



**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/48-10/Adj/ADC/MCH/19-20
B	Order-in-Original No.	MCH/ADC/SK/07/2020-21
C	Passed by	Shri Sushant Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	28.04.2020
E	Date of Issue	28.04.2020
F	SCN NO. & Date	DRI/HQ-CI/50D/ENQ-26(INT-24)/ 2015-Pt. dtd. 02.05.2019
G	Noticee / Party / Importer / Exporter	M/s DRRK Foods Pvt. Ltd, Khasra No.12/1, Village Alladinpur, Govindwal Road, Trantaran , Punjab & others.
H	DIN No.	20200471MO0000010BCE

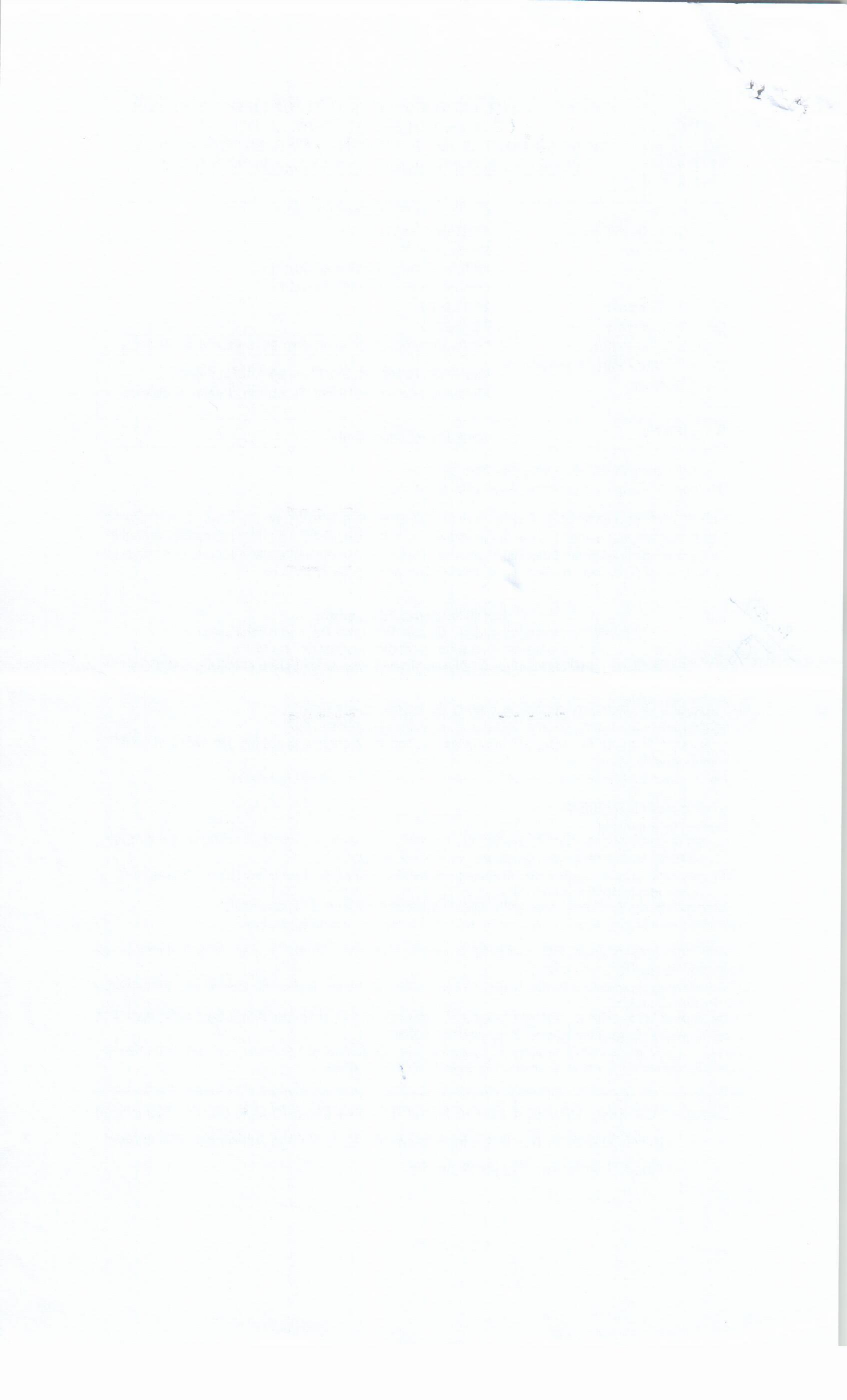
1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में 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:

POLED  
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**“ 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.”**

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 पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए 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.
5. 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 :- SCN F.No. DRI/HQ-CI/50D/ENQ-26(INT-24)/ 2015-Pt. dt. 02.05.2019 issued  
to M/s DRRK Foods Pvt. Ltd, Khasra No.12/1, Village Alladinpur, Govindwal  
Road, Trantaran , Punjab & others.**





**BRIEF FACTS OF THE CASE :**

1. Acting upon a specific information regarding violation of the provisions of the Customs Act, 1962, by M/s DRRK Foods Private Limited, (IEC 1298000815) (hereinafter also referred to as 'Exporter') located at Khasra No. 12/1, Village Alladinpur, Tarantaran, Punjab, India, investigation was initiated by the office of Directorate of Revenue Intelligence (Hqrs.), 7<sup>th</sup> Floor, "D" Block, I.P. Bhawan, I.P. Estate, New Delhi (hereinafter referred to as DRI).

**1.1.** Statement of Shri Amit Marwaha, Director, M/s DRRK Foods Private Limited, Khasra No. 12/1, Village Alladinpur, Tarantaran, Punjab was recorded on 15.03.2016 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that they exported rice to Dubai, Iran, Iraq, Saudi Arabia, Kuwait, Bahrain, USA etc.; that their exports of rice to Iran have taken place from Mundra Port & ICD Ludhiana; that their Customs House Agent for these consignments was M/s V. Arjoon, contact person was Shri Gordhan Bhowani (mobile No. 09925237882) for Mundra and M/s. RB Ramnath Lambah, contact person Sh. Dalip Singh (09814051978) for ICD Ludhiana; that he interacted with above CHAs regarding export of rice to Iran; that negotiations with foreign buyers were carried out in the currency in which payment was received by them i.e. where payment was to be received in Dollars, the rates shall be quoted in Dollars and where payments were to be received in Indian Rupees, the rates shall be quoted in Indian Rupees; that as on date the remittances of export consignments was received in INR from Iran and in US\$ from Dubai and other countries; that the remittances in Indian Rupees in respect of rice exported to Iran was allowed as per the agreement between India and Iran and in respect of export of rice to all other countries payment was received in dollars or Euro. He submitted the details of rice exported to Iran during the year 2014-2015 & 2015-2016 (07 pages). On being asked about diversion to Dubai or other ports of rice exported to Iran, he stated that seven consignments (S. no. 21 & 22 of 2014-2015 and 3, 7, 16, 18 & 19 of 2015-2016) (of the list provided by him during his statement) which were shipped for Iran, had been discharged at Port of Jebel Ali Dubai.

Sl. No.	SB No. / date	BL on No.	Invoice No. / date	Invoice Amount (INR)
1.	8539391/ 23/03/2015	GMAEMUNJEA009062	DRFL/0088 12.03.2015	16387500.00
2.	8703227/ 30/03/2015	BALMUNJEA009110	DRFL/0089 15.03.2015	16560000.00
3.	8753224/ 01/04/2015*	VASMUNJEA009071	DRFL/0092 18.03.2015	2281600.00
4.	9285022/ 29/04/2015	GMAEMUNJEA009326	DRRK/0301 20.04.2015	3553500.00
5.	1304961/ 20/06/2015	GMAEMUNJEA009792	DRRK/0317 08.06.2015	4416000.00
6.	1714648 10/07/2015#	VASMUNJEA10021	DRFL/0128 04/07/2015	5807500.00
7.	1712656 10/07/2015	VASMUNJEA10023	DRFL/0124 04/07/2015	17077500.00

\* Mentioned incorrectly as 11/04/2015 in the list

# Mentioned incorrectly as 16/07/2015 in the list

He further stated that the Port of discharge shown in these details was as per the bills of lading, however, actually, in case of above seven consignments, those have been discharged at Jebel Ali Port, Dubai and delivered to different buyers; that the said



diversion took place on the instructions of their Iranian buyers M/s Kian Mehr Tejarat Jonoub Iranian Co. and M/s. Kaspian Mehr Mobin Edeh with whom they had contract to supply Rice to Iran; that he had been shown certain documents pertaining to the above seven consignments, which were provided by the shipping lines and signed on those documents as a token of having seen the same; that Sh. Rakesh Kumar, their Export Manager, had requested vide different letters to the shipping line i.e. Vasco Maritime Pvt. Ltd or Goodrich Maritime Pvt. Ltd for surrendering the original B/L and for delivery to the notify party at Dubai; that on being asked as to why the delivery orders had been issued by the shipping lines in the name of other parties, he stated that on the basis of documents shown to him, it appeared that the notify party had instructed the shipping line to deliver the cargo to other Dubai based parties about which he did not had any knowledge till the time; that they had not applied for any amendment in the Shipping Bills, pertaining to those consignments regarding change in consignee name and Port/country of Discharge/Destination; that on being asked as to why necessary amendment was not got done in the Shipping Bills, he stated that since payment was to be received from Iran in Indian rupees, the amendment was not made; that he would like to add that the name of Dubai based party was already mentioned as 'notify party' in export documents submitted to Customs at the time of clearance for export; that they had not intimated to their bank about the change of destination of above seven consignments; that on being asked as to why the same was not intimated to the bank as the payment in INR can be received only against those consignments which were delivered in Iran and not for the consignments which were discharged at Jebel Ali Port, he admitted that they had incorrectly relied upon the verbal assurances given by the buyer regarding ultimate destination being Iran, which was a mistake.

**1.2.** Statement dated 16.12.2015 of Shri Sunjjoy Salve, Vice President (Western Region) of M/s Goodrich Maritime Pvt. Ltd., 174, Sector 1A, Opposite Havmor, Gandhidham, Distt. Kutch, Gujarat was recorded, wherein he inter-alia stated that he was working as a Vice President, Western Region in M/s Goodrich Maritime Pvt. Ltd. since May 2015; that he was looking after Shipping Liner activities at Kandla, Mundra, Ahmedabad and Indore. On being asked he stated that as a Shipping Line, they used to provide facilities to the exporters for exporting the goods by providing vessel as per their requirement mainly for exporting goods like Rice, Minerals, used clothing, pharmaceuticals etc.

