

		<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b> <b>CUSTOM HOUSE: MUNDRA, KUTCH</b> <b>MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>
<b>A</b>	<b>File No.</b>	<b>VIII/48-22/Adj/ADC/MCH/2017-18</b>
<b>B</b>	<b>Order-in-Original No.</b>	<b>MCH/ADC/PK/113/2018-19</b>
<b>C</b>	<b>Passed by</b>	<b>Shri Prashant S. Kaduskar</b> <b>Additional Commissioner of Customs,</b> <b>Custom House, AP &amp; SEZ, Mundra</b>
<b>D</b>	<b>Date of Order</b>	<b>22.02.2019</b>
<b>E</b>	<b>Date of Issue</b>	<b>25.02.2019</b>
<b>F</b>	<b>SCN NO. &amp; Date</b>	<b>F.No.S/15-136/Enq./SIIB/CHM/16-17 dated 11.08.2017</b>
<b>G</b>	<b>Noticee / Party / Importer / Exporter</b>	(i) M/s N R Brothers Multitrade LLP, Plot No. 44, Sector -8, GIDC, Gandhidham, Kutch.  (ii) M/s Urmi Traders, Plot No. 20, Survey No. 27, Meghpar Borichi, Anjar, Kutch.

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील), कांडला  
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
Having his office at 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,  
Ashram Road, Ahmedabad-380 009.”

- उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within sixty days from the date of communication of this order.
- उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
- (i) उक्त अपील की एक प्रति और  
A copy of the appeal, and
- (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

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

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

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject :- F.No.S/15-136/Enq./SIIB/CHM/16-17 dated 11.08.2017 issued to M/s N R Brothers Multitrade LLP, Plot No. 44, Sector -8, GIDC, Gandhidham, Kutch. & M/s Urmi Traders, Plot No. 20, Survey No. 27, Meghpar Borichi, Anjar, Kutch.

**BRIEF FACTS OF THE CASE:**

M/s. N.R. Brothers, Plot No. 44, Sector-8, GIDC, Gandhidham, Kachchh, 370201, Gujarat (hereinafter referred to as "the noticee No.1") holding IEC No.3716901750, was engaged in the Export of Project Machinery falling under Customs Tariff Chapter Heading No.84559000 and Import of Scrap HMS and used to export/import the same through Custom House, Mundra.

2. It appeared that the noticee No.1 had filed the following two Shipping Bills:

- (i) S/B No.3400353 dated 11.01.2017: Parts of Machinery & Accessories (used in rolling mill) Fly Wheel & Motor Rail.
- (ii) S/B No.3503749 dated 17.01.2017: Parts of Machinery & Accessories (used in rolling mill).

Both under CTH 84559000, through their Customs Broker M/s. Praveen Bhatt & Sons, to be exported to Guinea from Mundra Port. The total FOB value declared by the exporter was USD 2,11,943.37 (\$1,59,420 for S/B No. 3400353 + \$ 52,523.37 for S/B No. 3503749). The noticee No.1 had claimed export benefits as applicable to them under 'Merchandise Export from India Scheme' (hereinafter referred to as "MEIS" for short) @ 3% of Free On Board (FOB for short) as applicable for the declared CTH.

3. It was noticed by the Dock Examination Officers, during regular examination of the goods that the declared export goods were basically old & used parts of machinery items, and thus, the goods were apparently mis-declared by the noticee No.1. Therefore, the noticee No.1 was requested through their CB to produce Chartered Engineer/ Approved Valuer Certificate for valuation of the export goods covered under both the aforesaid Shipping bills.

4. The Customs Broker, on behalf of the noticee No.1, submitted Chartered Engineer (CE for short) Certificate Ref. No.AYK/INSP/0464/2016 dated 29.01.2017 issued by Sh. Anwar Y. Kukad, Chartered Engineer, vide which the CE reported as under:

- (i) The year of make was not found on machine but the machine seems to be 10 to 12 year old.
- (ii) No reconditioning was found, Condition good, residual life is 8-9 years
- (iii) Original price of the machine was estimated to be USD 1,90,000.00 approx.
- (iv) The FOB value of the goods covered under both the shipping Bills was estimated to be USD 1,20,000 approx.

4.1 There was a difference of declared value *vis-à-vis* the value estimated under CE Certificate dated 29.01.2017 to the tune of USD 91,943.37, i.e., Rs.61,73,997.30/- (@ Rs.67.15/USD), it can be concluded that the noticee No.1 had overvalued the goods covered under the said two Shipping Bills with the sole intention to avail undue export benefits.

5. The said export goods lying at Mundra Port were kept on hold for further examination by the SIIB Officers. A Panchnama dated 17.02.2017 was drawn at Mundhra Container Freight Station Pvt. Ltd. (CFS), for examination for the export goods where in the export goods covered under both the shipping bills i.e. "Parts of Machinery & Accessories (used in rolling mill), were placed under seizure, under the provisions of the Customs Act, 1962.

6. A statement of Shri Nitin Katarmal authorized signatory of the noticee No.1, tendered in his statement on dated 20.02.2017, wherein he, *inter alia*, reiterated that they are doing trading work only; that they are doing import of Scrap (HMS) and export of Project Machinery etc.; that they had hired M/s Praveen Bhatt and Sons and M/s Aman Sea Trans for their documentations and Customs clearance in Export/ import; that the project machinery, i.e., "Parts of Machinery & Accessories (used in rolling mill), covered under S/Bills nos. 3400353/11.01.2017 and 3503749/17.01.2017, were to be installed in West Africa, Republic of Guinea and they would be sending 50 containers in the same project; that they declared the cargo as mentioned on the retail invoice provided to them by their trader M/s Urmi Traders; that they are not concerned to the fact as to whether the machinery is "old and used" and they declared it as per the trader's retail invoice; that the value declared by them in the shipping bill was correct; that they had not overvalued the cargo; that he was not aware that for availing the benefit of MEIS scheme the Make of Machine should be in India; that they did not agree to the report dated 29.01.2017 of CE as the same was called by their CB; that they were purchasing the goods from various traders; that he would submit the purchase order of the trader within short period. He also submitted self-signature copies of the following documents:

- (i) Copy of sales contract no. NRBMLLP/AMSTL/01/2016 dated 01.01.2017 between the exporters and Al Massa Steel Trading LLC, Sharjah UAE, for parts of machinery and its accessories (Automatic rolling Mill complete with installation) approx. 300.00 MTs (+/-10%) @ USD 7000 PMT (+/-10%), consignee Odhav Multi Industrial SAU, Conakry, Republique De Guine;
- (ii) Retail invoice No. UT/RET/008 dated 02.01.2017 issued to the exporters for supply of machinery Spare pa Qty. 23.540 MTs for Rs.89,45,200/- and its corresponding invoice no. NRBMLLP/EXP/AMSTL/40/16-17 dated 11.01.17 issued by M/s. NR Brothers for Parts of Machinery & Accessories (used in rolling Mill) loose Qty. 23.060 MTs @ USD 7000 PMT;
- (iii) Retail Invoice no. UT/RET/013 dated 06.01.2017, issued to the exporters for supply of machinery Spare pa 8.120 MTs for Rs.30,85,600 @ 3,80,000/- PMT and its corresponding invoice no. NRBMLLP/EXP/AMSTL/42/16-17 dated 17.01.2017 issued by the exporters for Parts of Machinery & Accessories (used in rolling Mill) loose Qty. 7.800 MTs @ USD 7000 PMT.

7. A statement of Shri Vipul G. Thakkar, authorized person of M/s. Pravin Bhatt & Sons appeared to tender his statement on dated 20.02.2017, wherein he, *inter alia*, reiterated that they were duly authorized for customs clearance for export consignment by M/s. N.R. Brothers Multitrade LLP, Gandhidham; that they used to prepare a checklist based on the export documents, e.g., invoice, packing list and other details, provided by the exporter for filing the Shipping Bill; that after preparing the checklist, they used to mail it to the exporter for vetting the information filled-in the Shipping bills, *viz.*, classification of goods under appropriate CTH of Customs Tariff, description of goods, details of MEIS benefits claimed and valuation of goods; that the exporters confirmed the said details through phone and accordingly they submitted the checklist for filing the Shipping Bill; that they had filed shipping bills of 57 containers for export of Goods, *viz.*, Machinery and parts of Machinery; that they had appointed Shri Anwar Y.Kukkad, CE for inspecting the cargo lying at Mundhra CFS, Mundra, who after inspection of the cargo on 27.01.2017, issued Certificate No. AYK/INSP/0464/2016 dated 29.01.2017 and certified that machine is used "Rolling Mill Machine and Parts" and appeared to be 10 to 12 years old and no manufacturer or country of origin found on the said machine and that Second Hand Price of Machine would be USD 1,20,000 approximately; that on visual inspection, the said cargo appeared to be overvalued to claim undue export benefits under the MEIS Scheme. Shri Vipul also admitted that they were aware of the facts that for claiming export benefits under MEIS scheme, the make of the machine should be of India, however, no such sign was available on the exposed parts of the machine.

