



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,  
CUSTOM HOUSE, MUNDRA, KUTCH  
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421  
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	File No.	VIII/48-25/Adj/ADC/MCH/2017-18
B	Order-in-Original No.	MCH/ADC/PK/114/2018-19
C	Passed by	Shri Prashant Kaduskar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	26.02.2019
E	Date of Issue	27.02.2019
F	SCN NO. & Date	F.No.S/15-152/Enq./SWB/CHM/16-17 dated 07.09.2017
G	Noticee/ Party/ Importer/ Exporter	(i) M/s Wafa International, Office No. 517, 5 <sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santacruz West, Mumbai-400 054 (ii) M/s Global Enterprises, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001 (iii) M/s Super Trading Co., Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086. (iv) M/s Monarch Collection and Trading, Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp Shreya Cinema, Ghatkoper West, Mumbai-400 086. (v) M/s Gini Enterprise, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001. (vi) M/s B N Thakkar and Co., Room No. 207, Nilesh, Park, Gandhidham - 370 201 (vii) Sh. Manoj Kannar, Proprietor of M/s Samar Shipping, 201, 2 <sup>nd</sup> floor, Mani Complex, Gandhidham,

1. यह अपील आदेशासंबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील विध्यावली 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 बसाए 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) -430

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

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के प्रारंभिक शुल्क अधिनियम के तहत 5- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित आवश्यक सलसू किर्चा जाएं-

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 जिसे पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम, 1970 के माह 20-4 में निर्धारित 5- रुपये का न्यायालय शुल्क टिकट आवश्यक 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 - 1, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी, ब्याज, दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।

Proof of payment of duty, interest, fine, penalty, etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) विध्यावली 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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में ही, अथवा दण्ड में जहाँ केवल जुर्माना विवाद में ही, Commissioner (A) के समक्ष मंगी 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 11.03.2017 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:**

On the basis of a specific information that some unscrupulous exporters are exporting cheap quality goods, viz., Polyester Baby Rompers, Polyester frock, Ladies undergarments by overvaluing their export cargo and intend to avail higher amount of drawback on the same. The officers of Special Intelligence and Investigation Branch, Customs House, Mundra (hereinafter, referred to as Customs Officers), examined the following cargos:

**Table - 1 (Amount in INR)**

Sr No.	Name of Exporters M/s	S. B. No. and date	Description of Goods	No. of Pkgs. (ctns.)	Qty of goods (pcs.)	Ass. Value Declared (CIF) INR	Drawback claimed INR
1	Wafa International	4477415/ 02.03.17	Polyester Baby Romper	60	14400	7163251	542944
2	- do -	4488745/ 02.03.17	Polyester Frock	60	18000	10478160	792000
3	Global Enterprises	4443537/ 01.03.17	- do -	60	18000	10478160	792000
4	Super Trading Co.	4477514/ 02.03.17	Ladies Under Garments	59	17700	4683420	265500
5	Monarch Collection and Trading	4484298/ 02.03.17	Polyester Baby Romper	55	18480	9107267	609840
6	Girri Enterprise	4442876/ 01.03.17	Ladies Under Garments	56	17700	4507791	265500

2. The aforesaid cargos were examined by the Customs officers on 10.03.2017, at Mundra CFS in presence of two independent witnesses, representatives of Customs Broker and the CFS. The goods covered under the aforesaid 06 shipping bills were seized vide seizure Memo dated 10.03.2017 and were handed over to the representative of the CFS as mentioned in the Panchnama dated 10.03.2017.

3. Each of the exporters, vide their letter dated 09.03.2017 (05 letters), requested the Deputy Commissioner (Export) that their supplier mistakenly had forwarded low quality cargo whereas they had asked their supplier to send best quality which was well packed cargo at Mundhra CFS. Finally they requested to permit them to export their cargo under the cover of new invoice enclosed with their request letter

4. Subsequently, market enquiries for each of the seized cargo were conducted on 21.03.2017 wherein the customs brokers also accompanied the customs officers. The outcomes of the market enquiries are as under:

**Table - 2** (Amount in INR)

Sr. No.	Name of Exporters M/s	S. B. No./ date	Description of Goods	Assessable value declared (per piece)	Value (per piece) as per market enquiry
1	Wafa International	4477415 / 02.03.17	Polyester Baby Romper	497	150 - 200
2	- do -	4488745 / 02.03.17	Polyester Frock	582	125 - 150
3	Global Enterprises	4443537 / 01.03.17	- do -	582	150 - 200
4	Super Trading Co.	4477514 / 02.03.17	Ladies Under Garments	265	100 - 125
5	Monarch Collection and Trading	4484298 / 02.03.17	Polyester Baby Romper	493	150 - 200
6	Guri Enterprise	4442876 / 02.03.17	Ladies Under Garments	255	100 - 125

5. From the market enquiries conducted in presence of the authorized representatives of the exporters, i.e., Customs Brokers, it was clear that the goods contained in the shipping bills were overvalued 2 to 6 times than the prevailing market price. All the shipping bills are filed under the cover of drawback scheme as mentioned in table 1 above.

6. Summonses under Section 108 of the Customs Act, 1962, were issued to each of the exporters and the Customs Brokers M/s B. N. Thakkar and Co., Gandhidham, as under:

**Table - 3**

Sr. No.	Name and addresses of Exporters (M/s)	Date of issuance of Summonses	Date of appearance
1	Wafa International, Office No. 517, 5 <sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santacruz West, Mumbai-400 054	30.03.2017	31.03.2017
2	Global Enterprises, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001.	30.03.2017	31.03.2017
3	Super Trading Co., Office No. 509/B, Kohinoor Compound, SwastikDisha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086.	30.03.2017	31.03.2017
4	Monarch Collection and Trading, Office No. 509/B, Kohinoor Compound, SwastikDisha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086	30.03.2017	31.03.2017
5	Gurri Enterprise, Office No. 79, 1 <sup>st</sup> floor,	30.03.2017	31.03.2017

	Ashoka Shopping Centre, I T Marg, Mumbai-400 001.		
B.	M/s B. N. Thakkar and Co., Gandhidham	30.03.2017	31.03.2017

6.1 However, none of them appeared in compliance to these summonses. M/s B. N. Thakkar and Co., Gandhidham, the Customs Brokers, vide their letter 31.03.2017 requested to postpone their appearance till 05.04.2017

7. Further summonses were issued to each of the exporters on as under:

**Table - 4**

Sr. No.	Name and addresses of Exporters (M/s)	Date of issuance of Summonses	Date of appearance
1	Wafa International, Office No. 517, 5 <sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santacruz West, Mumbai-400 054	07.04.2017	12.04.2017
2	Global Enterprises, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001	07.04.2017	13.04.2017
3	Super Trading Co., Office No. 509/B, Kohinoor Compound, SwastikDisha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086	07.04.2017	12.04.2017
4	Monarch Collection and Trading, Office No. 509/B, Kohinoor Compound, SwastikDisha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086	07.04.2017	13.04.2017
5	Girri Enterprise, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001.	07.04.2017	13.04.2017