On being asked about the shipping consignments of rice commodity, he stated that by their Shipping Line they booked the vessel for delivery of Rice mostly for Jebel Ali (Dubai), Doha (Qatar), Bahrain, Dammam, Abu Dhabi, Bandar Abbas (Iran) etc. He submitted the list of the major rice exporters with whom their company was shipping.

**1.3.** Statement dated 22.12.2015 of Shri Tushar H. Anam of M/s V. Arjoon, 6, Hafizain Bldg. 3rd Floor, 129/131, Kazi Syed Street, Masjid (W), Mumbai – 400 003, CHA was recorded under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that he joined their family firm M/s V. Arjoon (CHA Code AAAPV2081LCH001) as a clerk and later on became a working partner in 1984; that besides him, Shri Hirala IAnam, his father, Shri Ashwin H. Anam, his elder brother, Shri Jai T. Anam, his son and Shri Sagar A. Anam, his nephew were the partners in M/s V. Arjoon; that they were engaged in the Customs clearance activities at Mumbai Sea Port, Nhava Sheva Port,



Kandla Port, Mundra Port and Hazira Port; that M/s DRRK Foods Pvt. Ltd was one of their major exporter clients; that all these clients exported rice to Iran and various other countries; that the remittance can be received in INR against export made to Iran; that he understood that there was a treaty between India and Iran that the remittance can be received only in INR against the export made from India to Iran; that he also understood that the remittance can be received in freely convertible currency against exports made to countries other than Iran; that he was not aware that the remittance received in INR against exports made to other than Iran is a violation of Foreign Trade Policy; that he was not aware of the provisions of the Foreign Trade Policy; that he was not in the position to guide their clients to ensure compliance of the provisions of Foreign Trade Policy; that they provided the services to their clients engaged in the export of rice to Iran like customs clearance, all logistics services through M/s. V. Arjoon Shipping Limited; that Shri Jai T. Anam, Shri Sagar A. Anam and himself were the three directors of this company which was engaged in arranging transportation, warehousing, container booking etc. for their clients; that Shri Gordhan Bhowani, H-card holder of M/s. V. Arjoon and himself interacted with all the shipping lines on behalf of their clients; that that some shipments of rice, which were cleared for export to Iran were later on diverted at Jebel Ali Port after customs clearance; that he inter alia submitted documents (-Letter dated 23.10.2015 of M/s. DRRK Foods (Pvt.) Ltd. addressed to the office of the Principal Commissioner of Customs, Mundra regarding documents of Rice Export to Iran (one page) relating to M/s. DRRK Foods Pvt. Ltd. under his dated signatures; that the diversion of goods to Dubai after clearance for Iran was not brought to the notice of Customs authorities at the Port of export by exporters or shipping lines, because cargo had already left Indian waters and had reached Jebel Ali and Exporters/Shipping Line had not requested for any amendment in the Shipping Bill.

**1.4.** Statement dated 30.12.2015 of Shri Sunjjoy Salve, Vice President (Western Region) of M/s Goodrich Maritime Pvt. Ltd., 174, Sector 1A, Opposite Havmor, Gandhidham, Distt. Kutch, Gujarat was recorded under Section 108 of the Customs Act, 1962, wherein on being asked about the documentation process he inter alia stated that draft copy of Bill of Lading on the basis of shipping bill was forwarded by them to the concerned CHA by e-mail; that thereafter, CHA provided them the shipment allowed export documents i.e. shipping bill, commercial invoice and packing list; that thereafter, they generated the Bill of Lading according to Shipping Bill handed over to concerned CHA after collection of freight and other local charges as per the terms & conditions agreed upon; that on being asked about the Bill of Lading number, he stated that first three/four alphabets represented the shipping line, then three alphabet represented Port of loading, then three alphabets for transshipment if applicable or final destination and Sequence number generated by the system. For example GMAEMUNBND\*\*\*\*\* for consignment shipped by them from Mundra Port to Bandar Abbas.

**1.5.** M/s DRRK Foods Pvt. Ltd vide their letter dated 21.03.2016 submitted a demand draft No. 006636 dated 21.03.2016 for Rs. 10,00,000/- (Rupees Ten lakhs) in favour of Principal Commissioner of Customs, Mundra, towards probable adjudication levies. The said draft was deposited vide TR-6 No-29 dated 07.04.2016.



**1.6.** Shri Gordhan Bhawnani, Manager of M/s V. Arjoon, Plot No. 130, Lilashah Nagar, Gandhidham in his voluntary statement dated 09.01.2017 recorded under section 108 of the Customs Act, 1962 inter alia stated that he was working as Manager in M/s. V. Arjoon and looking after documentation of all Customs related work of Exports side and other day to day client work; that he passed G-Card examination in 2016 but had been handling all the work relating to Customs clearance assigned to him by his Company in coordination with the clients; that he is well versed with all the legal provisions and procedures for Customs clearance. On being asked about the procedure they follow in the case of export of rice to various countries, he stated that first of all they receive the Shippers (Exporters) documents i.e. Invoice, Packing List, APEDA Certificates and SDF (Self Declaration Form) for Banking purpose; that then on the basis of these documents, he used to file a checklist from his office on ICEGATE; that on the basis of declaration filed in the ICEGATE, they would take a printout of the checklist and check it and on finding it to be correctly entered and generated, they would submit it to ICEGATE for generating Shipping Bill; that then on receipt of the cargo from exporter, the goods were presented to Customs for examination and on clearance by Customs, the goods were stuffed in the containers; that on being asked as to how they get the containers from the Shipping lines, he stated that they place booking to the shipping line from the office email. Then they get a booking confirmation/Delivery Order from the Shipping line; that in the booking request, they have to intimate to the shipping line among other details about - shipper, exporter/consignee, Port of discharge, no. of containers, size of container, commodity, Port of stuffing; that as far as he could recall they have handled customs clearance of the several exporters of rice to Iran / Dubai including that of M/s. DRRK Foods Pvt. Ltd.

He undertook to submit a detailed list of the exporters / shipping line / BLs / Date / Shipping Bill No. / Undertaking (LOI) / Release Order / booking request & confirmation etc. in respect of all the exports handled by them to Iran by 13.01.2017.

**1.6.1** On being asked he stated that in M/s DRRK Foods Pvt Ltd. he has dealt with Mr Vikram Marwaha; that on being specifically asked, he stated that on behalf of the exporter he dealt with the shipping lines and got their customs clearance work with the help of other employees of their company; that whatever handling of export consignments with shipping line, Customs custodians and exporters and other related person was done by them as employees of the CHA firm, was in the knowledge of owner of the CHA firm and was done for the CHA firm as per the practice being followed by them; that on being asked about the consignments of rice meant for export to Iran and shown in the shipping customs documents as being exported to Iran but diverted to Jebel Ali, Dubai he stated that he always acted on the directions of exporter; that he has never done it without directions of the exporter; that he admitted that it was known to him in advance i.e. before leaving of the consignment from Indian shore that the goods were actually going to Dubai in place of Iran as mentioned in the shipping bill but as CHA they had no choice but to act in accordance with the directions of the exporter; that even in some of the cases they came to know of the diversion of the goods to Dubai after loading of the goods in the vessel and leaving the vessel from Indian shore.

**1.6.2** On being told that certain exporters have stated that he was aware about the fact of diversion at the time of export of goods in as much as the goods were shown in the



Shipping Bill to be destined at Iran but were actually going to Dubai he stated that he agreed that the fact of mentioning Port of discharge as Bandar Abbas in place of Jebel Ali in Dubai was in his knowledge but as explained above, he acted on behalf of his company, as per the directions of the exporters.

He was shown Section 50 of the Customs Act, 1962. He stated that he has read and understood the same; that in terms of provisions of this section, the exporter of any goods shall make entry thereof by electronically presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, in the prescribed form; that in terms of sub section (2) of section 50 the exporter of any goods, while presenting a shipping bill, shall make and subscribe to a declaration as to the truth of its contents.

He was also shown Shipping Bill (Electronic Declaration) Regulations, 2011 issued under Notification No. 80/2011-Cus. (N.T.), dated 25-11-2011, he admitted that at the time of filing of shipping bills they undertake as under

“ I/we declare that the particulars given in the Checklist are true, correct and complete”.

Further some questions were asked from him. The questions and answers are reproduced as under:

“Question:- Since from the investigation conducted so far and admitted by the persons named above, whose statements have been referred above, who have categorically admitted that goods had been diverted to Dubai despite the place of destination was shown as Iran in the Shipping Bills, it appeared that the factual position with regard to the actual consignee/port of discharge have been mis-stated in the Shipping Bill.

Ans.- We had diverted the goods on the request of the exporter and as stated above acted at their directions and whatever mis-statement has been made is without any intention to avail any benefit. I admit that we could have filed amendment U/s- 149 of the Customs Act, 1962 which we did not do as no request from exporter or shipping line was received.

Question:- Your attention is drawn to Regulation No. 11 of CUSTOMS BROKERS LICENSING REGULATIONS, 2013 which requires a Customs Broker to advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. As per your answer to above question, the exporter did not request you to get the amendment filed. Please explain as to was it not your obligation to advise the exporter to get the amendment done and in case of non-compliance, informed to the concerned Customs Officers in terms of this regulation.

Ans.- We never felt it to be such a major issue and whatever was happening was being done on the directions of exporter only. All the requirements of law as per practice were being followed by us. I state that whatever omission has been



done in filing of the shipping bills and non-compliance of the regulation 11(d) above was without any intention to violate any provisions of law. We just followed the practice of the trade.”