8. The noticee No.1, vide letter dated /02/2017, submitted that the declared C&F value of USD 1,61,420 (Rs.1,08,27,266/-) includes MOP as well as the handling, transportation of goods from factory, clearance expenses, overseas freight and further installation charges.

9. The second opinion was also obtained during investigations and the *in-panel* Chartered Engineer Sh. N. J. Lalwani, inspected the cargo on 15.03.2017. Shri Lalwani, vide his report No.NJL/Mundra/17-92 dated 15.03.2017, reported that there were no details of manufacturer, identification marks, serial numbers, specifications, year of manufacturing etc.; that the machinery parts may be 10 -12 years old; that in his considered opinion the residual value would be INR 11.50/- lakhs for invoice no. NRBMLLP/EXP/AMSTL/42/16-17 dated 17.01.2017 and INR 28.00/-lakhs for invoice no. NRBMLLP/EXP/AMSTL/40/16-17 dated 11.01.2017 (weight shown in the invoice considered as true).

10. Enquiries were also extended to M/s. Urmi Traders (hereinafter referred to as "the noticee No.2). The noticee No.2, vide letter dated 09.03.2017, submitted the following documents:

- (i) Offer Letter of M/s Urmi Traders to M/s N R Brothers, Ref: UT/16-17/015 dated 05.12.2016 for supply of machinery Spare Pa Qty. 50.00 +/- 10% MT @ 380000/- PMT, payment 45 days after receiving the material;

- (ii) Purchase Order of M/s. N. R. Brothers to M/s. Urmi Traders Ref.: NRBMLLP/PO/2016-17/008 dated 13.12.2016 in connection with Ref: UT/16-17/015 dated 05.12.2016 of M/s. Urmi Traders, for purchase of Machinery Spare Pa, Qty. 50.00 MT (10% +/-) @ Rs.380000 PMT, transportation would be arranged by N R Brothers;
- (iii) Retail invoice No. UT/RET/008 dated 02.01.2017 issued to N. R. Brothers for supply of machinery Spare pa Qty. 23.540MTs for Rs.89,45,200/-;
- (iv) Retail Invoice no.UT/RET/013 dated 06.01.2017, issued to M/s. N.R. Brothers for supply of machinery Spare pa 24.340 MTs for Rs.92,49,200/-
- (v) and payment received details only for four entries indicating that M/s Urmi Traders had received the following payment from M/s. N. R. Brothers
  - (i) Rs. 40.00 Lac on 07.01.2017
  - (ii) INR 6.00 Lac on 10.01.2017
  - (iii) INR 19.00 Lac on 16.01.2017 and
  - (iv) INR 97.00 Lac on 19.01.2017

Duly certified by HDFC Bank, Gandhidham.

11. Summonses were issued to the noticee No.2 on 21.02.2017, 06.03.2017, 04.05.2017, 12.07.2017 and lastly on 28.07.2017 for their appearance on 04.08.2017. Summonses were also issued to the noticee No.1 on 17.02.2017, 06.03.2017 and 12.07.2017. Both the noticees, vide letter dated 17.07.2017, sought time (one week) for attendance and submission of documents citing that due to GST regime they were under pressure to complete the basic requirements prescribed under GST. However, none of them joined or co-operated in further investigation and /or turned up for further statement.

12. The noticee No.2 was a proprietorship firm owned by Shri Vinod H. Chandra and was operating as a dealer of Excisable Goods, situated at Survey No. 27, Plot No. 20, Meghpar Borichi, Anjar, Kutch, Gujarat and it was registered under Central Excise holding Registration No. AEYPC9488AXD001 issued on 05.08.2010 by the Asstt. Commr., Central Excise, Div. Gandhidham, Kutch.

12.1 The noticee No.1 was an importer of Excisable Goods, situated at Plot No. 44, Sector -8, GIDC, Gandhidham, Kutch, Gujarat and it was registered under Central Excise holding Registration No. AAMFN4214DEI001 issued on 11.10.2016 by the Asstt. Commr., Central Excise, Div. Gandhidham, Kutch.

13. The exporters requested for provisional release of the export cargo which was released against submission of Bond of INR 1,43,00,000/- and bank guarantee of INR 25,00,000/-, duly accepted by the Deputy Commissioner of Customs (Export).

14.2.2 The above fact is also strengthened from the scrutiny of other documents as submitted by Sh. Katarmal, in support of his saying, that they had purchased the Parts of machinery & Accessories (Used in Rolling Mill) from one M/s Urmi Traders, Sh. Katarmal had also submitted copies of two invoices nos. UT/RET/008 dated 02.01.2017 and UT/RET/013 dated 06.01.2017, both purported to be issued by the noticee No.2 to noticee No.1, for 8.120 MTs and 23.540 MTs of Machinery Spare Pa respectively. During scrutiny of both the invoices it was noticed that though the sale was shown against Form-H, however, the parameters *viz.* Supplier's Ref., Buyer's order no., date, and Form-H, date were left blank. The Section 5(4) of the Central sales Tax Act, 1956, read with Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, makes way for the declaration on Form-H. The Form-H is form of declaration which the dealer/ seller, selling the goods furnishes to the prescribed authority, duly filled-in and signed by the exporter to whom the goods are sold, under Form-H obtained from prescribed authority, i.e., Commercial Tax authority of State. In the instant case the noticee No.1, was required to obtain Form-H from Commercial Tax Department, Govt. of Gujarat and send the same to the seller i.e. the noticee No.2. Only thereafter the seller i.e. M/s Urmi Traders would issue the invoice to the exporters herein and would fill-in the details in respect of Supplier's Ref., Buyer's order no., date, and H form date. M/s Urmi Traders though registered under Central Excise omitted to issue any Excisable invoice to the exporters, since the Central Excise Registration number was not found mentioned on both the invoices i.e. dated 02<sup>nd</sup> and 06<sup>th</sup> January, 2017, issued by the noticee No.2. Therefore the parameters *viz.* Supplier's Ref., Buyer's order no., date, and H-Form date were left blank intentionally.

14.3 Sh. Katarmal in his statement *inter-alia* stated that they declared the cargo as mentioned on the retail invoice provided to them by their trader M/s Urmi Traders; that they are not concerned to the fact as to whether the machinery is "old and Used" and they declared as per the trader's retail invoice; that the value declared by them in the shipping bill was correct; that he was not aware, that for availing the benefit of MEIS scheme the Make of Machine should be in India. He also agreed that he would submit the purchase order of the trader within short period, which he never submitted. This indicates that the exporters have no respect for the law of the land and indulge themselves in nefarious activities & work with sole intent to procure benefits not only from the foreign buyers but also from the Government, by defying the very purpose of the MEIS scheme.

14.4 Moreover, during investigation, certain information were also gathered from the official website dgft.gov.in of Directorate General of Foreign Trade (DGFT for short) with regard to the IEC codes of noticee No.2 (IEC 3705001353) and noticee No.1 (IEC 3716901750), wherein it was noticed that the name of one of the directors namely Sh. Vinod Hariram Chandra, R/o H. No. 17/A, NU -3, Nr. Mataji Temple, Apna Nagar, Gandhidham, Kutch was common to both the parties. The authority letter dated 28.02.2017 issued to Sh. Kishor Bhanushali of noticee No.2, was also issued by the aforesaid Sh. Vinod H. Chandra, wherein Sh. Kishor was authorized to submit the requisite

documents to customs, which was submitted on 09.03.2017 (refer para 11 above). All these acts of omissions and commissions on the part of noticee No.1 indicates that there was an agreement between the two "Related parties", with regard to the instant export consignment and to divide the share of profit between themselves, which they would earn from both sides, i.e., from the foreign buyers and from the Government.