7.1 However, none of them appeared in compliance to these summonses.

8. Further summonses were issued to each of the exporters on as under:

**Table - 5**

Sr. No.	Name and addresses of Exporters (M/s)	Date of issuance of Summonses	Date of appearance
1	Wafa International, Office No. 517, 5 <sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santacruz West, Mumbai-400 054	17.04.2017	25.04.2017
2	Global Enterprises, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001	17.04.2017	25.04.2017
3	Super Trading Co., Office No. 509/B, Kohinoor Compound, SwastikDisha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086	17.04.2017	25.04.2017
4	Monarch Collection and Trading, Office No. 509/B, Kohinoor Compound, SwastikDisha Corporation Park, LBS Marg, Opp. Shreya	17.04.2017	25.04.2017

	Cinema, Ghatkoper West, Mumbai-400 086		
5.	Giri Enterprise, Office No 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001.	17.04.2017	25.04.2017
6.	M/s B. N. Thakkar and Co., Gandhidham	26.04.2017	27.04.2017

8.1 However, none of them but for M/s B. N. Thakkar & Co. appeared in compliance to the summonses.

9. The Dy. Commissioner of Customs (SIIB), Custom House, Mundra, vide letter dated 27.04.2017 requested the Additional Commissioner of Customs (Mumbai) to verify the genuineness of each of the aforesaid five exporters.

10. Shri Sagar Thakkar, manager cum authorized person on behalf of the Customs Brokers M/s B N Thakkar, appeared for his statement on 27.04.2017. Sh. Thakkar in his statement, *inter-alia*, stated that he is associated as Manager, in M/s B N Thakkar and Co., Room No. 207, Nilesh Park, Gandhidham - 370 201, since 2014; that M/s B N Thakkar is a partnership firm; that their licence is registered as R/2/1994 at Customs House, Kandla; that he used to supervise all work done by his staff related to export cargo *viz.* filling of shipping bills, dock examination of goods, stuffing permission by dock preventive; that the aforesaid 06 nos. of shipping bills were filed by them through ICEGATE; that they came to know about the exporters through one forwarder Sh. Manoj Kannar, Director of M/s Samar Shipping; that they are not in direct contact with any of the exporters; that they received whole set of documents *viz.* Invoice, packing list, KYC through Sh. Manoj Kannar only; that they had verified the IEC authenticity online from DGFT website; that they had pre-knowledge about overvaluation of the cargo; that Sh. Manoj Kannar had instructed them to file the shipping bills; that they got the approval of the check list for the shipping bills to be filed from Sh. Manoj Kannar; that they filed the shipping bills to cart the cargo since the CFS was not allowing them for carting without filing the shipping bills.

11. Shri Manoj Kannar, Proprietor of M/s Samar Shipping 201, 2<sup>nd</sup> floor, Mani Complex, Gandhidham in response to the summons dated 27.04.2017, appeared for his statement on dated 28.04.2017. Shri Kannar in his statement, *inter-alia*, stated that he was doing business related to forwarder from Mundra to almost all locations in the world; that he had done some business with M/s B N Thakkar and Co.; that the work related to forwarder (booking of container) of M/s B. N. Thakkar used to be done by him, that he was contacted by Shri Sagar Thakkar and they finalized the rates of Customs Clearance; that he agreed with the statement dated 27.04.2017 of Shri Sagar Thakkar, that one Sh. Dinesh Bhanushali S/o Bhanushali Nanji R/o Managdas Ratadiya Falia, Deriper, Tera, Kachchh, contacted him through his mobile no 98245 64329,

for export of the impugned cargo through Mundra Port; that this was his first dealing and he had not provided any containers to the exporters in past; that he had received the set of documents viz. Invoice, packing list, KYC through Shri Dinesh Bhanushali through courier; that he had not seen the cargo.

12. Further summonses were issued to each of the exporters on as under:

**Table - 6**

Sr. No.	Name and addresses of Exporters (M/s)	Date of issuance of Summonses	Date of appearance
1	Wafa International, Office No. 517, 5 <sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santacruz West, Mumbai-400 054	19.05.2017	26.05.2017
2	Global Enterprises, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001.	19.05.2017	26.05.2017
3	Super Trading Co., Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086	19.05.2017	26.05.2017
4	Monarch Collection and Trading, Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086	19.05.2017	26.05.2017
5	Girji Enterprise, Office No. 79, 1 <sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001.	19.05.2017	26.05.2017

12.1 However, none of them appeared for their statement. Summons were issued on 22.05.2017 to M/s Monarch Collection & Trading for their appearance on 29.05.2017, but they did not appear. The summonses issued to the exporters were returned by the postal authorities with remarks "not known", "no such commercial activity at this address".

13. The Dy. Commissioner of Customs (SIB), Customs House, Mundra, vide his reminder letter dated 09.05.2017 requested the Additional Commissioner of Customs (Mumbai) to verify the genuineness of each of the aforesaid five exporters.

14. The Joint Commissioner of Customs (Prev.), HQRS, R&I, NCH, Ballard Estate, Mumbai, vide his letter dated 18.05.2017, informed that the address mentioned as Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086 of M/s super Trading Co. and M/s Monarch Collection & Trading is a residential address and no such firm/ commercial activity exists at that place. Regarding M/s Global Enterprises, Office No. 79, 1<sup>st</sup> floor, Ashoka Shopping Centre, IT Marg, Mumbai, it was informed that the firm was closed since 2007-08.

15. The Superintendent of Customs (Prev.), M&P Wing, Thane Circle, vide letter dated 15.06.2017, informed that the address mentioned as Office No. 79, 1<sup>st</sup> floor, Ashoka Shopping Centre, IT Marg, Mumbai of M/s Girri Enterprise and Office No. 517, 5<sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santacruz West, Mumbai of M/s Wafa International are residential address and no such firm/ commercial activity exist at that place.

16. M/s Wafa International, Super Trading Co. and Monarch Collection & Trading, vide their separate letters dated 03.08.2017, surrendered their respective cargos to Customs and CFS and gave all authority to proceed for auction of the same.

17. As per statement of Shri Manoj Karmar, efforts were made to locate Sh. Dinesh Bhanushali S/o Bhanushali Nanji R/o Mangikdas Rutadiya Palla, Deriper, Tera, Kachohh but were in vain. A visit report has been prepared in this regard.

18. The Dy. Commissioner of Customs (SIIB), Custom House, Mundra, vide letter dated 15.05.2017 addressed to Axis bank Ltd., NarsiNath Street, Greater Bombay, Mumbai, called for information with reference to the account maintained by M/s Monarch Collection & Trading. The operation head of the Axis Bank vide his letter dated 20.05.2017, provided the requisite information and account statement as called for.