**1.7.** Further vide their letter dated 21.01.2017 M/s V.Arjoon, Customs Broker submitted copies of Request letters issued by M/s DRRK Foods Pvt. Ltd. to the shipping line for doing a telex release for diversion of containers in respect of the following consignments to buyer in Dubai:

SHIPPER	LINE	BL NO.	DATED	VESSEL
DRRK FOODS PVT. LTD.	GOODRICH MARITIME	GMAEMUNJEA009326	11.05.2015	SUDAIR/1518
DRRK FOODS PVT. LTD.	BALTIC	BALMUNJEA009110	17.04.2015	X-PRESS EUPHRATES/59
DRRK FOODS PVT. LTD.	VASCO	VASMUNJEA009071	10.04.2015	INTER MUMBAI/0030
DRRK FOODS PVT. LTD.	GOODRICH MARITIME	GMAEMUNJEA009062	08.04.2015	X-PRESS EUPHRATES/58
DRRK FOODS PVT. LTD.	GOODRICH MARITIME	GMAEMUNJEA009792	29.06.2015	X-PRESS EUPHRATES/64
DRRK FOODS PVT. LTD.	VASCO	VASMUNJEA010023	20.07.2015	CIMBRIA/129
DRRK FOODS PVT. LTD.	VASCO	VASMUNJEA010021	20.07.2015	CIMBRIA/129
DRRK FOODS PVT. LTD.	BALTIC	VASMUNJEA010169	13.08.2015	INTER MUMBAI-0038

A perusal of these documents reveals that M/s. DRRK Foods Pvt. Ltd had directed the shipping lines to deliver the goods in Dubai in place of their actual destination at Iran.

**1.8.** Statement of Shri Amit Marwaha, Director, M/s DRRK Foods Private Limited, Khasra No. 12/1, Village Alladinpur, Tarantaran, Punjab was recorded on 26.03.2018 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that in his previous statement dated 15.03.2016 he had stated that in total they had diverted the under mentioned seven consignments of rice shipped for Iran to Jebel Ali Dubai:-

Sl. No.	SB No. / date	BL on No.	Invoice No. / date	Invoice Amount (INR)
1.	8539391/ 23/03/2015	GMAEMUNJEA009062	DRFL/0088/12.03.2015	16387500.00
2.	8703227/ 30/03/2015	BALMUNJEA009110	DRFL/0089/15.03.2015	16560000.00
3.	8753224/ 01/04/2015*	VASMUNJEA009071	DRFL/0092/18.03.2015	2281600.00
4.	9285022/ 29/04/2015	GMAEMUNJEA009326	DRRK/0301/20.04.2015	3553500.00
5.	1304961/ 20/06/2015	GMAEMUNJEA009792	DRRK/0317 /08.06.2015	4416000.00
6.	1714648 10/07/2015#	VASMUNJEA10021	DRFL/0128/04/07/2015	5807500.00
7.	1712656 10/07/2015	VASMUNJEA10023	DRFL/0124/ 04/07/2015	17077500.00

\* Mentioned incorrectly as 11/04/2015 in the list

# Mentioned incorrectly as 16/07/2015 in the list

He further stated that however, later from his records, he found that apart from the above mentioned shipments, one more shipment of rice, shipped for Iran, was diverted to Dubai during the period 2014-15; that the details of the shipments were as under:-

Sl. No.	SB No. / date	BL on No.	Invoice No. / date	Invoice Amount (INR)
1.	4609807/26.08.2014	MUNBND327822	DRRK/0209 / 11.08.2014	6624000.00

He further stated that during the year 2014-2015 they had exported only 22 consignments and in 2015-2016, 30 consignments of rice to Iran; that during the



Financial Year 2014-15, out of the total consignments of rice meant for Iran, 3 consignments were diverted to Jebel Ali Port (Dubai) and during the year 2015-16, out of total consignments of rice exported to Iran, 5 consignments were diverted to Jebel Ali Port (Dubai); that he submitted Landing Certificates in respect of all the 52 consignments of their export of Rice to Iran during the Financial Year 2014-15 and 2015-16; that he had put his dated signatures on the copies of the said Landing Certificates; that on being asked about the mode of payment received in respect of their exports to Iran and above mentioned eight consignments to Jebel Ali, he stated that they had received payment from Iran in Indian Rupees only in respect of all these consignments including the eight consignments exported to Jebel Ali; that in the case of aforementioned eight consignments of rice meant for export to Iran subsequently, the buyer had asked them to deliver the goods at Jebel Ali; that they accordingly instructed their CHA and provided him the necessary documents for change of destination from Iran to Jebel Ali; that their Customs Broker, M/s. V. Arjoon and their employee i.e. Shri Goverdhan Bhavnani were fully aware about the diversion of rice to Dubai/Jebel Ali before leaving of the goods from India whereas in the export documents the destination was mentioned to be Iran; that he was shown photocopies of some documents (1 to 53 pages) related to their export of rice; that he was informed that these documents had been provided by M/s V. Arjoon, their Customs Broker; that he had put his dated signature on all these pages in token of having seen the same and their correctness; that he confirmed these documents belong to the goods exported by them; that the payment in respect of aforesaid eight consignments discharged at Jebel Ali, had been received in Indian Rupees only and in support of the same, he would provide the copies of bank account statement and Bank Realisation Certificates (BRC) pertaining to those consignments in a week's time. Further, in respect of goods exported by Shipping Bill No. 9285022 dated 29.04.2015/Invoice No. DRRK/0301/2015-16 dated 30.04.2015/ Bill of Lading No. GMAEMUNJEA009326 Dated 11.05.2015, he was shown copy of Request to do a Telex Release dated 02.12.2014 (as provided by the CHA), which predates the respective Shipping Bill and Bill of Lading; that on being asked about the reasons for the same, he stated that it could be an error; however, he would find out from his record and clarify the same; that further, on being asked about the request to do a telex release and corresponding papers pertaining to the following B/Ls, he stated that he would provide the same in a week's time:-

S.No.	Bill of lading No.
1	GMAEMUNJEA009792
2	MUNBND327822

**1.9.** Vide letter dated 02.04.2018, M/s. DRRK Foods Pvt. Ltd. made following submissions/furnished documents:-

- i) In respect of giving clarification regarding- mismatch of date in the Telex Release dated 01.12.2018 for BL No. GMAEMUNJEA009326, M/s. DRRK Foods Pvt. Ltd. has mentioned that the mismatch of date was *“due to typing mistake of their office executive, who had copied the date from the previous record and forgot to change the date of this request.”*



ii) As undertaken by Shri Amit Marwaha, Director of M/s. DRRK Foods Pvt. Ltd. in his statement dated 26.03.2018 about submission of Telex Release request, he provided a copy of "Request To Do A Telex Release" in respect of six consignments including that of B.L. No. GMAEMUNJEA009792. However, he could not provide the "Request To Do A Telex Release" in respect of MUNBND327822, as according to his letter dated 02.04.2018, the same was not available in their records.

**1.9.1** In respect of Bill of Lading No. VASMUNJEA010169 dated 13.08.2015 (as per the details provided by CHA, M/s. V. Arjoon vide their letter dated 21.01.2017), enquiry was caused with M/s. Goodrich Maritime, the Shipping Line, vide this office email dated 12.02.2019. The Shipping Line, Goodrich Maritime, vide email dated 12.02.2019 replied that the correct Bill of Lading No. is BALMUNJEA010169 dated 13.08.2015 instead of VASMUNJEA010169 dated 13.08.2015; that the shipment was for Bander Abbas, but as per the LOI submitted by the Shipper, M/s. DRRK Foods Pvt. Ltd., containers were discharged at Jebel Ali; that the Shipping Bill No. in respect of the Bill of Lading is 2270936 dated 07.08.2015 from the Landing Certificate and email dated 13.02.2019 received from the Shipping Line, it is clear that the shipment was for Bander Abbas but was discharged at Jebel Ali.

As such it appeared that the following consignments in respect of which the export documents had been filed by the exporter for export to Iran had been discharged at UAE:-

Sl. No.	SB No. / date	BL No.	Date	FOB Value
1	8539391/ 23/03/2015	GMAEMUNJEA009062	08.04.2015	1,56,97,500
2	8703227/ 30/03/2015	BALMUNJEA009110	17.04.2015	1,58,70,000
3	8753224/ 01/04/2015	VASMUNJEA009071	10.04.2015	21,89,600
4	9285022/ 29/04/2015	GMAEMUNJEA009326	11.05.2015	34,15,500
5	1304961/ 20/06/2015	GMAEMUNJEA009792	29.06.2015	42,32,000
6	1714648/10/07/2015	VASMUNJEA10021	20.07.2015	55,77,500
7	1712656 /10/07/2015	VASMUNJEA10023	20.07.2015	1,63,87,500
8	4609807/26.08.2014	MUNBND327822	30.08.2014	66,24,000
9	2270936/07/08/2015	BALMUNJEA010169	13.05.2018	1,67,48,373
		<b>Total</b>		<b>8,67,41,973</b>

## 2. Legal Provisions

### 2.1 Customs Act, 1962

**2.1.1** Section 2(33) of the Customs Act, 1962 defines "prohibited goods" as under

*"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."*

**2.1.2** SECTION -50. Entry of goods for exportation.- (1) The exporter of any goods shall make entry thereof by presenting [electronically] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

[**Provided** that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting



electronically, allow an entry to be presented in any other manner.]

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

**2.1.3 SECTION -51. Clearance of goods for exportation.**— Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.

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

- (d) *any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
- (i) *any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;]*

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

- (i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act], whichever is the greater;*

**2.1.6 SECTION-114AA--Penalty for use of false and incorrect material**

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

**2.2. Shipping Bill (Electronic Declaration) Regulations, 2011**

As per Regulation 2(a) "authorised person" means an exporter or a person holding a valid licence under the Custom House Agents Licensing Regulations, 2004 and authorised by such exporter;

Further as per Regulation – 3, the authorized person may enter the electronic declaration in the Indian Customs Electronic Data Interchange System by himself through ICEGATE or by way of data entry through the service centre by furnishing the particulars, in the format set out in Annexure.

At serial No 11 & 12 of the Annexure, Port of destination and country of final destination are required to be mentioned.

Further a declaration is signed for filing the checklist wherein the following undertakings are also made:

*I/We declare that the particulars given herein above are true, correct and complete.*



I/We undertake to abide by the provisions of Foreign Exchange Management Act, 1999, as amended from time to time, including realisation or repatriation of foreign exchange to or from India.

### **2.3. Foreign Trade Policy 2009- 2015**

#### **2.3.1 Payments and Receipts on Imports / Exports**

##### **2.3.1.1 Para 2.40 Denomination of Export Contracts**

(a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

##### **2.3.1.2 Foreign Trade Policy 2015 - 2020**

##### **2.3.1.3 Payments and Receipts on Imports / Exports**

##### **2.3.1.4 Para 2.52 Denomination of Export Contracts**

(a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

(b) However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his non-resident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.

(c) Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/Government of India line of credit.