14.5 The investigating officer, while issuing Summonses to the noticee No.1 and noticee No.2 under Section 108 of the Customs Act, 1962, had also requested for literature/brochure of the machine. However, both the noticees omitted to provide the requisite document to Customs.

### **15. Conclusion of the investigations:**

15.1 From the foregoing discussions it appears that the noticee No.1 tried to export the goods declared as "Export of Project Machinery" falling under CTH 84559000 by declaring the same as "Parts of Machinery & Accessories (used in rolling mill)" under two shipping bills nos. 3400353 dated 11.01.2017 and no. 3503749 dated 17.01.2017 by declaring the FOB value as USD 159420 (INR 1,07,05,053/- and USD 52523.37 (INR 35,26,944.29/-) respectively. During examination the Customs officers took a note that the machinery is Old, Used and overvalued, since there was no marks, nos., Year of Manufacturing (YoM) etc. to co-relate the cargo *vis-a-vis* the export documents.

15.2 The facts that there was no make, marks, YoM etc. was also confirmed by the two Chartered Engineers, in absence of which (YoM), it cannot be substantiated that the machine was made in India. The CE Sh. Anwar Y Kukkad, valued the cargo at INR80,58,000/- (USD 1,20,000) and Sh. N J Lalawani valued the cargo at INR 39,50,000/-. The noticee No.1 could not justify the absence of make, marks, YoM etc. and also the exporters could not provide any literature/ brochure with regards to the cargo to be exported by them.

15.3 Chapter 3 of Foreign Trade Policy 2015-20 enunciates the MEIS Scheme as under:

#### **Merchandise Exports from India Scheme (MEIS)**

**3.03 Objective:** Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/ manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

15.3.1. The noticee No.2 from whom the noticee No.1 had procured the export goods, was also a dealer of excisable goods and not manufacturer. In view of the above, the exporters could not prove that the goods have ever been produced or

manufactured in India. Therefore, the export benefits under MEIS Scheme cannot be extended to them.

15.4 The exporter did not agree to the valuation done by the CEs, and stick to their valuation. On being asked the exporters stated that their valuation is based on the price on which they procure the export goods from M/s Urmi Traders (noticee No.2). However, as mentioned in para13.4 above, M/s Urmi Traders and M/s N R Brothers are "Related parties" within the scope of Valuation Rules under Central Excise Law being a common Director for both the companies. Thus, the value declared by the exporters is not justifiable.

15.5 Further during scrutiny of the documents it was noticed that the sales contract between the foreign buyer and the Indian supplier (i.e. the noticee No.1) is of dated 01.01.2017, whereas the "offer letter" between the noticee No.1 and noticee No.2 was of 05.12.2016, wherein noticee No.2 offered to sale Machinery Spare Pa @ 3,80,000/- PMT to noticee No.1. Thus, the two documents are not related to each other.

15.6 The declaration of cargo as mentioned in the invoices of noticee No.2 was also different from the declaration made by the noticee No.1 in the invoices inasmuch as the noticee No.2 declared the goods as "Machinery Spare Pa" and the noticee No.1 declared the same cargo as "Parts of Machinery & Accessories (used in rolling mill)" and in packing list of shipping Bill No. 3400353 dated 11.01.2017, as "Fly wheel and Motor rail". Thus, there is no sanctity of the declaration by the exporters.

15.7 Moreover, the qty. of the cargo as supplied by the noticee No.2 under two invoices was 47.880 MTs (**23.540 + 24.340** MTs) as produced by the authorized signatory of the noticee No.1 during his statement dated 20.02.2017, which was also shown as 31.660 MTs (8.120 + 23.540 MTs) in the documents submitted on 09.03.2017, by the authorized signatory of the noticee No.2 under the cover of same invoices nos. issued on the same date, whereas, the corresponding export documents produced by the noticee No.1 indicated that the cargo to be exported was 30.120 MTs (**7.060 +23.060** MTs). Thus the quantification of the cargo was also not justified.

15.8 Thus it can be concluded that the value of the goods to be exported as mentioned by the noticee No.1 was liable to be rejected in terms of Rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

**16. Role of M/s N R Brothers Multitrade LLP, Plot No. 44, Sector -8, GIDC, Gandhidham, Kutch (noticee No.1):-**

16.1 The noticee No.1 filed the Shipping Bill no. 3503749 dated 17.01.2017 under which they intended to export Parts of Machinery & Accessories (used in rolling Mill) Qty. 7.560 MTs in loose packages valued at 52920 USD (@7000 USD PMT) and 750 Kgs of wheat in 30 bags (25 Kgs each) valued at 450 USD 0.60 USD PMT, bearing terms of delivery & payments as C&F. Simultaneously, they filed another Shipping Bill no. 3400353 dated 11.01.2017 under which



they intended to export Parts of Machinery & Accessories (used in rolling Mill) Fly wheel and Parts, total Qty. 23.060 MTs in 02 packages valued at C&F 161420 USD (@7000 USD PMT). The noticee No.1 also produced two different sets of invoices issued by them bearing same no. and date where under in one invoice they showed the packing of the cargo as loose whereas the same cargo was shown packed in two package, simultaneously in another set of invoice issued by them bearing same no. and date the qty of cargo was shown differently 7.060 MTs and 7.800 Mts. The noticee No.1 execute a contract for supply of Part of Machinery and accessories with their "Related party", the noticee No.2 during Dec. 2016, where they do not even whisper about the Exports, whereas the sales contract for export of goods was executed with the foreign supplier on 01.01.2017. Such an act on the part of the noticee No.1 indicated that they were indulged in preparation of parallel invoices and/or in manipulation of documents.

16.2 Further, they omitted to inspect the goods and failed in co-relating the cargo *vis-à-vis* to the export documents. They also omitted to observe the conditions of the MEIS scheme under which they claimed the export benefits. Had the officer not observed the nature and status of the Cargo, the exporters would be able to execute their unscrupulous activities.

16.3 In view of the aforesaid facts and circumstances of the case that the noticee No.1 and noticee No.2 connive to export old and used machinery parts and accessories under the guise of new machinery by overvaluing the cargo and to earn profit from the foreign suppliers as well as to claim export benefits under MEIS scheme from the Govt. by defying the very purposes of the scheme:

16.4 Thus the noticee No.1, by their acts of omissions and commissions renders the cargo, i.e., Parts of Machinery & Accessories (used in rolling Mill) Qty. 7.560 MTs in loose packages valued at 52,523.37 USD (FOB) covered under S/Bill No. 3503749 dated 17.01.2017 and Parts of Machinery & Accessories (used in rolling Mill), Flywheel and parts, total Qty. 23.060 MTs in 02 packages valued at 159420 USD (FOB) covered under S/Bill No. 3400353 dated 11.01.2017, liable to confiscation under Section 113 (i) and 120 of the Customs Act, 1962, and renders themselves liable to penal action under Section 114, 114AA and 117 of the Customs Act, 1962.

**17. Role of M/s Urmi Traders, Plot No. 20, Survey No. 27, Meghpar Borichi, Anjar, Kutch (noticee No.2):-**

17.1 The noticee No.2 provided two documents where under there was a lot of difference in the quantification of the cargo, i.e., **24.340** MTs and **8.120**MTs. At this stage it is pertinent to mention here that the information filled in both the invoices were same but for the qty. of the cargo. The noticee No.2 omits to issue Excisable invoices for the excisable products which he knew or reasons to believe that they (M/s Urmi Traders) are selling the same in India, since the offer letter dated 05.12.2016 and the purchase order dated 13.12.2016 were silent about export of goods. Moreover, the contract between the noticee No.1 and the foreign buyers for export of goods was executed on 01.01.2017. Even if

it is considered for the sake of arguments that the invoices dated 02.01.2017 and 06.01.2017 raised by the noticee No.2 was against Form-H and the goods supplied there under were meant for export, they are required to mention the buyers reference number with date in terms of CST Rules, 1957. This act on the part of the noticee No.2 indicated that they were also indulged in preparation of parallel invoices and/or in manipulation of documents, to suit the purposes of the noticee No.1.

