request to take appropriate action for recovery of fraudulently claimed/availed IGST Refund amount, if any, under CGST Act, 2017 and Rule 96, 96A & 96B of CGST Rules, 2017.
2. The Additional/Joint Commissioner of Customs (Export), ACC, Mumbai for adjudication.
3. The Additional/ Joint Commissioner of Customs in-charge of

Customs Broker Section to take appropriate action against above CB under CBLR – 2018.

4. The Additional Director General, DGFT, Mumbai, with request to cancel the IEC of M/s. L. G. Enterprise (IEC – 0205021867) under the provisions of Foreign Trade (Development and Regulation) Act.

5. The Deputy/Asstt Commissioner of Customs, Drawback (EDI), ACC (X), Mumbai for taking appropriate action to safeguard the Government Revenue.

6. The Marine Products Export Development Authority, with request to take appropriate action for fraudulently export, if any, under the Marine Products Export Development Authority Act and Rules,1972.

7. Export Inspection Agency (EIA) as Q-certificate is issued by EIA-Kolkata under the Quality Control, Inspection and Monitoring Rules 2002. (G.O.I Order & Notification S.O. 729(E)& S.O. 730(E) dated. 21.08.1995).

8. Notice Board, Air Cargo Complex, Mumbai.

9. Office copy

LISTS OF RELIED UPON DOCUMENTS.

Sr.No.	Relied Upon Documents	
1.	Data retrieved from ICES 1.5 system under the Category – List of Shipping Bills with and without FOB Realization	RUD-1
2.	Data retrieved from ICES 1.5 system under the Category – List of Shipping Bills with claimed export benefits like RoDTEP	RUD-2
3.	MPEDA Certificate “Certificate of Registration as an exporter”	RUD-3
4.	Export Inspection Agency letter (Certificate for Export)	RUD-4
5.	Statements of Bank Realization issued by DGFT	RUD-5
6.	Statement dated 16.09.2022 of Shri Brijesh Pandey (G-P/A-KARDEX P-2232) Partner of M/S Macro Customs Consultants LLP	RUD-6
7.	Statement dated 29.09.2022 of Shri Karmchandra P Pandey, Marketing Manager of M/S PBC Logistics Pvt. Ltd. KARDEX NO. P-4002,Card no. 3879/2022	RUD-7
8.	Statement dated 31.01.2023 of Shri Brijesh Pandey, Director of M/S Macro Logistics and Exim Pvt. Ltd.	RUD-8
9.	GSTIN status as exporter is not registered with the exported goods HSN code.	RUD-9
10.	IEC Status	RUD-10