##### **2.3.1.5 Para 2.53 Export to Iran - Realisations in Indian Rupees to be eligible for FTP benefits / incentives**

Notwithstanding the provisions contained in Para 2.52 (a) above, export proceeds realized in Indian Rupees against exports to Iran are permitted to avail exports benefits / incentives under the Foreign Trade Policy (2015-20), at par with export proceeds realized in freely convertible currency.

### **2.4 Foreign Trade (Development & Regulation) Act, 1992**

#### **2.4.1 Section 11: Contravention of provisions of this Act, rules, orders and export and import policy.**

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

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of



cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-Section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

## **2.5. Foreign Trade (Regulation) Rules, 1993**

**2.5.1 Rule 11:** On the importation into, or exportation out of, any Customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962) state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of each Bill of entry or Shipping Bill or any other documents.

**2.5.2 Rule 14(2):** No persons shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.

## **2.6. Section 8 of the Foreign Exchange Management Act, 1999**

Realisation and repatriation of foreign exchange.—“Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.”

## **2.7. RELEVANT RBI PROVISIONS :**

RBI has issued guidelines in respect of the Third party payments for export / import transactions vide RBI/2013-14 /364, A. P. (DIR Series) Circular No.70 dated November 8, 2013 in connection with various provisions of FEMA Notification No. 14 dated May 3, 2000. It is stated in the circular that normally payment for exports has to be received from the overseas buyer named in the Export Declaration Form (EDF) by the exporter and the payment shall be received in a currency appropriate to the place of final destination as mentioned in the EDF irrespective of the country of residence of the buyer. With a view to further liberalising the procedure relating to payments for exports/imports and taking into account evolving international trade practices, it has been decided as under:

## **2.8 EXPORT TRANSACTIONS**



AD banks may allow payments for export of goods / software to be received from a third party (a party other than the buyer) subject to conditions as under:

- a. Firm irrevocable order backed by a tripartite agreement should be in place;
- b. Third party payment should come from a Financial Action Task Force (FATF) compliant country and through the banking channel only;
- c. The exporter should declare the third party remittance in the Export Declaration Form;
- d. It would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;
- e. Reporting of outstandings, if any, in the XOS would continue to be shown against the name of the exporter. However, instead of the name of the overseas buyer from where the proceeds have to be realised, the name of the declared third party should appear in the XOS; and
- f. In case of shipments being made to a country in Group II of Restricted Cover Countries, (e.g. Sudan, Somalia, etc.), payments for the same may be received from an Open Cover Country.

**3.** Based upon the legal provisions and factual position as discussed in the various statements above, it appeared that: -

**3.1** In terms of the provisions of the Foreign Trade Policy (FTP) all export proceeds are to be realized in freely convertible currency. However, a few exceptions had been made to allow realization of export proceeds in Indian rupees. Export of rice to Iran was such an exception and export proceeds of rice exported to Iran were allowed to be realized in Indian rupees.

**3.2** A transaction can be considered bonafide only when the parties concerned exchange goods and payment with each other. Involvement of any other person/party in such transaction can only be considered when the said person/party is actually involved in such transaction either as a buyer or consignee or as a commission agent.

**3.3.** Section 113(d) & 113 (i) of the Customs Act, 1962 provide for confiscation of improperly exported goods. It reads as under :-

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

*(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.*

*.....*  
*.....*  
*(i) [any goods entered for exportation which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;”*

**3.4** The aforesaid Section empowers the competent authority to confiscate any

- goods attempted to be exported contrary to any 'prohibition' imposed by or under the Act or any other law for the time being in force or
- the goods which do not correspond in any other particular with the entry made under the Customs Act, 1962.

**3.5** Thus in view of the aforesaid Section the authorities are empowered to confiscate any goods attempted to be exported contrary to any 'prohibition' imposed by or under the Act or any other law for the time being in force.

**3.6** Section 2(33) of the Act defines “prohibited goods” as under :

*“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the*



*conditions subject to which the goods are permitted to be imported or exported have been complied with.”*

**3.6.1** Thus in terms of definition as provided by this section any goods are considered prohibited goods if :

- there is any prohibition of import or export of goods under the Act for the time being in force,
- there is any prohibition of import or export of goods under or any other law for the time being in force,
- the goods in respect of which conditions prescribed for import or export of goods are not complied with,

**3.6.2** Power to prohibit importation or exportation of goods by central government is also dealt with in the Section 11 of Customs Act, 1962 which provides that import or export of goods of any specified description may be prohibited either absolutely or subject to such conditions (to be fulfilled before or after clearance) for several purposes including the prevention of smuggling; the conservation of foreign exchange and the safeguarding of balance of payments;

**3.6.3** The dispute regarding scope of prohibition has been long ago settled by Hon'ble Apex Court in the case of SHEIKH MOHD. OMER Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS {1983(13)1439 ELT} wherein while referring to section 111 of the Act it has been *inter alia* observed by the Court that Section 111 says is that any goods which are imported or attempted to be imported contrary to “any prohibition imposed by any law for the time being in force in this country” is liable to be confiscated. “Any prohibition” referred to in that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. **The expression “any prohibition” in Section 111(d) of the Customs Act, 1962 includes restrictions.** Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions “prohibiting”, “restricting” or “otherwise controlling”, we cannot cut down the amplitude of the word “any prohibition” in Section 111(d) of the Act. “Any prohibition” means every prohibition. In other words, all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues.”(emphasis supplied)

**3.7.1** Further in the case Om Prakash Bhatia Versus Commissioner of Customs, Delhi {2003(155)423 ELT} Hon'ble Supreme Court in a landmark judgment has *inter alia* settled the dispute on the following points:

- ❖ Section 113 of the Customs Act, 1962 empowers the authority to confiscate any goods attempted to be exported contrary to any 'prohibition' imposed by or under the Act or any other law for the time being in force.
- ❖ Hence, for application of the said provision, it is required to be established that attempt to export the goods was contrary to any prohibition imposed under any law for the time being in force.
- ❖ If there is any prohibition of export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods;

**3.7.2** This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be



clear from Section 11 of the Customs Act, 1962 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This was also made clear by the Hon'ble Supreme Court in *Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negated the said contention and held thus :-

*'...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues.'*

**3.7.3** In terms of Section 11 (1) of the Foreign Trade (Development & Regulation) Act, 1992 (as amended), "no export or import shall be made by any person except in accordance with the provisions of the said Act, the rules and orders made there-under and the Foreign Trade Policy for the time being in force". **Thus, it appeared that any goods exported in contravention of any of the provisions of the Foreign Trade Policy would bring such goods within the prohibition envisaged in the Foreign Trade (Development and Regulation) Act, 1992** which allows Section 113(d) and Section 114 to be invoked for confiscation of export goods that breach the said Act.

**3.7.4.** It appeared that the liability of export goods, already exported, to confiscation under Section 113 of the Act *ibid* and subsequent imposition of penalty under Section 114 of the Act *ibid*, as in the present case, has already been settled in a catena of judgments. The Hon'ble Calcutta High Court in the case of *M/s. Euresian Equipments & Chemicals v. Commissioner of Customs and Others* (1980 (6) E.L.T. 38 (Cal.)) had the opportunity to deal with the said issue. In that case the issue before the Hon'ble Court was whether or not goods exported in violation of prohibition/restriction imposed under Sec. 12(1) of the Foreign Exchange Regulation Act, 1947 will be deemed to be a violation leading to penalty under Sec. 114, with respect to goods already exported. In that case as it was argued by the appellants that penalties under Sec. 114 of the Customs Act, 1962 can only be imposed with respect to 'export goods' which are not yet exported. Paras 26 to 30 of the order passed by Calcutta High Court in the above case are relevant and are reproduced below:



**Quote**

“26. .... The question is whether the violation of the prohibition or restriction imposed under Section 11 of the Customs Act will attract the provisions of Sections 113 and 114 of the Act in a case where goods had already been exported. The answer to this question will depend on proper construction of the relevant provisions of the Customs Act and of the provisions contained in Section 113 in particular. Section 113 lays down conditions when export goods become liable to confiscation. It makes provision as to under what circumstances ‘export goods’ incur the liability to confiscation. Section 113 does not deal with actual confiscation of the goods or the physical possibility of confiscation thereof. It only provides that ‘export goods’ shall be liable to confiscation, if any of the conditions stipulated in Section 113 are satisfied, in other words, it makes provision as to the incurring of liability to confiscation of the ‘export goods’. Section 113(d) makes it clear that ‘export goods’ shall incur the liability to confiscation if the goods are attempted to be exported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. .... The liability of the goods to confiscation, therefore, arises as soon as the said goods are attempted or sought to be exported contrary to such prohibition. This liability which “accrues or arises as soon as the attempt to export the goods is made is in no way dependent and has not been made dependent on the possibility or feasibility of actual confiscation of the goods. .... **On a proper construction of Sections 113 and 114 of the Customs Act with reference to the language used in the said sections this position, in our opinion, clearly emerges. We fail to appreciate how the accrued liability of the goods to confiscation with the attempt made for exporting the same contrary to prohibition is extinguished or wiped out with the said illegal attempt succeeding, resulting in the actual exportation of the goods.** .....

27. In our opinion, this appeared to be the proper interpretation of Sections 113 and 114 of the Customs Act, applying the well settled principles of construing the said sections with reference to the language used therein. This interpretation further appeared to be in accord with the objects for which this particular legislation has been enacted by the Parliament.

28. .... **As we have earlier observed, the liability of the goods to confiscation arises under Section 113(d), as soon as the goods are attempted to be exported and the attempt to export the goods necessarily precedes the actual export of the goods. Goods become liable to confiscation as soon as the attempt is made. There is no provision in the Act to suggest that this accrued liability is wiped out or extinguished with the exportation of the goods. It may be that after the goods had in fact been exported the liability of the goods to be confiscated may not be enforceable by actual confiscation of the goods.** 29. An order by the proper officer permitting clearance and loading of the goods under Section 51 of the Customs Act does not affect the position.

30. We have earlier noticed that under Section 113 of the Customs Act export goods incur the liability to confiscation at the stage when they are attempted to be exported.”

**3.7.5** Thus, it appeared that the liability to confiscation of the improperly exported goods does not get extinguished in case of already exported goods.

**3.7.6** It also appeared that in case any mis-declaration is made in the entry made under the Act (Shipping Bill under Section 50 of the Customs Act, 1962), the said goods are liable to be confiscated in terms of Section 113 (i) of the Act *ibid*.