#### **19. Scrutiny of the documents and statements**

19.1 From the scrutiny of the export documents submitted by the exporters it was revealed that the all the exporters wanted to export wearing apparels i.e. Polyester Baby Romper, Polyester frocks and Ladies under Garments to M/s Trends Creations LLC, Shop No. 6, AL Alsoor Building, AL Fahadi Street, Meena Bazar, Opp. Sher-E-Karachi Restaurant, Bur Dubai, P O Box No. 114239, Dubai, UAE, but for M/s Global Enterprises the cargo i.e. Polyester Frock, of which was being exported to M/s Trends City General Trading LLC, Shop No. 8, Abdul Razak Zarooni Bld, AL Hisn Street, Meena Bazar, Bur Dubai, Dubai, UAE.

19.2 The export cargo as can be seen from the documents viz. panchnama, seizure memos all dated 10.03.2017 and the market enquiries reports all dated 21.03.2017, was cheap which was not only having low quality but also overvalued by the exporters.

19.3 The summonses were issued to exporters at their registered addresses which were returned by postal authorities. Further, during the course of enquiries none of the exporters appeared before the Customs authorities to give their statements. The Customs authorities at Mumbai also reported that the

addresses are residential address and no such commercial activities were running over there.

19.4 The value of the export cargo varied from INR 45 Lac to INR 104.78 Lac and the amount of drawback thereon as claimed by the exporters varied from INR 2.65 Lac to INR 7.92 Lac. Whole of the cargos were being exported to Dubai that too to one company only. Initially the exporters tried to amend the export documents, however, finally three exporters, out of five, surrendered their cargo to Customs for auction purpose willingly.

19.5 During his voluntary statement dated 27.04.2017, Sh. Thakkar, authorized signatory of the Customs Brokers admitted that he had not seen the cargo, that the KYC was verified through DGFT Website only; that the documents were received through their forwarders M/s Manoj Kannar, moreover the check list was also got approved from him.

19.6 Sh. Manoj Kannar in his voluntary statement dated 28.04.2017, admitted that he had not seen the cargo; that the documents were received by him through one Dinesh Bhanushali; that he agreed to the contents of the statement of Sh. Sagar Thakkar.

19.7 The account statement of M/s Monarch Collection and Trading as provided by M/s Axis Bank Ltd., indicated that M/s Wafa International and Super Trading were engaged in the transaction with M/s Monarch Collection and Trading.

19.8 The Customs Brokers did not receive the documents directly from the exporters and failed to produce the exporters before the Customs Authorities, they did not checked the cargo and received the documents through their forwarder which also had received the documents through another person, which was not found existing at the declared address. The customs brokers vetted the check list from the forwarder and not from the Customs Brokers. Thus none of them knew the exporters personally or had at any point of time were exposed to/ faced the exporters.

19.9 The scrutiny of the documents revealed that the 06 nos. of aforesaid shipping bills were filed under mentioning the nature of contract on CIF basis, whereas the exporters had not mentioned the Insurance or freight in their invoices. The invoices reads the nature of contract as 180 days D A Basis.

## **20. Conclusion of the investigations;**

20.1 From the foregoing discussions in *para-supra* it appeared that the exporters were members of a syndicate, whose sole intent was to export the impugned cargo and avail drawback. The act of omissions and commissions done by the exporters, the Customs Brokers and the forwarder defeat the very



purpose of export benefits allowed to the genuine exporters under the Customs Law.

20.2 In the light of above facts and circumstances it seems that the whole plan was masterminded by one person/ syndicate with sole intent to avail higher amount of drawback from the Government exchequer.

### **21. Role of the exporters:**

21.1 In the light of the aforesaid facts and circumstances of the case, all the aforesaid 05 exporters were working for a common syndicate. The *modus operandi* adopted by the exporters were to procure a cargo which was cheap not only in terms of value but also in terms of quality and overvalue the same to avail higher amount of drawback. In case an alert Customs officer stops them they would make excuses and would bring another set of invoices in order to export the cargo. They used to operate from a address which though exists but is a residential complex and no commercial activities are running over there, so that the authorities could not catch them, if the cargo is put on hold. Finally they would surrender the cargo to the Customs, if they could not found any other way out.

21.2 The sole intent of the exporters was to export the goods and to avail higher amount of drawback. They also produced another sets of invoices for the same cargo stating that their supplier had supplied them with the cheap/low quality cargo and requested to allow them to export on the basis of the invoices issued lately.

21.3 In the light of facts and circumstances as mentioned in *para supra* it appeared that the exporters by their acts defeat the very purpose of export benefits allowed to the genuine exporters under the Customs Law and renders the cargo liable to confiscation and themselves liable to penal action.

21.4 The act of omissions and commissions committed by the exporters rendered the cargo liable to confiscation under Section 113 (i) and 113 (b) of the Customs Act, 1962. They are also liable to penal action under Section 114 (iii) and 114 AA, of the Customs Act, 1962.

### **22. Role of M/s B N Thakkar & Co., the Customs Brokers and Sh. Manoj Kannar (the forwarder):**

22.1 Both the above persons were also involved in this syndicate inasmuch as they produce/ cause to produce the impugned cargo before the Customs Authorities, which they knew or had reason to believe, was liable to confiscation, inasmuch as they did not check the cargo or any sample of it before producing the same to the Customs; none of them had ever met the exporters personally or had verified the antecedents of the exporters through some independent source but for the DGFT website and that is why they failed

to produce the exporters before Customs. The Customs Brokers verified the check list from Shri Manoj Kannar, who himself getting the documents through another person, which apparently is non-existing. The shipping bills filed by the Customs Brokers on behalf of the exporters read the nature of Contract as CIF which could not be substantiated from other documents viz. the corresponding invoices produced by them along with the cargo. The Customs Broker and the forwarder only negotiated their monetary consideration and were careless about fulfilling the recruitment of law and their statutory duties.

22.2 The act of omissions and commissions committed by the Customs Broker and the forwarder rendered themselves liable to penal action under Section 114 (iii) and 114 AA, of the Customs Act, 1962.

### 23. Valuation of the Cargo:

23.1 The market enquiries conducted by the Customs officers along with the Customs Brokers regarding the range for the valuation of the goods attempted to be exported under the impugned Shipping Bills. Under the market enquiry no fix/definite price could be obtained, however a range (Minimum - Maximum price) was obtained. As per the price (per piece) emerged out of the market enquiry it appeared that the exporter had overvalued the cargo by approximately five times of the price *vis-à-vis* the market price. Therefore, in the interest of justice it was decided to adopt a mean value of the market value (per piece), which was emerged out of the market enquiries as under:

Table - 7

(Amount in INR)

Sr No.	Name of Exporters M/s	S. B. No./ date	Description of Goods	Assessable value (per piece)	no. of Pcs.	Value as per market enquiry	Ass. Value declared
1	Wafa International	4477415/ 02.03.17	Polyester Baby Romper	175	14400	2520000	7163251
2	- do -	4488745/ 02.03.17	Polyester Frock	137.5	18000	2475000	10478160
3	Global Enterprises	4443537/ 01.03.17	- do -	175	18000	3150000	10478160
4	Super Trading Co.	4477514/ 02.03.17	Ladies Under Garments	112.5	17700	1991250	4683420
5	Monarch Collection and Trading	4484298/ 02.03.17	Polyester Baby Romper	175	18400	3231000	9107267
6	Gurri Enterprise	4442876/ 02103.17	Ladies Under Garments	112.5	17700	1991250	4507791