17.2 In view of the aforesaid facts and circumstances of the case that both the noticees conspired to export old and used machinery parts and accessories under the guise of new machinery by overvaluing the cargo and to earn profit from the foreign suppliers as well as to claim export benefits under MEIS scheme from the Govt. by defying the very purposes of the scheme.

17.3 Thus, the noticee No.1, by their acts of omissions and commissions renders the cargo, i.e., Parts of Machinery & Accessories (used in rolling Mill) Qty. 7.560 MTs in loose packages valued at 52,523.37 USD (FOB) covered under S/Bill No. 3503749 dated 17.01.2017 and Parts of Machinery & Accessories (used in rolling Mill), Flywheel and parts, total Qty. 23.060 MTs in 02 packages valued at 159420 USD (FOB) covered under S/Bill No. 3400353 dated 11.01.2017, liable to confiscation under Section 113(i) of the Customs Act, 1962, and renders themselves liable to penal action under Section 114AA and 117 of the Customs Act, 1962.

**18. Valuation of the Cargo i.e. Parts of Machinery and Accessories (used in Rolling Mills):-**

18.1 The noticee No.1 valued (FOB Value) the cargo at INR 1,42,31,997.29 (USD 2,11,943.37) collectively, however, in the light of facts and circumstances as discussed above, the make and YoM of the cargo is not available, the relation of the parties, it seemed that the relationship between noticee No.1 and noticee No.2 has influenced the price. In view of this the valuation of the cargo i.e. Parts of Machinery and Accessories (used in Rolling Mill) at the declared value of USD 2,11,943.37 (FOB) was liable to be rejected in terms of Rule 8 of the Customs Valuation Rules, 2007. The value cannot be determined in terms of Rule 4, since the goods exported, in respect of which data is available, may not be "similar or identical" in physical characteristics, quality and reputation as that of the goods in question. Similarly, the value of the goods could not be determined by computation in terms of Rule 5 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007, since the design, brand, manufacture, cost of productions is not available. Thus, the residual method under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, is the only option left with. The two Chartered Engineers opined two different opinions with regard to the value of the cargo i.e. one at INR 82,58,000/- and another at INR 39,50,000/-. It seemed that the two CEs have given a range for valuation of the export goods. Therefore, in the light of facts and circumstances and in the interest of justice it would be appropriate to adopt a mean value, of the value proposed by the two CEs i.e. INR 61,04,000/-.

19. In view of the above a Show cause Notice No.S/15-136/Enq./SIIB/CHM/16-17 dated 11.08.2017 was issued to M/s N R Brothers Multitrade LLP, Plot No. 44, Sector-8, GIDC, Gandhidham, Kutch, to show cause to the Additional Commissioner of Customs, having his office situated at Room No. 102, 1st floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ asking them as to why:

- (i) The FOB value INR 1,42,31,997.29/-collectively, of the cargo i.e. Parts of Machinery and Accessories (used in Rolling Mills, Flywheel and motor wheel), falling under CTH 8455 90 00, attempted to be exported under S/Bill No. 3400353 dated 11.01.2017 and 3503749 dated 17.01.2017, as determined by them should not be rejected in terms of Rule 8 and the same should not be re-determined at INR 61,04,000/-under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (ii) The cargo i.e. Parts of Machinery and Accessories (used in Rolling Mills, Flywheel and motor wheel) attempted to be exported under S/Bill No. 3400353 dated 11.01.2017 and 3503749 dated 17.01.2017 by them should not be confiscated under section 113 (i) of the Customs Act, 1962.
- (iii) The penalty under sections 114, 114AA and 117 of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

20. In view of the above M/s Urmi Traders, Plot No. 20, Survey No. 27, Meghpar Borichi, Anjar, Kutch were issued a Show cause Notice asking them to show cause to the Additional Commissioner of Customs, having his office situated at room no. 102, 1st floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ as to why the penalty under sections 114AA and 117 of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

**WRITTEN SUBMISSION:**

**21. Written Submission by M/s. N.R Brothers**

The noticee has submitted the written submission vide letter dated 16.01.2019, wherein they have, *inter alia*, submitted that services of two Chartered Engineers, namely, Shri Anwar Kukad and Shri N. J. Lalwani were availed, however, there is no enabling provision in CVR for availing the services of Chartered Engineers to determine the value of goods entered for export. Therefore, on this ground alone, it is submitted that the entire proceedings are void ab initio and therefore, liable to be dropped.

Both the Chartered Engineers have given their reports by ignoring the material particulars of goods, like, markings, etc. that are clearly discernible on the goods (as duly recorded in the panchanama dated 17.02.2017) and hence, their reports cannot be relied, unless chartered engineers are made available for cross-examination.

As per panchnama dated 17.02.2017, goods were bearing marking "Hi Tech", however, there is no reference to these markings in the certificates issued by the Chartered Engineers. Thus, the Chartered Engineers have issued the certificates without physical verification. Therefore, it is imperative to cross-examine both the Chartered Engineers before any reliance can be placed on their certificates.

21.1 Moreover, the certificate dated 29.01.2017 issued by Shri Anwar Y. Kukad, Chartered Mechanical Engineer suffers from following amongst other discrepancies:

- (i) The Certificate claims to have followed "Indian standard" during inspection. However, details of the standard followed by the Chartered Mechanical Engineer for the purpose of carrying out inspection are not forthcoming from the report.
- (ii) The Certificate, on page 1, states that "year of make" is not found on the machine but on page 2, certifies the "original price at which the machinery was fabricated in the year of manufacturing" as Rs.1,90,000/- . Thus, without ascertaining the year of make, the Engineer has certified the original price of the goods as in the year of manufacturing.
- (iii) The Certificate, on page 2, certifies the original price of the goods to be Rs.1,90,000.00 whereas it certifies second hand price to be USD 1,20,000.00.
- (iv) CE has not furnished any basis to support the above valuation.
- (v) Thus, reliance placed on this CE certificate is completely misplaced.

21.2 The certificate dated 15.03.2017 issued by Shri N. J. Lalwani, Chartered Engineer (Mechanical) suffers from following amongst other discrepancies:

- (i) The Certificate, on page 3, states that identification marks are not specified on the unit. However, it ignores the markings "Hi Tech" that are duly noted in the panchanama dated 17.02.2017.
- (ii) CE has not furnished any basis to support the value of Rs. 11.50 lakh for goods covered by invoice no. 42 and Rs. 28 lakh for goods covered by invoice no. 40.
- (iii) Thus, reliance placed on this CE certificate is completely misplaced.

There is no justification for huge variation between the opinions given by the two chartered engineers, i.e. Rs. 82.58 lakh opined by Shri Anwar Kukad and Rs. 39.50 lakh opined by Shri N. J. Lalwani.

There is also no legal justification behind adopting a mean of Rs.82.58 lakh and Rs.39.50 lakh, i.e. Rs.61.04 lakh to determine the value of goods under consideration. None of the rules contained in the CVR, including Rule 6 of enables the department to adopt mean of the value(s) opined by different chartered engineers.

The chartered engineers have also not disputed the present market value (in INR) declared in the shipping bill. Thus, even by applying the provisions of rule 6 of CVR, 2007, no fault can be found with the declared value.

For the ease of ready reference, Rule 6 of CVR is as under:

*"6. Residual method. -(1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rule 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods."*

Thus, under rule 6, value must be determined (i) by using reasonable means consistent with the principles and general provisions of valuation rules and (ii) without making the local market price of the export goods as the only basis.

21.3 The principles and general provisions of valuation rules, apart from rule 6, would suggest that rule 4 deals with determination by comparison whereas rule 5 deals with determination by computation. However, the show cause notice neither compares nor computes the value. It only relies upon the certificates issued by chartered engineers, which suffer from variation upto 200% without revealing any basis for the same. Moreover, it may be appreciated that whereas Shri Anwar Kukad, CE, has determined the value in USD without revealing his exposure in dealing with goods of like kind and quality entered for export, Shri N. J. Lalwani, another CE, has determined the value in INR without revealing the methodology. Neither of them have determined the year of manufacture nor applied the widely accepted method of depreciation. Moreover, there is no indication in these reports that the CE had carried out inspection in our presence. Thus, no reliance can be placed on the reports given by CE Shri Anwar Kukad and CE Shri N. J. Lalwani.