**3.7.7** Section 113(i) clearly provides that the goods in respect of which a wrong entry has been made in the shipping bills the provisions of this section are attracted.



**3.7.8** M/s DRRK Foods Pvt Ltd. had not disclosed the fact of mis-statement in shipping bills on their own. The facts came to the knowledge of the Department only subsequent to initiation of investigation. In today's era of self-assessment, the department is not privy to the certain information which is in exclusive control of the exporter. It may be seen that in the case of self assessment there is a system in place where it is enjoined upon the exporter to make true declarations in the shipping bills and in the same shipping bills itself they have to make an undertaking with regard to truthfulness of the disclosures made in it.

The acts of M/s DRRK Foods Pvt Ltd. did not appear simple cases of ordinary omissions or inadvertent failure to state correctly. The sequence of events which has come to fore in this case as a result of investigation clearly brings out deliberate acts on their part. The applicable law provides for liability for confiscation of the offending goods in such situation of mis-statement in shipping bills in violation of section 50 of the Act.

**3.7.9.** In view of the Legal provisions and facts and circumstances of the case as discussed above the following undisputed points appeared to have emerged:

- M/s DRRK Foods Pvt. Ltd. has filed the export documents for export of goods to Iran;
- In their export documents M/s DRRK Foods Pvt. Ltd./CHA had declared that all the facts stated in the declaration filed under this regulations to be true;
- The goods have been shown in the export documents to be consigned to Iran but in fact the goods have been delivered at UAE;
- Thus mis-declaration/mis-statement was made in the export documents filed by M/s DRRK Foods Pvt. Ltd.
- Receipt of remittances in respect of export to Iran is regulated through provisions of FTDR/FEMA and other applicable provisions of law;
- In terms of provisions of FTP all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency, thus the proceeds of the goods exported to UAE are mandatorily required to be realized in freely convertible foreign currency;
- The proceeds of impugned goods, exported to UAE have been realized in Indian Currency through Iran;
- By realization of proceeds in Indian currency, in respect of goods exported to UAE, the prohibition specified by FTP and provisions contained in the RBI circulars have been violated by M/s DRRK Foods Pvt. Ltd.
- Shri Amit Marwaha, Director of M/s DRRK Foods Pvt. Ltd. is the key person who carried out the relevant operations for the purpose of export. His involvement in committing the violations as discussed above is clearly brought out by the facts and circumstances as discussed above;
- Customs Broker firm M/s V Arjoon have also violated the relevant provisions of law inasmuch as they have facilitated the export of goods under mis-declaration to Jebel Ali under the garb of export to Iran while they were fully aware about the alleged offence;
- M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha, and Customs Broker M/s V Arjoon have knowingly and intentionally made,



signed and caused to be made, signed declaration in the export documents which are false and incorrect;

- M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha appear to have exported the goods under mis-declaration to UAE under the veil of export to Iran. They appear to have exported the goods in violation of the prohibition discussed above.

**3.7.9.1** As discussed above the following prohibitions appeared to have been violated by M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha, attracting provision of section 113(d) of the Customs Act, 1962:

<b>Reference of the Relevant provisions</b>	<b>Provisions</b>	<b>How it is violated/not complied with by the noticees</b>
Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992	No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force	M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha had exported the goods and realised the proceeds in violation of para 2.40 and 2.52 of the FTP as discussed above.
Rule 14(2) Foreign Trade (Regulation) Rules, 1993	No persons shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.	The goods appear to have been exported by making mis-statement in the relevant documents. Foreign exchange which is mandatorily required to have been received from the actual buyer of the goods has not been received.
Section 8 of the Foreign Exchange Management Act, 1999	Realisation and repatriation of foreign exchange- Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank. ."	Proceeds have been realised from a third party and not have been received from the actual buyer of the goods.
RBI/2013-14 /364, A. P. (DIR Series) Circular No.70 dated November 8, 2013	Payment for exports has to be received from the overseas buyer named in the Export Declaration Form (EDF) by the exporter and the payment shall be received in a currency appropriate to the place of final destination as	Proceeds have been realised from a third party and not have been received from the actual buyer of the goods.



	mentioned in the EDF irrespective of the country of residence of the buyer. <i>(AD banks may allow payments for export of goods / software to be received from a third party (a party other than the buyer) subject to certain conditions)</i>	
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**3.7.9.2** Section 113(i) of the Customs Act, 1962 provides that any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 are liable to confiscation.

**3.7.9.3** M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha and Customs Broker firm M/s V Arjoon have made the following violations attracting action in terms of section 113(i) of the Customs Act, 1962:

<b>Reference of the Relevant provisions</b>	<b>Provisions</b>	<b>How it is violated/not complied with by the noticees</b>
SECTION 50 (1) of the Customs Act, 1962	The exporter of any goods shall make entry thereof by presenting [electronically] to the proper officer, in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.	M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha and Customs Broker firm M/s V Arjoon and forwarder got made false entries in the shipping bills with regard to actual destination of the export consignments.
SECTION 50 (2) of the Customs Act, 1962	The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.	M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha and Customs Broker firm M/s V Arjoon had falsely certified/got certified the entries to be true whereas they have mis-stated the facts in the shipping bills.
Shipping Bill (Electronic Declaration) Regulations, 2011	Further a declaration is signed for filing the checklist wherein the following undertakings are also made: I/We declare that the particulars given herein above are true, correct and complete. I/We undertake to abide by the provisions of Foreign Exchange Management Act, 1999, as amended from time to time, including realisation or repatriation of foreign exchange to or from India.	M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha Customs Broker firm M/s V Arjoon had made/got made false entries in the shipping bills declarations with regard to actual destination of the export consignments



**3.7.9.4** Thus the various consignments of M/s DRRK Foods Pvt. Ltd. (as per details above), which as per their respective shipping bills were destined for Iran had been diverted to UAE, appeared liable to confiscation in terms of Section 113(d) and (i) of the Customs Act, 1962.

**3.7.9.5** Thus from the above, it clearly appeared that the M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha had violated the following provisions of law:

S. No	Relevant provisions	Description of violation
1	<b>SECTION 50.</b> – (1) The exporter of any goods shall make entry thereof by presenting [electronically] to the proper officer, in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.	Making of false entries in the shipping bills with regard to actual destination of the export consignments
2	<b>SECTION 50.</b> (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.	False certification of the entries to be true whereas they have mis-stated the facts in the shipping bills
3	<b>Shipping Bill (Electronic Declaration) Regulations, 2011</b> A declaration is signed for filing the checklist wherein the following undertakings are also made: I/We declare that the particulars given herein above are true, correct and complete. I/We undertake to abide by the provisions of Foreign Exchange Management Act, 1999, as amended from time to time, including realisation or repatriation of foreign exchange to or from India.	Making of false entries in the shipping bills declarations with regard to actual destination of the export consignments
4	<b>FTP 2009-14</b> <b>2.40:Denomination of Export Contracts</b> (a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.	The export proceeds have been realised in Indian rupees as against statutory requirement of their realisation in freely convertible foreign currency
5	<b>FTP 2015-20</b> <b>2.52 Denomination of Export Contracts</b> (a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.	The export proceeds have been realised in Indian rupees as against statutory requirement of their realisation in freely convertible foreign currency
6	Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992	Export proceeds have been realised in violation of para 2.40 and 2.52 of the FTP as discussed above.
7	Rule 14(2) Foreign Trade (Regulation) Rules, 1993	The goods appear to have been exported by making mis-statement in the relevant documents. Foreign exchange



		which is mandatorily required to have been received from the actual buyer of the goods has not been received.
8	Section 8 of the Foreign Exchange Management Act, 1999	Proceeds have been realised from a third party and not have been received from the actual buyer of the goods.
9	RBI/2013-14 /364, A. P. (DIR Series) Circular No.70 dated November 8, 2013	Proceeds have been realised from a third party and not have been received from the actual buyer of the goods. (AD banks may allow payments for export of goods / software to be received from a third party (a party other than the buyer) subject to certain conditions)

**3.7.9.6** Thus from the above, it clearly appeared that the Customs Broker firm M/s V Arjoon had made/got made false entries in the export documents and thereby appear to have violated the provisions of section 50 of Customs Act, 1962 and Shipping Bill (Electronic Declaration) Regulations, 2011.

**3.7.9.7** Imposition of penalty

Thus from the above, it clearly appeared that M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha Customs Broker firm M/s V Arjoon are liable to penal action in terms of the following provisions of law:

<b>Relevant Section</b>	<b>Description of offence warranting imposition of penalty</b>
<p><b>SECTION 114</b> <b>Penalty for attempt to export goods improperly, etc.</b> Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty.</p>	<p><b>M/s DRRK Foods Pvt. Ltd., its Director Shri Amit Marwaha,</b> Customs Broker firm M/s V Arjoon have mis-stated the facts in the export documents filed by them. The goods which were actually destined for UAE have been shown to be destined to Iran. They appear to have smuggled the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism. They appear to have exported the goods in violation of the prohibition discussed above and rendered the goods liable to confiscation. Therefore, they appear to have rendered themselves liable to imposition of penalty under section 114 and section 114AA of the Customs Act, 1962.</p>
<p><b>SECTION 114AA</b> <b>Penalty for use of false and incorrect material.-</b> If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]</p>	



**3.7.9.8** Further, it also appeared that the proceeds claimed to have been received in respect of the impugned exported goods are not relatable to these goods in view of the following points:

- ❖ The goods are declared to have been consigned to Iran;
- ❖ The goods had been delivered at UAE;
- ❖ In term of Para 2.40 and 2.52, as referred above, the proceeds were mandatorily required to have been received in foreign currency
- ❖ In terms of Section 8 of the Foreign Exchange Management Act, 1999 the due amount of foreign exchange should have been realized and repatriated to India,
- ❖ Certain payments which had been received by M/s DRRK Foods Pvt Ltd in their bank account are claimed to be towards export of impugned goods;
- ❖ These payments had actually been received from Iranian entity in whose names the shipping bills had been filed as consignee of the goods;
- ❖ M/s DRRK Foods Pvt. Ltd. has not been able to demonstrate as to how this payment is related to the goods delivered in UAE;
- ❖ In the absence of their establishing relationship with the export goods the same cannot be considered to be the proceeds of export goods;

**3.8** Thus from the evidence on record, statements of the various persons and legal position in the matter, as discussed above, it appeared that:-

- A. the goods exported by M/s. DRRK Foods Pvt. Ltd. having collective FOB value of Rs. 8,67,41,973/- as per details in Table above, are liable to confiscation under Sections 113 (d) and 113 (i) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 (as amended) Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules, 1993, read with provisions of Section 50 of the Customs Act, 1962.
- B. M/s DRRK Foods Pvt. Ltd. and its Director Shri Amit Marwaha, Customs Broker firm M/s V Arjoon are liable to penalty under Section 114 and 114AA of the Customs Act, read with provisions of Section 50 of the Customs Act, 1962, in view of the acts of omission and commission as discussed above.