### 24. The Charge:

24.1 In view of the above M/s Wafa International, Office No. 517, 5<sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, SV Road, Santacruz West, Mumbai-400 054, were issued a SCN No.8/15-152/Enq/SIB/CHM/16-17

dated 07.09.2017 asking them to show cause to the Additional Commissioner of Customs (Adjudication), having his office situated at room no. 102, 1st floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ as to why:

- (i) The assessable value of Rs.71,53,251/- of the cargo, i.e., Polyester Baby Romper attempted to be exported under S/Bill No. 4477415 dated 02.03.2017 and the assessable value of Rs.1,04,78,160/- of the cargo i.e. Polyester Frocks attempted to be exported under S/Bill No. 4478745 dated 02.03.2017 as determined by the exporters M/s Wafa International should not be rejected in terms of Rule 8 and the same should not be re-determined at Rs. 25,20,000/- for S/Bill No. 4477415 dated 02.03.2017 and Rs. 24,75,000/- for S/B No 4478745 dated 02.03.2017 under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007.
- (ii) The cargo i.e. Polyester Baby Romper attempted to be exported under S/Bill No. 4477415 dated 02.03.2017 and the cargo Polyester Frocks attempted to be exported under S/Bill No. 4478745 dated 02.03.2017 by the exporters M/s Wafa International should not be confiscated under section 113 (i) and 118 (b) of the Customs Act, 1962.
- (iii) The penalty under sections 114 and 114AA of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

24.2 In view of the above M/s Global Enterprises, Office No. 79, 1<sup>st</sup> floor, Ashoka Shopping Centre, IT Marg, Mumbai-400 001 were issued a SCN No.S/15-152/Eng/SIB/CHM/16-17 dated 07.09.2017 asking them to show cause to the Additional Commissioner of Customs (Adjudication), having his office situated at room no. 102, 1st floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ as to why:

- (i) The assessable value of Rs. 10478160/- of the cargo i.e. Polyester Frocks attempted to be exported under S/Bill No. 4443537 dated 01.03.2017 as determined by the exporters M/s Global Enterprises should not be rejected in terms of Rule 8 and the same should not be re-determined at Rs. 31,50,000/- under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007.
- (ii) The cargo i.e. Polyester Frocks attempted to be exported under S/Bill No. 4443537 dated 01.03.2017 by the exporters M/s Global Enterprises should not be confiscated under section 113 (i) and 118 (b) of the Customs Act, 1962.

- (iii) The penalty under sections 114 and 114AA of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

24.3 In view of the above M/s Super Trading Co., Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086, were issued a SCN No.S/15-152/Enq/SIB/CHM/16-17 dated 07.09.2017 asking them to show cause to the Additional Commissioner of Customs (Adjudication), having his office situated at room no. 102, 1st floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ as to why:

- (i) The assessable value of Rs. 4683420/- of the cargo i.e. Ladies Undergarments attempted to be exported under S/Bill No. 4477514 dated 02.03.2017 as determined by the exporters M/s Super Trading Co. should not be rejected in terms of Rule 8 and the same should not be re-determined at Rs. 1991250/- under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007.
- (ii) The cargo i.e. Ladies under garments attempted to be exported under S/Bill No. 4477514 dated 02.03. 2017 by the exporters M/s Super Trading Co. should not be confiscated under section 113 (i) and 118 (b) of the Customs Act, 1962.
- (iii) The penalty under sections 114 and 114AA of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

24.4 In view of the above M/s Monarch Collection and Trading, Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086, were issued a SCN No.S/15-152/Enq/SIB/CHM/16-17 dated 07.09.2017 asking them to show cause to the Additional Commissioner of Customs (Adjudication), having his office situated at room no. 102, 1st floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ as to why:

- (i) The assessable value of Rs. 9107267/- of the cargo i.e. Polyester Baby Rompers attempted to be exported under S/Bill No. 4484298 dated 02.03.2017 as determined by the exporters M/s. Monarch Collection and Trading, should not be rejected in terms of Rule 8 and the same should not be re-determined at Rs. 32,34,000/- under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007.
- (ii) The cargo i.e. Polyester baby Rompers attempted to be exported under S/Bill No. 4484298 dated 02.03.2017 by the exporters M/s Monarch Collection and Trading should not be confiscated under section 113 (i) and 118 (b) of the Customs Act, 1962.

- (iii) The penalty under sections 114 and 114AA of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

24.5 In view of the above M/s Girri Enterprise, Office No. 79, 1<sup>st</sup> floor, Ashoka Shopping Centre, 1 T Marg, Mumbai-400 001 were issued a SCN No.S/15-152/Enq/SITB/CHM/16-17 dated 07.09.2017 asking them to show cause to the Additional Commissioner of Customs (Adjudication), having his office situated at room no. 102, 1<sup>st</sup> floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ as to why:

- (i) The assessable value of Rs.45,07,791/- of the cargo i.e. Ladies undergarments attempted to be exported under S/Bill No. 4442876 dated 02.03.2017 as determined by the exporters M/s Girri Enterprise, should not be rejected in terms of Rule 8 and the same should not be re-determined at Rs.19,91,250/- under Rule 6 of the Customs Valuation Rules [Valuation of Export Goods], 2007.
- (ii) The cargo i.e. Ladies Undergarments attempted to be exported under S/Bill No.4442876 dated 02.03.2017 by the exporters M/s Girri Enterprise should not be confiscated under section 113 (a) and 113 (b) of the Customs Act, 1962.
- (iii) The penalty under sections 114 and 114AA of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

24.6 M/s B N Thakkar and Co., Room No. 207, Nilesh Park, Gandhidham - 370 201 and Shri Manoj Kannar, Proprietor of M/s Samar Shipping 201, 2<sup>nd</sup> floor, Mam Complex, Gandhidham, were called upon to show cause to the Additional Commissioner of Customs (Adjudication), having his office situated at room no. 102, 1<sup>st</sup> floor, Public Users Building, Custom House, Mundra, Mundra Port and SEZ as to why the penalty under sections 114 and 114AA of the Customs Act, 1962, should not be imposed on them for their aforesaid acts of omission and commissions.

#### **WRITTEN SUBMISSION:**

25. The exporters in the case in hand, did not submit their written submissions nor they or any representative on behalf of them appeared for personal hearing. Only customs broker and forwarder has submitted their written submissions and appeared for hearing on stipulated dates, which is as under:

25.1 **Written Submission of M/s. B N Thakker (CB):** The customs broker, vide letter dated 09.01.2019, inter alia, submitted that they are obeying

Customs Act, Rule and other allied Acts properly. Shri Manoj Kannar has given them export documents for the total five exports and asked them to file total six shipping bills as per law, they have obtained original KYC Documents duly authorised by their respective Banks then after they have filed the shipping bills on the basis of documents received from Shri Manoj Kannar vide shipping bills No. 4477415, 4488745, 4443537, 4477514, 4484298 and 4442876 all dated 02.03.2017. All the shipping bills have already purged as they did not processed with registration of goods as they sensed some misconduct in the said shipment.