21.4 The notice, except for raising technical issues regarding minor variation in weight between the invoices issued by M/s. Urmi Traders and the

invoices filed by noticee no.1 with shipping bills, does not dispute the basic fact that the goods entered for export noticee no.1 were supplied by M/s. Urmi Traders.

The noticee relied upon Para 7 to 11 of decision of Hon'ble Tribunal in the case of R. Kishan & Co. v/s Commissioner of Cus. (Export), Nhava Sheva, 2016 (331) E.L.T. 91 (Tri.-Mumbai) that the ratio of the said decision is squarely applicable to the facts of present case inasmuch as when the details of seller is undisputedly available on record, rule 5 of CVR ought to have been pressed in service instead of relying upon completely arbitrary and inconsistent certificates issued by Chartered Engineers by invoking rule 6 *ibid*. Therefore, on this ground also, the impugned notice is not tenable in the eyes of law.

21.5 There is no mis-declaration with regard to description. The goods have been described in the shipping bills as "parts of machinery & accessories (used in rolling mill)". As per the impugned notice, the goods have been found to be used parts of rolling mill. Thus, it cannot be said or alleged that there is any mis-declaration rendering the goods liable to confiscation under section 113 (i) of Customs Act, 1962, therefore, the noticee are not liable to penalty under section 114 of Customs Act, 1962.

21.6 The notice invokes section 114AA of Customs Act, 1962 **without** pinpointing the declaration, statement or document, which is alleged to be false or incorrect in any material particular, which was made, signed or used or caused to be made, signed or used by us. **Annexure-"A" to the show cause notice (list of relied upon documents) does not enlist any document** that is alleged to be false or incorrect in any material particular, which was made, signed or used or caused to be made, signed or used by us. Thus, it is our humble submission that invocation of section 114AA of Customs Act, 1962 is unsubstantiated.

21.7 The show cause notice already contains proposal to impose penalty under section 114 *ibid* therefore penalty under section 117 *ibid* is not sustainable. The noticee has relied on the decision of Hon'ble Tribunal in the case of Commissioner of Cus. & C.Ex., Ghaziabad v/s Ruby Impex, 2017 (357) E.L.T. 1239 (T).

The noticee has also waived their right of a personal hearing .

## 22. Written submission by M/s. Urmi Traders

The noticee submitted that they have not filed any shipping bill and have not made any declaration under the provisions of Customs Act, 1962 so as to invite penal action under the provisions of section 114AA and 117. Therefore,

on this ground alone the entire proceedings initiated are void *ab initio* and therefore, liable to be dropped.

The transaction between M/s. Urmí and M/s. N. R. Brothers was a local sale and hence, the same is beyond the scope of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Consequently, no proceedings based on the allegation of over-valuation by invoking rule 8 of the said valuation rules and determination of value by resorting to rule 6 *ibid* can be lawfully initiated against us in respect of goods sold within India.

22.1 The allegation regarding conspiracy to export old and used machinery under the guise of new machinery by resorting to over-valuation is also mis-directed inasmuch as they have never entered any goods for export. Further, the show cause notice nowhere challenges the price at which they have sold the goods to M/s. N. R. Brothers and hence, the allegation regarding over-valuation is not sustainable.

22.2 The allegation regarding preparation of parallel invoices, etc. is also completely baseless inasmuch as Annexure-"A" to the show cause notice (list of relied upon documents) does not enlist any document to support such an allegation. Thus, Section 114AA of Customs Act, 1962 is not sustainable.

22.3 the noticee also denied proposal to impose penalty under section 117 of Customs Act, 1962 on the ground that the show cause notice already contains proposal to impose penalty under section 114AA *ibid*. The noticee relied upon the decision of Hon'ble Tribunal in the case of Commissioner of Cus. & C.Ex., Ghaziabad v/s Ruby Impex, 2017 (357) E.L.T. 1239 (T).

The noticee has also waived their right of personal hearing.

#### **PERSONAL HEARING**

23. The personal hearing was offered on 28.11.2018, 29.11.2018, 30.11.2018, 24.12.2018, 26.12.2018, 27.12.2018 and 10.01.2019. However, both the noticees in their written submissions dated 16.01.2019 has waived their right for personal hearing. Hence, matter is decided on the basis of available records as the obligations of department in terms of principle of natural justice has been met with. The noticee No.1 M/s. N R Brothers Multitrade LLP (hereinafter referred to as NRB) have assailed both the Chartered Engineers for their reports have stated that they may be made available for cross examination. At the same time they have waived their right of personal hearing. It is only in a personal hearing the cross examination can be conducted. Thus, I hold that M/s. NRB is not serious for cross examination of the Chartered Engineers and has waived their right of cross examination also.

**24. DISCUSSION AND FINDINGS:**

I have carefully gone through the records of the case and the submissions made by and on behalf of the noticees in the written submission to the show cause notice.

The point for determination in this case is whether:

- (A) FOB value Rs.1,42,31,997.29/- collectively, of the cargo, i.e., parts of Machinery and Accessories (used in Rolling Mills, Flywheel and motor wheel), falling under CTH 84559000, attempted to be exported under S/Bill No. 3400353 dated 11.01.2017 and 3503749 dated 17.01.2017, as determined by the noticee No.1 required to be rejected in terms of Rule 8 and required to be re-determined at Rs.61,04,000/- under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules,2007.
- (B) Cargo attempted to be exported under above shipping bills, by M/s. NRB is required to be confiscated under section 113 (i) of the Customs Act,1962.
- (C) Whether M/s. NRB liable for penalty under Section 114, 114AA and 117 of the Customs Act,1962 for contravention of his act.
- (D) Whether M/s. Urmi Traders, Anjar liable for penalty under Sections 114, 114AA and 117 of the Customs Act,1962.

24.1 M/s. NRB in their written submission argued that there is no enabling provision in CVR for availing the services of chartered engineers to determine the value of goods entered for export. In this regard, I find that Chartered Engineers are being appointed as per guidelines provided under Board's Circular No. 4/2008-Cus dated 12.02.2008 read with Public Notices issued under the provisions of said Circular. Though the said circular it is in relation to imported of goods but it applies *mutatis mutandis* in the case of export of goods also. Therefore, the argument of the noticee challenging the appointment of Chartered Engineer is without any legal basis, hence not sustainable. Even otherwise Customs can take help of qualified Chartered Engineer, qualified chemist from laboratories from state government, Universities, IIT etc., reputed institutions like, Indian Institute of Petroleum, Dehradun, Institute of Chemical Technology, Mumbai etc. to get the correct value, % composition of the goods imported, nature of goods etc. The noticee has further argued that both the Chartered Engineers have given their reports by ignoring the material particulars of goods like markings, etc. that are clearly discernible on the goods, as duly recorded in the panchanama dated 17.02.2017.

24.2 In this regard, I find that as per panchnama, there appeared mark as "Hi Tech". As per the said mark/ images, year of manufacturing as well as valuation of the machines cannot be ascertained. In fact, as per CE Certificate



NO. AYK/INSP/046/2016 dated 29.01.2017, issued by Anwar Y Kukad, it is clearly mentioned that:

Name of manufacturer & Country	:	Not found
Model/ serial No. or other identification	:	Used Rolling Mill Machine
Marks of the machine	:	Parts - painted on machine
Year of make	:	Not found on the machine, but seems to be 10 to 12 years old

24.3 Shri N.J Lalwani, vide inspection report No. NJL/Mundra/17-92 dated 15.03.2017 has observed as under:

Details of material as Actual : Old/ Used Machinery parts with Accessories consisting of:-  
Flywheel with Parts & Motor rails,  
Hydraulic Power pack, Dished Ends (Spherical Shape)  
The invoices are silent about details of parts/Parameters/ Specifications. The details are vague/ incomplete.

Regarding status of materials, both the Chartered Engineers have observed that the Manufacturer's Details, parameters & Year of Manufacture, Serial No., identification marks are not specified on the machine being examined.

Shri Lalwani has further observed that there are no details of manufacture, manuals/ literature/ drawings, identification marks, serial numbers, year of manufacture etc. There are no parameters/ specifications/ particulars.

M/s. NRB's plea that a marking is clearly discernible, as per the panchanama dated 17.02.2017. In this regard, I find that only visible marks "Hi Tech" is not at all sufficient reason to ascertain the year of manufacturing of the machinery and to there marks also of no use to determine value of this secondhand machineries.