**3.8.1** Therefore, a Show Cause Notice bearing File No. DRI/HQ-CI/50D/ENQ-26(Int-24)/2015-Pt. dated 02.05.2019 was issued to M/s DRRK Foods Pvt. Ltd. calling upon them to show cause to the Joint/Additional Commissioner of Customs, Mundra Port & SEZ, Mundra, Dist. Kutch, Gujarat as to why:

1. The goods of the declared FOB value of Rs. 8,67,41,973/- (Rupees Eight Crores Sixty Seven Lakhs Forty One thousand Nine Hundred and Seventy Three only) exported under 9 Shipping Bills, as per details in the table above should not be held liable to confiscation under Section 113(d) and 113(i) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules, 1993 and provisions of Section 50(2) of the Customs Act, 1962;
2. The penalty under Section 114 of the Customs Act, 1962 for acts of omission and commission as discussed above should not be imposed upon them;
3. The penalty under Section 114 AA of the Customs Act, 1962 for acts of omission and commission as discussed above should not be imposed upon them.
4. An amount of Rs.10 lakhs (Rupees Ten Lakhs only) deposited by them vide demand draft No. 006636 dated 21.03.2016 during the investigation of the case should not be appropriated towards statutory levies imposed during adjudication of this show cause notice.

**3.8.2** Therefore, a Show Cause Notice bearing File No. DRI/HQ-CI/50D/ENQ-26(Int-24)/2015-Pt. dated 02.05.2019 was issued to Customs Broker firm M/s V Arjoon, calling



upon them to show cause to the Joint/Additional Commissioner of Customs, Mundra Port & SEZ, Mundra, Dist Kutch, Gujarat as to why:

1. The penalty under Section 114 of the Customs Act, 1962 read with provisions of Section 50 of the Customs Act, 1962 should not be imposed upon them in view of the acts of omission and commission as discussed above;
2. The penalty under Section 114 AA of the Customs Act, 1962 read with provisions of Section 50 of the Customs Act, 1962 should not be imposed upon them in view of the acts of omission and commission as discussed above;

**Defence Reply :**

4. Shri Amit Marwaha, Director of M/s DRRK Foods Pvt. Ltd. vide letter dated ... (Received on 28.05.2019) requested to adjourn the proceedings till 2<sup>nd</sup> week of July, 2019, so that to submit their reply to the Show Cause Notice.

4.1 M/s DRRK Foods Pvt. Ltd. vide their letter dated 10.06.2019 requested to adjourn the proceedings till 2<sup>nd</sup> week of July, 2019, so that to submit their reply to the Show Cause Notice.

4.2 M/s V. Arjoon vide their letter dated 03.07.2019, submitted their brief reply to the SCN wherein they denied each and every allegation and charge leveled against their Custom Broker Firm. They also submitted that they would like to file detailed reply after personal hearing.

4.3 Further, M/s DRRK Foods Pvt. Ltd. and Shri Amit Marwaha (Director of M/s DRK Foods Pvt. Ltd.) vide their letter dated 22.07.2019, denied the charges levelled by the Show Cause Notice against the company and the Director; and requested to grant a further period of 12 week to submit further reply to the Show Cause Notice.

4.4 M/s Gupta Law Associates (on behalf of M/s V. Arjoon) vide their letter dated 13.09.2019 requested to grant an extension of a period of two months for filing a suitable reply to the Show Cause Notice.

4.5 M/s Ajay Singh & Associates (on behalf of M/s DRRK Foods Pvt. Ltd. and Shri Amit Marwaha, Director of M/s DRRK Foods Pvt. Ltd.) vide letter dated 15.01.2020, submitted their written submission wherein they submitted :

a. That on instructions and on behalf of their clients, they denied each and every allegation and charge as leveled against their said clients by the subject Show Cause Notice. The Charges leveled against their clients are erroneous, misconceived & appear to have been alleged by misinterpreting the provisions of the Customs Act, 1962, extracting unwarranted conclusions from the facts on record & the statements recorded.

b. That the allegations and charges as levelled by the Notice are solely based on the various statements recorded under section 108 of the Customs Act, 1962 as detailed in the list of RUDs to the SCN. These statements have been referred and relied for drawing adverse interference against their clients and to support the allegations and charges as contained in the Notice. That the averments as contained in the statements are not corroborated by any independent evidence and therefore veracity of those averments is required to be tested before the Hon'ble Adjudicating Authority by way of examination / cross-examination. They requested for cross examination of Shri Sunjoy Salve, Vice President (West Region) of M/s Goodrich Maritime Pvt. Ltd., Shri Tushar H. Anam of M/s V. Arjoon, CHA and Shri Gordhan Bhavnani, Manager of M/s V



Arjoon , CHA whose statements are relied upon at Sr. No. 2 to 4 & 6 of the list of Relied upon documents.

c. They referred Section 138B(2) of the Customs Act,1962 wherein it is provided that “ (2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.”.

d. They also referred the case laws:

(i) M/s Ambika International Vs. Union of India and others in CWP No. 12615 of 2016 before Hon'ble High Court of Punjab and Haryana.

(ii) M/s Him Logistics Pvt. Ltd. Vs. Pr. Commissioner of Customs 2016(336)ELT.15 (Delhi) .

(iii) M/s G-Tech Industries Vs. Union of India 2016(339)ELT209 (P & H) and Jindal Drugs Pvt. Ltd. Vs. Union of India 2016(340)ELT67(P & H)

(iv) Hi Tech Abrasives Vs. Commissioner of Central Excise & Customs, Raipur – 2018(362)ELT 961 (Chhattisgarh)

e. They further submitted that “It is needless to point out here that the provisions of Section 9D are *pari-materia* and are identically worded in the same context and the higher judicial forums have also confirmed the same and therefore the law laid down in context of Section 9D are equally applicable. It is also pertinent to point out here that these decisions of Hon'ble High Courts have been followed in plethora of orders passed by Hon'ble Tribunal and the law as laid down in these cases has virtually attained the status of settled law”.

f. They further submitted that “For any reason if the Hon'ble Adjudicating Authority is not inclined to accept our above submissions, then we may be communicated accordingly in writing keeping in view the law as laid down by Hon'ble Tribunal in the case of *Bharti Bhuada Vs. CCE-2011 (266) ELT.97 (Tri-Mumbai)*.”

4.6 M/s Ajay Singh & Associates, on behalf of M/s DRRK Foods Pvt. Ltd. and Shri Amit Marwaha , Director of M/s DRRK Foods Pvt. Ltd., vide letter dated 23.01.2020 submitted their further written submission ; wherein they submitted that :

“In continuation of the submissions made vide our earlier letter dated 15.01.2020, we wish to make following submissions under instructions and on behalf of our clients M/s DRRK Foods Pvt. Ltd. and its Director Shri. Amit Marwah, for kind and sympathetic consideration of the Hon'ble Additional Commissioner of Customs. We would like to draw kind attention of the Hon'ble Additional Commissioner of Customs to the letter granting personal hearing on 23.01.2020 in the matter of Show Cause Notice dated 02.05.2019 issued to M/s DRRK Foods Pvt. Ltd & others.

2. Before proceeding with further submissions on merits of the case, we would like to draw kind attention of the Hon'ble Adjudicating Authority to our letter dated 15.01.2020 praying for cross - examination of the witnesses in compliance with the provisions for Section 138B of the Customs Act, 1962, instructions issued by CBEC and principals of natural justice. As no communication has been received on the request till date, we once again request Hon'ble Adjudicating Authority to summon the witnesses for cross examination and grant us opportunity of personal hearing only after the cross - examination of the witnesses is concluded.

3. We would once again like to draw attention of the Hon'ble Adjudicating Authority to our earlier letter dated 15.01.2020, requesting for Examination / Cross Examination of certain witnesses, whose statements have been relied in support of the allegations and charges as leveled by the Notice. In support of our above requests we also cited the statutory provisions and various case laws on governing the issue. We would also like to draw kind attention to the



mandatory directions as contained in Master Circular No. 1053/2/2017-CX., dated 10-3-2017 issued from F. No. 96/1/2017- CX.I on Adjudication proceedings etc. and specifically to Para 14.9 thereof, whereby it has been specifically directed that where a statement is relied upon in the adjudication proceedings, It would be required to be established through the process of cross examination, the noticee makes a request for cross examination of the person whose statement is relied upon in the SCN. It is our submission that the above directions are mandatory and not discretionary. Honble Apex Court in the case of DHIREN CHEMICAL INDUSTRIES 2002 (143) ELT. 19 (SC.) has unequivocally held that the circular issued by CBEC is binding on the department and thus on departmental officers also and therefore Cross Examination of witnesses whose statements/evidences are relied on for sustaining the charges is must and denial thereof will amount to denial of Natural Justice.

4. We wish to point out to the Hon'ble Adjudicating Authority that cross examination of witnesses is utmost necessary in facts and circumstances of the present case, as detailed in our earlier letters, duly supported by citing the specific provisions of statute, case laws governing the issues and also the binding circular as detailed hereinabove, the Hon'ble Adjudicating Authority must communicate to the Noticees as to whether cross examination as requested for is being granted or denied in the interest of natural justice, so as to enable them to make effective submissions in their defense. In this regard we draw kind attention of the Hon'ble Adjudicating Authority to the Judgments in case of Bharti Bhutada v/s Commissioner of Customs 2011 (266) E.L.T 97 (Tri. Mum) & Hon'ble Gujarat High Court in case of Mahek Glazes Pvt. Ltd. Vs. Union of India - 2014 (300) E.L.T 25 (Guj.), wherein it is laid down that the Authority must communicate the outcome of request for cross-examination before proceeding with adjudication of the case.