25.2 After filling of shipping bills, they have received goods through two trucks along with manufacturer's invoice issued by M/s. Bhavani Textile, Bhiwandi wherein description of goods was mentioned as "Mixed Chindi", this fact was informed to him by his staff and they held the cargo for registration. He was out of station at that time, therefore, he told his team to all actions regarding said shipment until his return and to inform the customs. Meantime the customs seized the cargo furthermore, they have surrendered the said cargo to customs giving them right to do what seem worthy with the cargo, as they were not a part of this syndicate or had any intention of assisting the guilty. Thus, the noticee requested to drop the allegation made in the show cause notice.

25.3 **Written Submission of Shri Manoj Kannar, Prop of M/s. Samar Shipping (Forwarder):** Shri Manoj Kannar, vide letter dated 10.01.2019, *inter alia*, submitted that M/s. Samar Shipping are freight forwarders, i.e., they have only made arrangement of containers to his clients as per requirement. He was contacted by Shri Dinesh Bhanushali and authorised personnel of M/s. Paresh Enterprise (email:pareshbhaienterprise@gmail.com) for customs clearance of the consignment. He told Shri Paresh to contact a CHA, as he was freight forwarder. Shri Paresh Bhanushali then contacted customs broker M/s. B. N Thakker & Co. a recognised CHA of Gandhidham. He (Manoj Kannar) had arranged the necessary documents and KYCs of the clients and forwarded the same to M/s. B N Thakkar & Co. it was their sole role as forwarder in this consignments.

25.4 After that he never met personally with the parties and the documents were received through courier vide Waybill No.1675101018465 from M/s. Paresh Enterprises having its place of business at Vashi, Navi Mumbai. He has enclosed copy of envelop received from M/s. Paresh Enterprise. He being a forwarder was incapable and even incompetent to assess the value of the cargo. This was the first time he was dealing with such type of cargo. He submitted the copies of relevant documents with the submission and requested to drop

the proceedings since he only acted as forwarder and have no liability or responsibility in the case.

### **PERSONAL HEARING**

26.1 **M/s. B N Thakker (CB):** Shri Sagar Thakker, representative of the Customs Broker, M/s. B N Thakker, appeared for personal hearing, held on 09.01.2019, wherein he, *inter alia*, reiterated that shipping bills filed by them have been purged. After seeing the cargo, they came to know that it was chindi, they did not register the cargo with the customs for examination because they had come to know of mis-declaration of description and value of export goods which was actually mixed chindi. He requested to drop the proceedings against them as they acted in bonafide manner.

26.2 **Shri Manoj Kannar:** Shri Anand Singhal, Advocate appeared for personal hearing on behalf of Shri. Manoj Kannar which was held on 09.01.2019, wherein he, *inter alia* reiterated that Shri Manoj Kannar was the forwarder and the exporters got in touch with him. And as per their request, he introduced the exporter to the CHA M/s. B N Thakker. After the case was made by the SIIB, Shri Manoj Kannar called to the exporter on the mobile number available, however, the so called exporters were unresponsive. The learned Advocate also stated that actions of his client were bonafide and requested to drop the proceedings.

### **DISCUSSION AND FINDING**

27. I have carefully gone through the case records as well as written submissions made by the nounces and record of the personal hearing. I find that the issue is common in all the exports, under the 06 shipping bills filed by 05 exporters.

27.1 The issues under consideration in this case are whether:

- (i) The assessable value of the cargo attempted to be exported under the S/Bills in relation to 06 shipping bills filed by five exports as mentioned in the notice, as determined by the exporters liable to be rejected in terms of Rule 8 and the same is required to be re-determined under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007.
- (ii) The cargo attempted to be exported under the S/Bills in relation to 06 shipping bills filed by five exports as mentioned in the notice, by the exporters liable to be confiscated under section 113 (i) and 118 (b) of the Customs Act, 1962.

(iii) Penalty under sections 114 and 114AA of the Customs Act, 1962, on all five exporters as discussed in the notice, liable to be imposed on them for their aforesaid acts of omission and commissions.

(iv) Whether, M/s. B N Thakker, (CB) and Shri Manoj Kannar, Proprietor of M/s Samar Shipping are liable for penalty under section under sections 114 and 114AA of the Customs Act, 1962

27.2 I find that none of the exporter has filed written submission with respect to the notice nor any exporter has appeared for personal hearing. The hearing letters issued to the exporters have been returned back from the postal authority un-delivered with a remark "Left".

27.3 I find that during the investigation of the case, none of the exporters have appeared to record their statements under Section 108 of the Customs Act, 1962 even after issuance of repeated reminders on various dates and summonses. I find from the export documents as well as from investigation that the exporters attempted to export the low valued wearing apparels, i.e., Polyester Baby Romper, Polyester frocks and Ladies under Garments by grossly overvaluing the impugned goods to avail higher drawback. Therefore, the wearing apparels were seized under panchnama and seizure memo dated 10.03.2017 under section 110(1) of the Customs Act, 1962 on reasonable belief that the impugned goods were liable to confiscation under Section 111 of the Customs Act, 1962.

27.4 Market enquires were conducted by the department along with Ms. Kiran Thakkar, F-Card holder of the Customs Broker regarding valuation of the goods on 21.03.2017. During the enquiry, it was confirmed that the said export goods were overvalued as mentioned in the notice.

27.5 During the investigation, summonses were issued to all the exporters but nobody turned up, therefore, the registered addresses of all the exporters were verified through Mumbai Customs. The Customs authorities at Mumbai also reported that the addresses are residential addresses and no such commercial activities were running over there.

27.6 I also find that all the exporters have submitted letters allegedly dated 09.03.2017 addressed to the Deputy Commissioner Export, Custom House, Mundra wherein they have submitted that there was some mistake of their supplier had sent low quality and not well packed cargo at Mundra. When their CHA told about this matter, at the same time they took action regarding this matter to supplier. They have given order for best quality and well packed



cargo. Thus, all the exporters submitted another invoices with proper value of the cargo and requested to give permission to export the goods.

27.7 On perusal of the above letters of all the five exporters, I find that when the panchnama was drawn on 10.03.2017 then the doubt arises as to how the exporter got the knowledge of questionable quality on 09.03.2017. I find that the said letters dated 09.03.2017 were received in the Custom House only on 24.03.2017. All the letters are identically worded and in same fonts & size. It makes it evident for me that same person who is behind this scheme has submitted the predated letters as a tutored afterthought. I find that it is a futile attempt to legitimise the attempt to mis-declare the export cargo.

27.8 I find that, the value of the export cargo varied from Rs.45 lakh to Rs.104.78 lakh and the amount of drawback thereon as claimed by the exporters varies from Rs.2.65 lakh to Rs.7.92 lakh. All the export consignments are destined for Dubai and that too to one company only. Initially the exporters attempted to amend the export documents, however, finally following three exporters out of five surrendered their cargo to Customs for auction purpose willingly. They are M/s. Wafa International, M/s. Super Trading Co, and M/s. Monarch Collection and Trading.