24.4 The noticee further pleaded that the Certificate, on page 1, states that "year of make" is not found on the machine but on page 2, certifies the "original price at which the machinery was fabricated in the year of manufacturing" as Rs.1,90,000/-. Thus, without ascertaining the year of make, the Engineer has certified the original price of the goods as in the year of manufacturing.

24.4.1 In this regard, I find that M/s. NRB has not perused the whole CE report. The CE has found that machines were approximately 8 to 9 years old during inspection. The "original price" has been calculated on said observation/ inspection basis. He has calculated price of old and used parts of machine on that basis.

24.5 The noticee has disputed the certificate dated 15.03.2017 issued by Shri N. J. Lalwani, Chartered Engineer. He has argued that the Certificate, on page 3, states that identification marks are not specified on the unit. However, it ignores the markings "Hi Tech" that are duly noted in the panchanama dated 17.02.2017.

24.5.1 In this context, I find that mark "Hi Tech" is not at all sufficient to ascertain the year of manufacturing and value of the old & used machinery. Moreover, I find that Old & Used Machinery is a non-standard item. Hence, it is impossible for determination of value under rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, as the secondhand old & used machinery, goods, & like and quality sought to be exported cannot be found for comparison as for comparison the physical characteristics, quality, reputation of goods, functionality is needed to be compared. Thus, determination of value of Old & Used machine/ parts of rolling mill machine with accessories under rule 4 *ibid* is not possible. I find further that the year of manufacture, marks etc. nothing is known. Hence, it is not possible to determine cost of production, charges for design of brand and margin of profit as quantifiable data would not be available in such case. Thus, the only alternate is to determine the value of the goods in terms of value 6 *ibid*. the Chartered Engineers have used their technical expertise, domain knowledge and experience in the field to arrive at the reasonable value of goods which need to be accepted. Moreover, the exporter were requested through their Customs Broker to produce Chartered Engineer's Certificate for valuation of export good and the Chartered Engineer Shri Anwar Y. Kukad has not been appointed by the department. A Chartered Engineers has been asked to examine and evaluate the export cargo, being a professional recognized by prestigious Institute of Engineers it is a report of domain expert or a professional.

24.6 I further find that after recording of statement, Shri Nitin R. Katarmal, director of M/s. NRB vide letter dated /02/2017, received by the department on 10.03.2017, the noticee has submitted that their value (Rs.8058000/-) in the invoice is ex-factory against declared C&F value of USD 161420 (Rs.1,08,27,266/-) which includes their Margin of Profit, Handling Transportation of goods from factory, Clearance Expense, Overseas Freight and installation charges at destination. I find that in the export invoice, there is no reference number of such Purchase Order, nor the noticee has submitted a copy of agreement with their buyer. In export invoice No.EXP/AMSTL/40/16-17 dated 11.01.2017, in the column "Buyer's Ref. No. & date is blank. Therefore, the noticee's contention is mis-leading and hence legally not acceptable.

24.7 The noticee has argued that there is no legal justification behind adopting a mean of Rs.82.58 lakh and Rs.39.50 lakh, i.e. Rs.61.04 lakh to determine the value of goods under consideration. None of the rules contained in the CVR, including Rule 6 of enables the department to adopt mean of the

value(s) opined by different chartered engineers. Value must be determined under rule 6:

- (i) by using reasonable means consistent with the principles and general provisions of valuation rules and
- (ii) without making the local market price of the export goods as the only basis.

24.7.1 Neither of the CEs have determined the year of manufacture nor applied the widely accepted method of depreciation. Moreover, there is no indication in these reports that the CE had carried out inspection in noticee's presence. Thus, no reliance can be placed on the reports given by CE Shri Anwar Kukad and CE Shri N. J. Lalwani.

I find that M/s. NRB had filed following shipping bills:

- (i) Shipping Bill No. 3503749 dated 17.01.2017:

The goods are declared as Parts of Machinery & Accessories (used in rolling mills). The quantity is 7.560 MT in loose package and value shown in invoice No. NRB/MASTL/42/16-17 dated 17.01.2017 is 7000 USD/MT for parts of machinery and for 7.560 MT the total value is USD52920.00. The shipping bill also covers the wheat in 30 bags. The aforesaid invoice mentions unit price of 0.60 USD/Kg. there are 30 bags containing 25 Kg each. Hence, the total amount is 450 USD. The grand total is USD 53370 C&F. The final destination is Conakry Guinea and consignee is M/s. Odhav Multi Industries SAU, Conakry, Republique De Guinea

- (ii) Shipping Bill No. 3400353 dated 11.01.2017

The goods are declared Parts of Machinery & Accessories (used in rolling mills, Fly Wheel & Motor Rail). The quantity mentioned is 23.060 MT in two package. The invoice No. NRBMLLP/Exp/AMSTL/40/16-17 dated 11.01.2017, the declared goods are in loose packages & unit price is USD 7000/ MT. The total invoice value is USD161420/ MT C&F. The country of final destination shown as Conakry Guinea. The consignee M/s. Odhav Multi Industries SAU, Conakry, Republique De Guinea.

I note that Buyer's order number and date is blank in the respective column in both the invoices.

#### 24.7.2 Chartered Engineer's Certificate by Shri Anwar Y. Kukad

Shri Kukad, Chartered Mechanical Engineer, vide Certificate AYK/INSP/0464/2016 dated 29.01.2017, has clearly mentioned that name of manufacturer and country is not found on inspection of machinery, also the year of manufacture (YoM) not found. The CE has mentioned that the machine

appears to be 10 to 12 years old. It is also mentioned that expected residual life is 8-9 years and it is not re-conditioned. It is clearly mentioned that the machines having been inspected on 27.01.2017 at Mundra Port and 18 photographs have been annexed as proof.

The original price is mentioned as "Rs." 1,90,000/- and second hand price is mentioned as "USD" 1,20,000/- (Flywheel and Parts and Motor rail). The denomination "Rs." is an obvious typographical error. The Chartered Engineer has qualification B.E (Mech.), L.I.I.S.A (Mumbai) and is Chartered Mechanical Engineer. Thus, the allegation just because of no comment has been made on making "Hi-Tech" that Chartered Engineer has issued the certificate without physical verification is incorrect. The photographs bear signature of the CE. There is also a photograph of motor having mark 'ALSTOM' on one of motor. However, this has also not been commented upon by the CE in his certificate as this does not help in determination of the country of manufacturer or year of manufacture. The 'ALSTOM' motor can be used in any type of machinery in the world over. Similarly, marking 'Hi-Tech' is not helping the CE in determining the country of manufacture & year of manufacture. That *ipso facto* does not lead to conclusion that machinery has not physically examined by the CE.

24.7.3. The other allegation is that certificate claims to have followed "Indian Standard" during inspection, however, details of Standard followed are not forthcoming. Here, the points for which the words "As per Indian Standard" word used is "National/ International Standard followed during Inspection". Thus, it is sufficient to say "As per Indian Standard" as what are Indian Standard, is not required to be stated in the CE Certificate. The details if required can always be taken from the CE concerned. The argument raised by the noticee M/s. NRB is not of any consequence and do not have any bearing on outcome of the CE Certificate.

24.7.4. The other argument by the Noticee NRB is that the CE Certificate state "Year of Make" is not found, then, how the CE has concluded that "original price at which the machinery was fabricated in the year" of manufacture is USD 1,90,000/- without ascertaining the year of make. In this context, the Noticee has failed to mention the observation of the CE that Year of Make not found on machine but seems to be 10 to 12 years old and it is on the basis of this the evaluation has been done. I find that Noticee has got the copy of CE Certificate but the argument is totally misplaced and misconceived and I see it as an attempt to misdirect the adjudicating authority in this regard.

23.7.5. The Noticee M/s. NRB has also stated that no basis has been given by the CE for valuation of USD 1,90,000/- of original goods and USD 1,20,000/- for second hand goods. In this context, I find that the evaluation of

machinery by the CE has been done where there is no ascertainable and unimpeachable basis for year of manufacture. In such scenario, the valuation can only be done by a knowledgeable person in the field as its best intelligent estimate which the CE has done. I further regrettably observe that the exporter M/s. NRB has from date of seizure dated 17.02.2017 till date of his written submission dated 16.01.2019, has failed himself to submit even an iota of evidence about the year of manufacture and the country of manufacture, but is raising legally unsustainable and frivolous arguments seeking to challenge the bonafides of the CE Certificates. In view of the above, I reject the arguments raised in context of the CE Certificate issued by Shri Kukad, by M/s. NRB, in toto.