5. Without prejudice to the above submissions, on behalf of our clients, we would like to submit that rice in the case, ultimately reached the destination country i.e. Iran and merely due to the reason that the containers were offloaded / discharged at Jebel Ali, as stated by the Shipping Companies, it is not established that the goods did not reach the consignee in Iran. Our clients pursued the matter with the foreign buyer and after consistent efforts have ultimately received the irrefutable documentary evidences to show that the goods offloaded / discharged at Jebel Ali were further transported to Creek/launch Customs, Dubai, from where the exported goods (Rice) was shipped to Iran through the Coastal Cargo System as revealed from the documents received from the Dubai Customs.

6. We would like to draw kind attention of the Hon'ble Adjudicating Authority to the B/L No. GMAEMUNJEA009062 wherein the Port of Discharge and Delivery is shown as Bandar Abbas, Iran, but as per the Port Landing Certificate issued by shipping company namely M/s. Goodrich Maritime Pvt. Ltd. Port of Discharge/Country is shown as Jebel Ali, UAE. In this B/L, notify party is shown as M/s. Kian Mehr Tejarat Jonoub Iranian Co., Iran. On basis of the above document, it is alleged that the goods were delivered to the party at UAE and then solely on basis of above an assumption was drawn in the SCN that the exported goods did not reach the consignee at Iran. Our client made inquiries with the foreign buyer, **who informed that the rice unloaded at Jebel Ali, was firstly transported to Creek/launch Customs by the foreign buyer's agent M/s Shabeelah Food & Beverages Trading, Dubai, through the Cargo Transport Agency namely M/s. Khalsa Transport LLC, Dubai, which was duly registered with Government of Dubai since 18.03.2007 as a Cargo Transporter by heavy and light truck (copy of Certificate of Registration is enclosed as Exhibit - "A") [Page no.1] and the said M/s. Khalsa Transport LLC, Dubai issued bills for transportation charges from Jebel Ali to Launch / Creek Customs & issued receipt for receipt of transport charges.** Thereafter the said consignment was transshipped by M/s Shabeelah Food & Beverages Trading, Dubai to Iran in small boats.

7. Similarly in all other consignments exported under 6 Bills of lading viz. BALMUNJEA009110, VASMUNJEA009071, GMAEMUNJEA009326, GMAEMUNJEA009792, VASMUNJEA10021 and VASMUNJEA10023 exported by M/s DRRK Foods Pvt. Ltd. were first transported to Creek / Launch Customs & corresponding receipts and thereafter transshipped via Dubai in partial shipments by small boats from Dubai to Iranian Ports. Copies of Bills issued for transport charges of containers from Jebel Ali to Creek / Launch Customs, Copies "Sea Cargo



Export Manifest" of Dubai Customs evidencing the rice being transshipped to Iran from Jebel Ali by the respective agent of the foreign buyer namely (a) M/s Shabeelah Food & Beverages Trading, Dubai & (b) M/s. TRV General Trading Co., Dubai, serially numbered are collectively marked and annexed herewith as Exhibit - "B" (Page Nos. 2 to 138). It is our submission that Dubai Customs in UAE, in whose jurisdiction the exported rice was unloaded and on payment of applicable fees, Dubai Customs provided copies of "Sea Cargo Export Manifest" of Dubai Customs, under which M/s Shabeelah Food & Beverages Trading, Dubai & M/s. TRV General Trading Co., Dubai further transshipped the goods to Iran. These documents of Dubai Customs conclusively establish that the rice offloaded at Jebel Ali was in fact sent to Iran by smaller vessels and therefore the entire allegations and charges as leveled by Notice are erroneous, misconceived and cannot be sustained.

8. **The quantity of rice in the above "Sea Cargo Export Manifest" of Dubai Customs is mentioned in the number of bags. In view of the above, a table showing the number of bags transshipped and the number of bags covered by the 7 Bills of Ladings under which the goods were exported, was prepared and annexed herewith as "Exhibit -C" (Page nos. 139 - 141). Quantity shipped through smaller coastal vessel is marginally lower due to reason of damaged bags and remaining quantity being shipped in other consignments. Needless to say that the above documents, which clearly demonstrates that the exported goods ultimately reached Iran and therefore the charges and allegations as leveled by the impugned Notice cannot be sustained.**

9. It is also pertinent to point out here that in respect of Bill of Lading No.MUNBND327822 dated 20.07.2015, it is the allegations in the SCN that the goods were offloaded at Jebel Ali. **It is our submission that the said consignment is shipped to Bandar Abbas Port, Iran and concerned shipping company M/s. IAL Logistics India Ltd. issued 'Revised Landing Certificate' dated 12.06.2019, which establishes beyond doubt that this consignment was delivered to Bandar Abbas, Iran only. Copy of Revised Landing Certificate along with other related documents are collectively marked and annexed as Exhibit - "D" (Page nos. 142-157).**

10. **As far as the goods covered by Bill of Lading No. BALMUMNJEAO10169 dated 13.08.2015 is concerned, the goods were offloaded at Jebel Ali and the allegation that export proceeds of these goods were received in Indian Rupees is totally erroneous and we would like to submit that the export proceeds against these goods were received in convertible foreign exchange and "Statement of Bank Realization" downloaded from DGFT Site certifies the said fact. In light of the above facts, entire allegations and charges as leveled by Notice are erroneous, misconceived and cannot be sustained in respect of above 2 Bills of Lading. Copy of Bank Realization and other relevant documents are collectively marked and annexed as Exhibit - "E" (Page Nos. 158 - 174). It may kindly be appreciated that these goods were always (since shipment) were intended for UAE only.**

11. However for any reason, the Hon'ble Adjudicating Authority is having any reservation about the documents as submitted hereinabove, on behalf of our clients, we request the Hon'ble Adjudicating Authority to kindly get these documents verified and satisfy himself about the claim of the our clients and in the meantime the adjudication proceedings may please be kept in abeyance and we may be given hearing after receipt of the verification report.

12. Without prejudice to the submissions made hereinabove, we would like to submit that in the present case, it is a matter of record that Shipping Bills were filed by the Noticee Company showing the Iranian party as the Consignee and the Port of discharge was declared as Bandar Abbas (Iran). It is the case of the Notice that thereafter the changes were made in the Bill of Lading and the Port of discharge was changed. However, the Notice fails to **appreciate that such change has been made, as per the directions of the foreign buyer / consignee. It is pertinent to point out here that "Bill of Lading" is negotiable document and the person / party in whose favor the Bill of Lading stands or is endorsed is free to deal with the goods and can freely assign to any other party or person as the case may be.**



13. Hon'ble Addl. Commissioner of Customs may kindly appreciate that in terms of the Indian Bills of Lading Act, 1856, once the Bill of Lading is executed the property in goods are transferred to the consignee, in this case the Iranian party. It is our humble submission that **once the property in goods is transferred to the consignee, the goods are at their complete disposal and is at liberty to deal with the goods in any manner as deemed fit by them. In this scenario any changes effected in the Bill of Lading after the Bills of Lading were issued by the shipping company, the exporter cannot be held liable.** The consignee / purchaser chooses to take delivery of the goods at some other Port, after the property in goods is transferred / vested in them, then the exporter /shipper cannot be held liable in any manner whatsoever as proposed by the Notice. It may kindly be appreciated that though the Notice records that **the discharge Port was changed at the instance of CHA or the exporter but fails to take cognizance of the fact that it was at the behest of foreign buyer.** In support of our above submissions we would like to reproduce the provisions of the Indian Bills of Lading Act, 1856 and especially the Section 1 thereof which reads as under.

*"1. Rights under bills of lading to vest in consignee of endorsee.- Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."*

In view of the above express provision of the law, it is our submission that the allegations and charges as leveled by the Notice are liable to be dropped on this ground alone.

14. It is relevant to note here that the **rice exported under the Shipping Bills / Bills of Lading which are subject matter of the present Notice were packed in 10kg bags, bearing markings in Iranian language and the brands / trade names of the Iranian buyer.** It is also relevant to point out here that as per the UAE laws, no goods such as rice can be sold into UAE, unless and until they are bearing the markings in Arabic language and also other relevant details, but for which the sale of goods is not permitted in UAE and therefore the allegation of the Notice that merely for the reason that 9 consignments were offloaded / discharged at Jebel Ali Port, the exported rice was destined for UAE and thus consumed in UAE is without any substance and at the most assumption and presumption, on basis of which no legal charges can be sustained. It is evident that in one case, the shipping company did transship the goods to Iran and revised Landing certificate has been enclosed. **In 7 cases, the transshipment took place from Dubai Creek launch Customs under respective Shipping Bill as obtained in original from the Dubai Customs and attached hereinabove alongwith the confirmation from the respective buyer in Iran that the goods indeed has been received in Iran by them.** In the 9th case, it is admitted that the goods got cleared at UAE and also that the remittances were received in convertible foreign exchange. Thus, there has been no violation of any of the provisions of the Foreign Trade Policy read with regulations issued by RBI in this regard. The various documents as obtained from Dubai Customs and other entities corresponding to the respective Shipping Bill as alleged in the Notice have been tabulated and summarized in the chart given below:



**M/s. DRKK Foods Pvt. Ltd., Alladinpur, Tarantaran, Punjab**  
**Details of export of Rice to Jabel Ali, UAE and there further shipment movement to Bandar Abbas, Iran**