27.9 The account statement of M/s Monarch Collection and Trading as provided by M/s Axis Bank Ltd, indicated that M/s. Wafa International and Super Trading were engaged in the transaction with M/s Monarch Collection and Trading which proves that the exporters were members of a syndicate, whose sole intention was to export the impugned goods at a higher value and to avail higher drawback. The act of omissions and commissions done by the exporters, the Customs Brokers were purposeful and with intent to get undue Drawback benefit by inflating the export price of low value garments.

27.10 From the above discussion I find that all the aforesaid 05 exporters have adopted a common *modus operandi* which is to procure low valued garments and overvalue the same to avail higher amount of drawback. However, when detected and intercepted by the department then make some lame excuses and furnish another set of invoices in order to export the cargo. These 05 exporters operate from addresses, which though exist physically but were a residential premises of some other unrelated person & not an office premises, so the identity of these so called exporters remain camouflaged and concealed.

27.11 I find that all the 05 exporters have on purpose by design and intent have mis-declared & inflated the value of low value garments to obtain unduly and illegally the higher drawback. I hold that, all the goods (Garments) covered

under six shipping bills of 05 exporters mentioned in Table-I are liable for confiscation under Section 113(i) read with Section 118(b) of the Customs Act, 1962. The 05 exporters viz. (1) M/s. Wafa International, (2) M/s. Global Enterprises, (3) M/s. Super Trading Co., (4) M/s. Monarch Collection and Trading and (5) M/s. Girri Enterprise are liable for penalty under Section 114(iii) of the Customs Act, 1962.

27.12 The exporters have intentionally mis-declared the higher value to avail the higher drawback; even at the time of investigation. Instead of tendering statement and to assist the investigating officers, the exporters have produced invoices of low value and requested to release the cargo to export. When the exporters were called frequently through summonses, three exporters out of five have relinquished the goods. Thus, they had tried to purposefully mis-lead the investigation by not producing themselves for investigation though their registered office was not available at the given addresses. They have not only given their bogus addresses, but also raised invoices with false and mis-declared high values for low value garments. I hold that all the 05 exporters, whose names are detailed above, are liable for penalty under Section 114AA of the Customs Act, 1962.

#### **DISCUSSION ABOUT ROLE OF CUSTOMS BROKER**

28.1 I find that during the investigation the authorised person, Shri Sagar Thakker of the CB was asked whether they had obtained authorisation from the exporters, he said yes. But when he was asked about details of documents received for filing of shipping bills, he stated that the CB had received invoice, packing list, KYC from Shri Manoj Kannar a Forwarder, Shri Sagar never declared that the CB M/s. B.N Thakkar & Co. had never received any authorisation from exporters who later were found to be non-existent at given address. I also find that the CB had produced all the export related documents but not produced the authorisation letter during investigation nor during adjudication process. Even in written submission, the CB has submitted that Shri Manoj Kannar has given them export documents for the total five exports and asked them to file total six shipping bills. Thus, I find that the CB has contravened the provisions 11(a) of CBLR, 2013 (as amended).

28.2 The CB, vide his written submission submitted that after filing of shipping Bills, they received goods through two trucks bearing No. GJ15-YY-9082 and GJ12-AZ-0408 along with manufacturer's invoice issued by M/s. Bhavani Textiles, Bhivandi under which it was mentioned goods description as "MIXED CHINDI", they kept on hold the cargo for further clarification from Shri Manoj Kannar or their exporters.

28.3 I find that it was the obligation on the CB to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs in case of non-compliance, or mis-declaration of goods instead of informing to Shri Manoj Kannar or the exporters. Thus, the CB has contravened the provisions of 11(d) of CBLR, 2013 (as amended).

28.4 The CB has argued in written submission that Shri Manoj Kannar has given them export documents for the total five exports and asked them to file total six shipping bills; that they have obtained original KYC Documents duly authorised by their respective Banks then after they have filed the shipping bills on the basis of documents received from Shri Manoj Kannar.

28.5 Whereas, Shri Sagar in his statement tendered that that they received whole set of documents viz. Invoice, packing list, KYC through Shri Manoj Kannar only; that they had verified the IEC authenticity online from DGFT website.

28.6 There is contradiction in the statement of Shri Sagar Takkar and in written submission of CB. It is on records that the CB had not verified the antecedent, identity of the exporters and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information, particularly when the exporters had not approached the CB directly for their export work. Online verification of IEC only is not sufficient to verify antecedent because IEC is given by DGFT online without verification of clients.

28.7 Shri Sagar has also tendered in his statement that he got verified Check list from Shri Manoj Kannar (Forwarder), as he was not in direct contact of the exporters and he was not in direct touch of the exporters. I find that the Customs Broker was supposed to get verify the check list from the exporter instead of Shri Manoj, because Shri Manoj Kannar was getting the documents from another persons, who were non-existing. I also find that even after getting notice of fraudulent attempt of export by the exporters, the CB has never tried to contact the exporters nor they got done the verification of the existence of the exporter company. From the records it is not forthcoming that after receiving documents from Shri Manoj Kannar, the CB had ever tried to contact the exporters. Thus, the CB has contravened the provisions of regulation 11(n) of the CBLR, 2013 (as amended).

28.8 I find that subsequently some letters were received at the Customs House, viz., request letters of all the exporters dated 09.03.2017 in respect of giving another invoice with proper value (low price) of the cargo and allow them shipment for export. Further I find that three exporters, viz., M/s. Wafa

International. M/s. Super Trading Co., and M/s. Monarch Collection & Trading submitted their letter dated 28.07.2017 in respect of surrender of their cargo. All the above letters were acknowledged/ received at inward section/ Sevottam at the Custom House with office seal/ stamp of the Custom House. On the other hand I also find that all the summonses issued to the exporter returned back from the postal authority undelivered from the address given on their letter head. These facts indicate that some entity was working on behalf of the exporter. There are enough indications that the CB has worked hands in gloves with the exporters in an attempt to facilitate the overvaluation of low value garments.

28.9. The shipping bills filed by the Custom Broker on behalf of the exporters declared the terms of payments CIF which could not be substantiated with any other documents as well as the declared value which in itself is misleading and mis-stated. The Customs Broker was evidently careless about fulfilling their statutory duties under CBLR, 2013 as a Custom Broker.

28.10. From the above discussion, I find the act of CB have helped in rendering the export goods liable for confiscation under section 113(i) of the Customs Act, 1962. Therefore, I find that the CB is an abettor in making goods liable for confiscation under Section 113(i) of the Custom Act, 1962 and hence liable for penalty under section 114(iii) of the Customs Act, 1962.

28.11. The CB knowingly and intentionally involved himself in the export of overvalued goods and used false and incorrect material by filing the Shipping Bills to facilitate the impugned exporters, produced false and incorrect declaration before the department and statements. Their act for omission and commission and to facilitate the unscrupulous exporters for self-monetary consideration rendered themselves for penalty under section 114AA of the Customs Act, 1962.