25. Chartered Engineer Certificate issued by Shri N.J. Lalwani:

From Para-10 of the SCN, I find that the Department obtained second opinion from empanelled Chartered Engineer Shri N.J. Lalwani, whose qualifications are B.E.(Mech.), FIE, FIMrE, FIV, MIIMS (UK). He has, in his report, stated that considering status of fly wheel, its pulley grooves, plumber blocks, shaft, shaft keyway, the unit seems to be old/used. He has also mentioned that manufacturer's details, parameters, year of manufacture, serial no., identification marks are not specified on the unit. It is also mentioned that hydraulic power pack, including its motors, are old/used. The Dished Ends are old/used, edges are grinded, thus are old/used. It is also mentioned that except on motor, the YOM is not mentioned and serial no. of machine is not traceable. The CE Shri Lalwani has significantly observed that the machine is old & used and there are no details of manufacture, manuals, literature, drawings, identification marks and specifications/particulars. He has stated that machinery parts may be 10/12 years old and residual life is 10 years (approx.). He has given the residual value of goods covered under Invoice No. NRB LLP/EXP/AMSTL/42/16-17 dated 17.01.2017 as Rs.11.50 lakhs (approx.) and the residual value of goods covered under Invoice No. NRB LLP/EXP/AMSTL/40/16-17 dated 11.01.2017 as Rs.28 lakhs. He has certified that he has conducted physical verification on 15.03.2017 and enclosed 20 photographs (each page signed by him with rubber stamp).

25.1. In this case also the Noticee M/s. NRB has assailed the CE Certificate issued by Shri N.J. Lalwani on the ground that on Page No. 3, it states that identification marks are not specified on the unit, whereas the Panchnama dated 17.02.2017 mentions the marks 'Hi-Tech'. The perusal of Panchnama has also one photograph of motor with marks 'ALSTOM' & image on some parts 'Hi-Tech' is shown. The Panchnama nowhere states that name of the

manufacturer is 'Hi-Tech'. The part from 'Hi-Tech' and motor from 'ALSTOM' can be used in many types of machines. These marks have not been found to be important for determining the Name of the manufacturer or Country of manufacture and hence not significant from point of view of a Chartered Engineer, both of whom have observed that manufacturer's details and YOM has not been mentioned. Non-mentioning of 'Hi-Tech' on some part does not make the CE report infructuous. If the Noticee has the knowledge then why till date they have failed to provide a catalogue, brochure showing the manufacturer, YOM and country of manufacture themselves. I find that they have failed in their obligation as an exporter to give full and correct information of the machinery and parts they are exporting. I hold that the points raised against the CE Certificate issued by Shri Lalwani does not have any force and reject the objections raised by M/s. NRB. I also hold that M/s. NRB is not serious about contesting the CE Certificates as on one hand they have in their written submission mentioned that they want to cross-examine the CEs whereas they have waived their right of personal hearing during which the cross examination could have been held. This also makes the hollowness in the arguments proffered by M/s. NRB against the allegations made against them in impugned show cause notice.

26. On perusal of Import-Export Code details, I find that IE Code for M/s. NRB (Noticee No. 1) is 3716901750 and one of their director is Shri Vinod Hariram Chandra, House No. 17/A, Apna Nagar, Gandhidham, Gujarat, Pin No. 370201. The perusal of details of Import Export Code of M/s. Urmi Traders reveal that their IEC is 3705001353 and is a proprietorship firm & proprietor is Vinod Hariram Chandra, House No. 17/A, Apna Nagar, Near Mataji Temple, Gandhidham, Kutch, Gujarat. I find that both the Noticees have a common person Shri Vinod Hariram Chandra who is proprietor of M/s. Urmi Traders and also director of M/s. NRB. I find that since both the business entities (Noticee No. 1 and 2) are having common person who is proprietor of one firm and director of the other and therefore, the parties are clearly related parties and have got nexus.

27. Reason for negation of Export Value:

I find that it is clearly mentioned in para-13.2 of the SCN that during his voluntary statement dated 20.02.2017, Shri Nitin Katarmal, Authorised Signatory of Noitcee No.1 submitted Contract Invoice No. NRBMLLP/AMSTL/42/16-17 dated 17.01.2017, which shows the quantity of parts as 7.8 MT and value USD 54600/- whereas Invoice of identical no. and date submitted at the time of examination is having Qty. 8.550 MT and Invoice Value of USD 55050/-.

27.1. I find that in both the invoices the Buyer's Order No. and date is left blank. I find that M/s. NRB is required to obtain Form H from Commercial Tax Department, Govt. of Gujarat and send the same to the seller i.e., Urmi Traders. Only thereafter the seller i.e. Urmi Traders would issue their invoice to the exporter. However, in the subject case, M/s. Urmi Traders failed to issue any excisable invoice/Dealer's invoice to the exporter and it was for this reason that in the two export invoices the Buyer's Order No. & date is left blank. This has been done on purpose and intent to hide the actual value of the export cargo which would have been an evidence of misdeclaration of value of export cargo by M/s. NRB.

28. I find that in the written submissions the exporter M/s. NRB has challenged and cast aspersions on the value of goods under consideration as Rs.61.04 lakhs which is the mean of the value of old and used parts of machinery and accessories given by the CE Shri Kukad which is Rs.82.58 lakhs and export value of Rs.39.50 lakhs as given by Shri N.J. Lalwani. It has been argued that there is no justification to adapt the mean value and there is no rule in CVR including Rule 6 which enables the department to adopt the means of value opined by different CEs.

28.1. I find that both the CE, Shri Kukad who has opined the value of export cargo viz., second hand old & used parts of machinery and accessories as Rs.85.58 lakhs and CE Shri N.J. Lalwani who has opined the value of export cargo viz., second hand old & used parts of machinery and accessories as Rs.39.50 lakhs, have given their subjective opinions of the considered best value of the impugned old & used parts of machinery and accessories. Hence, there is nothing illegal about taking mean of the considered opinions of the export cargo viz., parts of machinery and accessories, where no data about country of manufacture, year of manufacture, manufacturer, markings, drawings, serial no., identification marks, model no. etc. is available. I find that both the CEs agree that goods are 10 to 12 years old and estimated residual life is 9 to 10 years only. In view of the above, I find that with this meagre data, the CEs have given their sincere and considered opinion and the department has used prudence and also means consistent with principles and general provisions of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, to correctly determine the value of Rs. 61,04,000/- for the export cargo viz., parts of machinery and accessories (collectively) covered under SB No. 3400353 dated 11.01.2017 & SB No. 3503749 dated 17.01.2017 in terms of Rule 6 ibid whereas the declared value is USD 1,59,420/- = Rs.1,07,05,053/- for export goods under SB No. 3400353 dated 11.01.2017 and USD 52,523.37 = Rs.35,26,944.29 for export goods under SB No. 3503749

dated 17.01.2017, which collectively is Rs.1,42,31,997.29 (Exchange Rate 67.15). Thus, the mis-declaration of export value of the goods is evident and I hold that the goods covered under the SB No. 3400353 dated 11.01.2017 & SB No. 3503749 dated 17.01.2017 and where description has been declared as "parts of machinery and accessories/used in rolling mill, fly wheel and motor rail" and "parts of machinery and accessories/used in rolling mill" respectively, are liable for confiscation under Section 113(i) of the Customs Act, 1962.