#### **DISCUSSION ABOUT ROLE OF MANOJ KANNAR**

29.1. I find that during the investigation Shri Manoj Kannar was asked as to how the exporters knew him, where upon he rendered in his statement that he didn't know the exporters personally but one person namely, Shri Dinesh Bhanushali called him from mobile No.98245 64329 (detail address not known) to book the containers for Dubai and Customs clearance work; that Mr. Dinesh Bhanushali resides at Mangaldas, Ratadiya Falia, Tera, Kutch;

29.2. During the course of investigation efforts were made to locate Sh. Dinesh Bhanushali S/o Bhanushali Nary and to issue summons, one officer from Custom House, Mundra was deputed to visit the above address. On enquiry, it

was observed that no such person was existing/ residing over there. He was tried to contact on above given number but the said mobile number was found out of reach.

29.3 Shri Manoj Kannar submitted copy of envelop sent to him by Shri Dinesh Bhanushali, with his written submission wherein the address is shown as under:

Paresh Enterprises, Office No. 115, Malika Chamber, Plot No.14/15, Sector-19C, Vashi Navi, Mumbai 400709 Mob No.: 9029788319/ 316.
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29.4 From the above it is observed that Shri Manoj Kannar mis-lead the investigation by giving wrong address and mobile number of Shri Dinesh Bhanushali during the investigation Shri Manoj Kannar, further submitted that he told Shri Paresh to contact a CHA, as he was freight forwarder. Shri Paresh Bhanushali then contacted customs broker M/s. B. N Thakker & Co. He (Manoj Kannar) had arranged the necessary documents and KYCs of the clients and forwarded the same to M/s. B N Thakkar & Co. However, Shri Manoj in his statement dated 28.04.2017 submitted that his friend, i.e., Sagar Thakkar is doing work related to Customs clearance. They (Shri Manoj Kannar and Sagar) finalised the rates of Custom clearance in this case whereas in his written submission dated 10.01.2019 he has stated that in these consignment his sole role was of Forwarder. He claims in his written submission that, he arranged necessary documents and KYC of the client and forwarded the same to M/s. B.N. Thakar & Co. How he got documents from a non-existent person is not explained.

29.5 Shri Sagar Thakkar, in his statement dated 27.04.2017 has also submitted that Shri Manoj Kannar had directed him to file the Shipping bills; that check list for shipping bills were approved by Shri Manoj Kannar as they were not in direct contact with the exporters. This fact also proves direct involvement of Shri Manoj Kannar in overvaluation of the export cargo. He has categorically mentioned in his statement that they know the exporters only through Shri Manoj Kannar and were not in direct contact with the exporters.

29.6 From the above facts I find that Shri Manoj Kannar is also found to be involved in the case as he produced the impugned cargo before the Customs Authorities, which he knew or has reasons to believe, that it is liable for confiscation. He indulged himself for his monetary benefits and did not take care to ever meet the exporters personally or to verify the antecedents of the

exporters through some independent source except for the DGFT website and that is why they failed to produce the exporters before Customs. Shri Manoj Kannar was not authorised to approve the check list as he was not the exporter in the instant case. The shipping bills filed on behalf of the exporters shows terms of payment as CIF which could not be substantiated from other documents viz. the corresponding invoices produced by them along with the cargo. Shri Manoj Kannar only negotiated his monetary consideration and never took care of legality of exports and bonafides of exporters. He is also an abettor in making the impugned garments mis-declared for value, liable for confiscation under section 113(i) of the Customs Act, 1962.

30.1 The act of omissions and commissions committed by the Customs Broker M/s. B.N. Thiakar & Co. and the forwarder rendered themselves liable to penal action under Section 114 (iii) and 114 AA, of the Customs Act, 1962.

30.2 From the above discussion, I find the act of Shri Manoj Kannar renders the export goods liable for confiscation under section 113(i) of the Customs Act, 1962. Therefore, I find that Shri Manoj Kannar is liable for penalty under Section 114(iii) of the Customs Act, 1962.

30.3 Shri Manoj Kannar knowingly and intentionally and a purpose involved himself in the export of overvalued goods and used false and incorrect material by filing the shipping to facilitate the impugned exporters, produced false and incorrect declaration before the department and statements. His act for omission and commission and to facilitate the unscrupulous exporters for self-monetary consideration rendered themselves for penalty under section 114AA of the Customs Act, 1962.

31. In view of the above, I pass the following order.

#### ORDER

**A. Wafa International Office No. 517, 5th Floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santacruz West, Mumbai-400 054;**

(i) I hereby reject the assessable value of Rs. 71,63,251/- of the cargo i.e. Polyester Baby Romper attempted to be exported under S/Bill No. 4477415 dated 02.03.2017 and the assessable value of Rs. 1,04,78,160/- of the cargo, i.e., Polyester Frocks attempted to be exported under S/Bill No. 4478745 dated 02.03.2017 in terms of Rule 8 and order the re-determined value of Rs.25,20,000/- for S/Bill No. 4477415 dated 02.03.2017 and Rs. 24,75,000/- for S/Bill No. 4478745 dated 02.03.2017 under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007 be taken as correct value.

(ii) I order confiscation of Polyester Baby Rompers attempted to be exported under S/Bill No. 4477415 dated 02.03.2017 and the cargo Polyester Frocks attempted to be exported under S/Bill No. 4478745 dated 02.03.2017 under Section 113 (i) read with Section 118 (b) of the Customs Act, 1962, I allow the redemption of the confiscated goods on payment of fine of Rs.10,00,000/- (rupees ten lakhs only) in terms of section 125 of the Customs Act, 1962.

(iii) I impose penalty Rs.20,00,000/- (rupees twenty lakhs only) on M/s. Wafa International, Mumbai under sections 114 of the Customs Act, 1962.

(iv) I impose penalty Rs.5,00,000/- (rupees five lakhs only) on M/s. Wafa International, Mumbai under sections 114AA of the Customs Act, 1962.

**B. M/S GLOBAL ENTERPRISES, OFFICE NO. 79, 1ST FLOOR, ASHOKA SHOPPING CENTRE, I T MARG, MUMBAI-400 001:**

(i) I reject the assessable value of Rs.10478160/- of the cargo, i.e., Polyester Frocks attempted to be exported under S/Bill No. 4443537 dated 01.03.2017, under rule 8, as determined by M/s Global Enterprises and order that the re-determined value of Rs.31,50,000/- under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007 be taken as the correct value.

(ii) I order confiscation the cargo, i.e., Polyester Frocks attempted to be exported under S/Bill No. 4443537 dated 01.03. 2017 by M/s Global Enterprises under Section 113 (i) read with Section 118 (b) of the Customs Act, 1962. I allow the redemption of the confiscated goods on payment of fine of Rs.6,00,000/- (rupees six lakhs only) in terms of section 125 of the Customs Act, 1962.

(iii) I impose penalty Rs.12,00,000/- (rupees twelve lakhs only) on M/s Global Enterprises under sections 114 of the Customs Act, 1962, and

(iv) I impose penalty Rs.3,00,000/- (rupees three lakhs only) on M/s Global Enterprises under 114AA of the Customs Act, 1962.

**C. M/S SUPER TRADING CO., OFFICE NO. 509/B, KOHINOOR COMPOUND, SWASTIK DISHA CORPORATION PARK, LBS MARG, OPP. SHREYA CINEMA, GHATKOPER WEST, MUMBAI-400 086:**

(i) I reject the assessable value of Rs.4683420/- of the cargo, i.e., Ladies Undergarments attempted to be exported under S/Bill No. 4477514 dated 02.03.2017 as determined by M/s Super Trading Co. in terms of Rule 8 and order that the re-determined value of Rs.1991250/- under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007 be taken as the correct value.

(ii) I order confiscation the cargo, i.e., Ladies under garments attempted to be exported under S/Bill No. 4477514 dated 02.03. 2017 by M/s. Super Trading Co. under Section 113 (i) read with Section 118 (b) of the Customs Act, 1962. I allow the redemption of the confiscated goods on payment of fine of Rs.4,00,000/- (rupees four lakhs only) in terms of section 125 of the Customs Act, 1962.

(iii) I impose penalty Rs.8,00,000/- (rupees eight lakhs only) on M/s. Super Trading Co. under sections 114 of the Customs Act, 1962, and

(iv) I impose penalty Rs.2,00,000/- (rupees two lakhs only) on M/s. Super Trading Co. under sections 114AA of the Customs Act, 1962.

**D. M/S MONARCH COLLECTION AND TRADING, OFFICE NO. 509/B, KOHINOOR COMPOUND, SWASTIK DISHA CORPORATION PARK, LBS MARG, OPP. SHREYA CINEMA, GHATKOPER WEST, MUMBAI-400 086:**

(i) I reject the assessable value of Rs.9107267/- of the cargo, i.e., Polyester Baby Rompers attempted to be exported under S/Bill No. 4484298 dated 02.03.2017 as determined by M/s Monarch Collection and Trading, in terms of Rule 8 and order that the re-determined value of Rs.32,34,000/- under Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007 be taken as the correct value

(ii) I order confiscation the cargo, i.e., Polyester baby Rompers attempted to be exported under S/Bill No. 4484298 dated 02.03.2017 by M/s Monarch Collection and Trading under Section 113 (i) read with Section 118 (b) of the Customs Act, 1962. I allow the redemption of the confiscated goods on payment of fine of Rs.6,00,000/- (rupees six lakhs only) in terms of section 125 of the Customs Act, 1962.

(iii) I impose penalty Rs.12,00,000/- (rupees twelve lakhs only) on M/s. Monarch Collection and Trading under sections 114 of the Customs Act, 1962, and

(iv) I impose penalty Rs.3,00,000/- (rupees three lakhs only) on M/s. Monarch Collection and Trading under sections 114AA of the Customs Act, 1962.

**E. M/S GIRRI ENTERPRISE, OFFICE NO. 79, 1ST FLOOR, ASHOKA SHOPPING CENTRE, I T MARG, MUMBAI-400 00:**

(i) I reject the assessable value of Rs.45,07,791/- of the cargo, i.e., Ladies undergarments attempted to be exported under S/Bill No. 4442876 dated 02.03.2017 as determined by M/s Girri Enterprise, in terms of Rule 8 and order that the re-determined value of Rs.19,91,250/- under



Rule 6 of the Customs Valuation Rules (Valuation of Export Goods), 2007 be taken as the correct value

(ii) I order confiscation the cargo, i.e., Ladies Undergarments attempted to be exported under S/Bill No. 4442876 dated 02.03, 2017 by M/s. Girri Enterprise under Section 113 (i) read with Section 118 (b) of the Customs Act, 1962. I allow the redemption of the confiscated goods on payment of fine of Rs.4,00,000/- (rupees four lakhs only) in terms of section 125 of the Customs Act, 1962.

(iii) I impose penalty for Rs.8,00,000/- (rupees eight lakhs only) M/s. Girri Enterprise under sections 114 of the Customs Act, 1962, and

(iv) I impose penalty for Rs.2,00,000/- (rupees two lakhs only) M/s. Girri Enterprise under sections 114AA of the Customs Act, 1962

**F** I impose a penalty of Rs.20,00,000/- (rupees twenty lakhs only) on M/s B N Thakkar and Co., Room No. 207, Nilesh Park, Gandhidham - 370 201 under Section 114(iii) of the Customs Act, 1962 and also impose a penalty of Rs.5,00,000/- (rupees five lakhs only) on them under Section 114AA of the Customs Act, 1962.

**G.** I impose a penalty of 20,00,000/- (rupees twenty lakhs only) on Sh Manoj Kannar, Proprietor of M/s Samar Shipping 201, 2<sup>nd</sup> floor, Mani Complex, Gandhidham under Section 114(iii) of the Customs Act, 1962 and also impose a penalty of Rs.5,00,000/- (rupees five lakhs only) on them under Section 114AA of the Customs Act, 1962.



(Prashant Kaduskar) 27/2/2019  
Additional Commissioner,  
Custom House, Mundra.

**BY RPAD/ BY Hand Delivery**

To,

- (i) M/s Wafa International, Office No. 517, 5<sup>th</sup> floor, Dheeraz Heritage, Nr. Santa Cruz Bus Depot, S V Road, Santa Cruz West, Mumbai-400 054,
- (ii) M/s Global Enterprises, Office No. 79, 1<sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001
- (iii) M/s Super Trading Co., Office No. 509/B, Kothuoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086,

- (iv) M/s Monarch Collection and Trading, Office No. 509/B, Kohinoor Compound, Swastik Disha Corporation Park, LBS Marg, Opp. Shreya Cinema, Ghatkoper West, Mumbai-400 086,
- (v) M/s Girri Enterprise, Office No. 79, 1<sup>st</sup> floor, Ashoka Shopping Centre, I T Marg, Mumbai-400 001
- (vi) M/s B N Thakkar and Co., Room No. 207, Nilesh Park, Gandhidham - 370 201
- (vii) Sh. Manoj Kannar, Proprietor of M/s Samar Shipping 201, 2<sup>nd</sup> floor, Mani Complex, Gandhidham.

**Copy to:**

- (i) The Deputy Commissioner of Customs (RRA), Customs House, Mundra.
- (ii) The Deputy Commissioner, Customs Broker Section, Customs House, Mundra to take action against M/s. B. N. Thakker, as per CBLR, 2013, as amended.
- (iii) The Deputy Commissioner of Customs (SIIB), Customs House, Mundra.
- (iv) The Deputy Commissioner of Customs (Disposal), Customs House, Mundra.
- (v) The Deputy Commissioner of Customs (Export), Customs House, Mundra.
- (vi) The Deputy Commissioner of Customs (Drawback), Customs House, Mundra.
- (vii) The Deputy Commissioner of Customs (TRC), Customs House, Mundra.
- (viii) The Deputy Commissioner of Customs (EDI), Customs House, Mundra.
- (ix) Notice Board, Customs House, Mundra.
- (x) Guard File.