28.2. I find that the hon'ble Supreme Court in the case of Collector of Customs, Madras Vs. D. Bhoormull has enunciated that department is not required to prove its case with mathematical precision, but what is required is establishment of such a degree of probability that prudent man may on its basis believe in the existence of the facts in the issue. Applying this enunciation to the subject case, I hold that department has arrived at the collective value of Rs.61,04,000/- for the goods covered under 2 Shipping Bills (supra) and fulfilled its legal obligation to arrive at the value of parts of machinery & accessories in face of the very meagre & cryptic data available and more cardinally when exporter has not given even an iota of physical/visible/tangible evidence as regards name of manufacturer, country of manufacture, YOM, the specifications, drawings/design, serial no., identification marks etc. Hence, I hold that the value of export cargo of Rs.61,04,000/- is the correct FOB value under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

29. The exporter has declared the exports are covered under Merchandise Exports from India Scheme (MEIS). The object has been enunciated in Para 3.03 of Foreign Trade Policy 2015-20 which states

**“Objective:** Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.”...

In this context, seller M/s. Urmi Traders (UT) from whom M/s. NRB had procured the export goods is a dealer of excisable goods and not a manufacturer. Neither in their written submissions, nor during the investigation, M/s. NRB or M/s. UT have been able to give any tangible evidence as regards the manufacturer of impugned goods in India. They have not even given the name of manufacturer. I find that in para 10 of the SCN, it is clearly mentioned that Summonses to appear before Investigating Officer of SIIB, were given to M/s. UT on 21.02.2017, 06.03.2017, 04.05.2017,



12.07.2017 & 25.07.2017. The Noticee M/s. UT vide their letter dated 17.07.2017 sought one week's time for attendance and submission of documents due to GST. However, they never honoured the Summons or co-operated with the investigation. Further, I find that the proprietor of M/s. UT is also director of M/s. NRB, hence the nexus between the two is obvious and automatically established.

29.1. In their written submission dated 16.01.2019, M/s. UT have taken a plea that they have not filed the SB No. 3400353 dated 11.01.2017 & SB No. 3503749 dated 17.01.2017 and have not made any declaration under the provisions of Customs Act, 1962, hence no penalty is imposable on them in terms of Section 114AA & 117 of the Customs Act, 1962. They have also denied preparation of parallel invoice as no RUD enlist such parallel invoice. They also opposed the penalty under Section 117 of the CA, 1962, on the basis of Hon'ble Tribunal in the case of CC, Ghaziabad Vs. Ruby Impex [2017 (357) ELT 1239 (T)].

29.2. In the context of the arguments proffered by M/s. UT, I agree that they have not filed any SB or Declaration before Customs under the Customs Act, 1962. However, they have sold the impugned goods to M/s. NRB who then have filed the SB No. 3400353 dated 11.01.2017 & SB No. 3503749 dated 17.01.2017 declaring the mis-declared value. As a Supplier of parts of machinery & accessories, a statement under Section 108 of the Customs Act, 1962, was sought to be recorded of the proprietor of M/s. UT. However, they never honoured the Summons and never appeared before the Investigating Officer. So they denied the opportunity to the Investigating Officer to check the veracity of Retail Invoice No. UT/RET/008 dated 02.01.2017 & **UT/RET/008 dated 02.01.2017**, also to record a statement as regards the YOM, Name of the manufacturer, proof about the Country of manufacture, H-Form, Details submitted to Commercial Tax Officer, Govt. of Gujarat etc. for the Parts of machinery & accessories supplied by them (M/s. UT) to Noticee M/s. NRB which are liable for confiscation under Section 113(i) of the Customs Act, 1962. I hold that M/s. UT have clearly supported, aided and encouraged the Noticee No. 1 M/s. NRB in their endeavour to mis-declare the value of export cargo, to inflate the value of goods with the ostensible reason to get undue benefit of MEIS scheme by doing the overvaluation of the export cargo covered under impugned two SBs supra. I hold that Noticee No. 2 M/s. UT is abettor in the subject case and are liable for penalty in terms of Section 114 of the CA, 1962. I also take a note of the fact that proprietor of M/s. UT Shri Vinod H. Chandra of 17/A, Apna Nagar, Gandhidham (Noticee No. 2), is also director of M/s. NRB the exporter and Noticee No.1.

29.3. M/s. NRB has submitted the two Invoices:

- (I) NRBMLLP/Exp/AMSTL/40/16-17 dated 11.01.2017, for USD 161420 against which shipping bill No. 3400353 dated 11.01.2017 was filed
- (II) NRBMLLP/Exp/AMSTL/42/16-17 dated 17.01.2017, for USD 53370.00 against which shipping bill No. 3503749 dated 17.01.2017 was filed

In both the SBs, the declared FOB value has been on purpose, design & intent mis-declared (higher value declared) to obtain illegally MEIS benefits. No tangible evidence has been submitted to prove that goods have been manufactured in India. Hence, subject exports are not even eligible for MEIS benefits. M/s. NRB are responsible through their acts of commission & omission to render the export cargo under SB supra liable for confiscation under Section 113(i) of the Customs Act, 1962. I hold that they are liable for penalty under Section 114 of the Customs Act, 1962.

30. I also hold that M/s. NRB have intentionally filed the two invoices and two SBs as detailed in para 28.3 above wherein they have declared the false invoice value (inflated or higher FOB value) of the goods sought to be exported. This was done for illegally getting the benefit of higher MEIS benefit. Hence, I hold that they are liable for penalty under Section 114AA of the CA, 1962.

31. From para 12 of the SCN, it is revealed that exporter requested for provisional release of export cargo which was released against submission of Bond of Rs.1,43,00,000/- and Bank Guarantee of Rs. 25 lakhs dated 07.04.2017 of Kotak Mahindra Bank Ltd.

32. In view of the above, I pass the following order:

#### **ORDER**

32.1. I reject the FOB value Rs.1,42,31,997.29/- collectively, of the export cargo declared as "Parts of Machinery and Accessories (used in Rolling Mills, Flywheel and motor wheel)" and provisionally released for export, under S/Bill No.3400353 dated 11.01.2017 and 3503749 dated 17.01.2017, under rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and I order that value of Rs.61,04,000/- FOB re-determined under rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, should be taken as the proper value of the export cargo – exported provisionally under S/Bill No. 3400353 dated 11.01.2017 and 3503749 dated 17.01.2017.

32.2. The export cargo covered under S/Bill No. 3400353 dated 11.01.2017 and 3503749 dated 17.01.2017, now valued at Rs.61,04,000/- FOB, is confiscated in terms of Section 113(i) of the Customs Act, 1962. The goods

have already been exported provisionally against Bond and Bank Guarantee. Hence, I impose a Redemption Fine of Rs.15,00,000/- in terms of Section 125 of the Customs Act, 1962 and direct that the said Redemption Fine be recovered by enforcing the Bank Guarantee given.

32.3. I impose penalty of Rs.12,00,000/- (Rupees Twelve Lakhs only) on M/s. N R Brothers Multitrade LLP, Gandhidham, under Section 114(iii) of the Customs Act, 1962.

32.4. I also impose penalty Rs.3,00,000/- (Rupees Three Lakhs only) M/s. N R Brothers Multitrade LLP, Gandhidham, under section 114AA of the Customs Act, 1962.

32.5. I also impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) on M/s. Urmi Traders, Anjar, in terms of Section 114(iii) of the Customs Act, 1962.

32.6. I do not impose penalty under section 117 of the Customs Act, 1962, on any Noticee. Also, I do not impose any penalty under Section 114AA of the Customs Act, 1962 on M/s. Urmi Traders, Anjar as they have not filed any documents like export invoices, Shipping Bills etc. under the Customs Act, 1962.

32.7. The Bank Guarantee furnished by the exporter M/s. N R Brothers Multitrade LLP, Gandhidham, be enforced to recover the fines & penalties imposed. M/s. Urmi Traders is also directed to pay the penalty forthwith.



(Prashant Kaduskar) 25/2/19  
Additional Commissioner,  
Custom House, Mundra.

F.No.S/15-136/Enq./SIIB/CHM/16-17

Date: 25.02.2019

**BY RPAD/ BY Hand Delivery**

To

- (i) M/s N R Brothers Multitrade LLP, Plot No. 44, Sector -8, GIDC, Gandhidham, Kutch
- (ii) M/s Urmi Traders, Plot No. 20, Survey No. 27, MeghparBorichi, Anjar, Kutch.

**Copy to:**

- (i) The Principal Commissioner, Custom House, Mundra
- (ii) The Deputy Commissioner (RRA), Custom House, Mundra.
- (iii) The Deputy Commissioner (SIIB), Custom House, Mundra.

- (iv) The Deputy Commissioner (Export), Custom House, Mundra.
- (v) The Deputy Commissioner (BG Cell), Custom House, Mundra
- (vi) The Deputy Commissioner (TRC), Custom House, Mundra.
- (vii) The Deputy Commissioner (EDI), Custom House, Mundra.
- (viii) Guard File.