Sr. No.	Bill of Lading no.	Date	No. of Bags	Further details of export of rice from Jabel Ali to Bandar Abbas, Iran (Dubai Creek Customs)			Name of the Exporter shown as manifest
				Manifest No./Export Declaration No.	Date	Date of shipment	
1	GMAEMUNJEA009062	08.04.2015	8625	15172143	23.04.2015	07.05.2015	1450 Shabeelah Food & Beverages Trading LLC.
				15172209	26.04.2015	26.04.2015	850 Shabeelah Food & Beverages Trading LLC.
				15172523	07.05.2015	07.05.2015	570 Shabeelah Food & Beverages Trading LLC.
				15173033	11.05.2015	11.05.2015	1000 Shabeelah Food & Beverages Trading LLC.
				15173171	14.05.2015	14.05.2015	500 Shabeelah Food & Beverages Trading LLC.
				15173239	14.05.2015	14.05.2015	2000 Shabeelah Food & Beverages Trading LLC.
				15173444	19.05.2015	19.05.2015	2399 Shabeelah Food & Beverages Trading LLC.
							Total
2	BALMUNJEA009110	17.04.2015	8625	15173522	20.05.2015	20.05.2015	600 Shabeelah Food & Beverages Trading LLC.
				15173141	13.05.2015	13.05.2015	1150 Shabeelah Food & Beverages Trading LLC.
				15173619	23.05.2015	23.05.2015	1710 Shabeelah Food & Beverages Trading LLC.
				15173656	24.05.2015	24.05.2015	1050 Shabeelah Food & Beverages Trading LLC.
				15173743	26.05.2015	26.05.2015	1000 Shabeelah Food & Beverages Trading LLC.
				15173828	28.05.2015	28.05.2015	575 Shabeelah Food & Beverages Trading LLC.
				15173874	28.05.2015	28.05.2015	625 Shabeelah Food & Beverages Trading LLC.
				15173887	28.05.2015	28.05.2015	650 Shabeelah Food & Beverages Trading LLC.
				15174000	30.05.2015	30.05.2015	1000 Shabeelah Food & Beverages Trading LLC.
							Total
3	VASMUNJEA009071	10.04.2015	1150	15173411	19.05.2015	19.05.2015	1150 Shabeelah Food & Beverages Trading LLC.
			Total			1150	
4	GMAEMUNJEA009326	11.05.2015	1725	15174017	31.05.2015	31.05.2015	1150 TR V General Trading LLC
			Total			1150	
5	GMAEMUNJEA009792	29.06.2015	2300	15175981	22.07.2015	22.07.2015	575 TR V General Trading LLC
				15176042	23.07.2015	23.07.2015	575 TR V General Trading LLC
				15176128	26.07.2015	26.07.2015	1300 TR V General Trading LLC
			Total			2450	
6	VASMUNJEA10021	20.07.2015	2875	15177080	16.08.2015	16.08.2015	500 TR V General Trading LLC
				15177150	17.08.2015	17.08.2015	1200 TR V General Trading LLC
				15177183	18.08.2015	18.08.2015	600 TR V General Trading LLC
				15177621	27.08.2015	27.08.2015	600 TR V General Trading LLC
			Total			2900	
7	VASMUNJEA10023	20.07.2015	8625	15176385	30.07.2015	30.07.2015	4600 Fateh Din General Trading LLC
				15176505	02.08.2015	02.08.2015	2870 Name in Arabic
				15176559	03.08.2015	03.08.2015	575 Fateh Din General Trading LLC
				15176595	04.08.2015	04.08.2015	575
			Total			8620	
8	MUNBND327822	30.08.2014	2300	Consignment discharged & delivered at Bandar Abbas, Iran. Revised Landing Certificate dated 12.06.2019 issued by Shipping Company M/s. IAL Logistics India Ltd. is enclosed.			
9	BALMUMNJEAO10169	13.08.2015	8625	Consignment delivered at Jabel Ali, Dubai and remittance is received in fully convertible currency BRC is enclosed.			

15. Hon'ble Addl. Commissioner may kindly appreciate that the Iran rupee trade is akin to the Rupee Ruble trade with Russia in past, which was formulated to offset the balance of payment against supply of arms etc. by Russia. Similarly, the Rupee Trade with Iran has been formulated to set off the balance of payment for oil being exported by Iran to India. It is our submission that in the Foreign Trade Policy there is no embargo of any kind as being proposed by the present Notice against us. There is no dispute in the case that the order was placed by the Iranian parties and the payments were received from them.

16. Changes in the Bill of Lading have been effected after the goods have sailed and the proceedings under the Customs Act, 1962 were over, and therefore it is our submission that the provisions of Customs Act, 1962 have not been violated in any manner. More so, it is our submission that various provisions of the Customs Act invoked in the SCN, are not at all applicable in the facts of the present case. Section 113 of the Customs Act incorporates the irregularities for which the goods can be held liable for confiscation under the Customs Act and the present Notice invokes Section 113 (d) & (i) of the Customs Act as detailed in Para 31A of the Notice. For the sake of convenience the provisions of the said subsections are reproduced hereinafter.

"(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force."



"(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77,"

It is our submission that provisions of sub section (d) above are not at all applicable in the case at hand as no prohibition has been imposed on export of rice, under Section 11 of the Customs Act or any other Rules/ regulation/Notification. The Show Cause Notice also invokes the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act 1992 and Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules 1993 read with provisions of Section 50 of the Customs act 1962. It appears that these provisions have been invoked without appreciating the provisions being quoted. Section 11(1) of Foreign Trade (Development Regulation) lays down that no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force. Nowhere in the notice it has been alleged that the exports were made in violation of foreign trade policy and therefore the invocation of the above provisions are of no avail for sustaining the charges as proposed by the notice. Similarly the Rule 11 of the Foreign Trade (Regulation) Rules 1993 is regarding the value, quality and description of such as stated in export/import documents etc. in the case at hand there is no allegation that the details of goods, quantity or any other parameters was not declared/incorrectly declared or that the contents in the shipping bill were not correct. In absence of any such allegation the provisions as invoked are not at all applicable in the facts and circumstances of the present case. As far as the provisions of Rule 14 is concerned, we would like to submit that the said Rule deals with licenses issued under the policy and since no license was used and or obtained against the said exports the invoking of the said provision is totally erroneous and misconceived. Since the provisions of Section 113 (d) and (i) are not at all attracted, the provisions of Section 114 of the Customs act will not be applicable in the facts and circumstances of the present case. As far as invoking the Section 114 AA of the Custom act is concerned, we would like to submit that it is our submission that all the information and details as contained in the shipping bills were correctly declared by us to the best of our knowledge and belief it is only after exportation of the goods, at the behest of foreign buyer the request was made for changing the port of discharge and therefore it is our submission that the allegations as contained in the Notice are not at all sustainable in the facts and circumstances of the case.

17. Much emphasis is made and reliance is placed by the Show Cause Notice on a **RBI circular No.RBI/ 2013 /364 A. P. (DIR Series) Circular No.70 dated November 8, 2013 addressed to All Category- 1, Authorised Dealer Banks regarding third-party receipt of payments in case of import/exports transactions.** It is our submission that the said circular is of no relevance in the facts and circumstances of the present case. Firstly, the said circular is addressed to the AD Banks and guiding them regarding the appropriation of payments being received or made against exports/imports from 3 parties, which is not the case at hand. It is not the allegation of the notice that the payment in the case has been received from 3<sup>rd</sup> parties and therefore it is our submission that the said circular of RBI is of no relevance in the instant case. Secondly the circular starts "normally" and therefore it does not lay down any law/Rule but is only of guiding nature and therefore no adverse inference can be drawn by interpreting the same guideline and applying to the case at hand. Thirdly the exports to Iran are treated by the Foreign Trade Policy at par with other exports being made in convertible foreign currency and is not treated like Rupee exports to Nepal, where no export benefits like MES or any other incentive is available. The rupee trade with Iran is traded at par with other exports being made in convertible foreign currency and therefore that is a special category of exports for which the normal regulations being laid down for regular exports will not be applicable."

4.7 M/s V. Arjoon vide letter dated 21.01.2020 (during the personal hearing on 23.01.2020) submitted their written submission; wherein they submitted that:

"1. This has reference to the aforesaid show cause notice issued to M/s DRRK Food Pvt Ltd. and various other parties including us wherein we are called upon to show cause to you as to why penalty under Section 114 and 114AA of the Customs Act, 1962 read with various provisions of



the Foreign Trade (Development & Regulation) Act, 1992 and the rules/regulation made there under, should not be imposed on us.

We have noted that the aforesaid proposal has been predominantly raised on the alleged basis that we, as customs house agent, failed to discharge our obligation under law in correctly advising our client, M/s DRRK Food Pvt. Ltd. to report change of destination from Iran to Dubai, and also failed to bring to the notice of the department such change.

2. At the outset, we say and submit that the proposal raised in the show cause notice is without any merit in law as well as in the facts of the case and the same is therefore, required to be withdrawn. We say and submit that there has been no violation/contravention of any of the provisions of the Act to invite penalty on us. The allegations made by the department in the above referred show cause notice, even if accepted on its face value, does not go to show any contravention on our part and therefore, the proposal to impose penalty on us is clearly misplaced and unwarranted. Even assuming, that there had been dereliction of duty on our part as a Customs House Agent, no penal action would be invited under the Customs Act for such alleged carelessness and negligence. The requirements to attract section 113(i) as also 114 and 114A are also not fulfilled in the facts of the present case. We therefore, emphatically deny all the allegations levelled against us in this show cause notice, and we also submit that the proposal levelled against us in the show cause notice deserve to be vacated because, as aforesaid, they are unsustainable in facts as well as in law.

3. Before proceeding to the contentions against the proposal raised in the show cause notice, pertinent facts may be noted and appreciated. We are a partnership firm, inter alia, engaged in the business of rendering services of Customs Broker. For the said purpose, we have been registered as a Customs Broker with the Customs authorities and have been operating at various ports such as Mumbai Port, Mundra Sea Port, Nhava Sheva Port, Kandla Port and Hazira Port for the last 80 years.

4. We have been catering to the needs and requirements of reputed clients who have regular business contracts and arrangements with us. Because of our reputation and proper services rendered to the clients, a large volume of business is regularly handled by us.....

5. The strength of employees like office staff, workers etc. employed by us have also been increasing over a period of time because of increase in our business and currently we have 24 employees working under us. As aforesaid, we have been functioning as a licensed CHA for last 8 decades, but no case or complaint of whatsoever nature has ever been lodged against us in this long career of almost 8 decades prior to and after the cases concerning export of rice which forms part of common investigation concerning the present case.

6. In normal course of business, we were approached and engaged as Customs Broker by one, M/s DRRK Food Pvt Ltd. (hereinafter referred to as the exporter) for export of various consignments of 'rice' to Iran. The exporter had issued an authorization letter in our favour for handling the export related work, and all documents required for customs purpose like commercial invoices, purchase order, export packing list, letter of credit etc. were submitted by us as a CHA of the exporter with various Shipping Bills filed during the period 2014-15 and 2015-2016. The proper Customs Officers in charge of the concerned port duly verified and scrutinized all these documents and on the basis of the said documents concerned goods were permitted to be cleared and exported. We are exclusively engaged for handling merely the customs related work at the port of export and therefore, matters relating to payment for the goods by the foreign parties to the exporter etc. are not matters for which we were concerned or aware about.

7. It appears that on the basis of some information received by the officers of the Directorate of Revenue Intelligence, investigations came to be initiated against various exporters of Rice. As a consequence of the said investigation, it was believed by the officers that out of all the consignments of rice exported to Iran, some of the consignments were instead of being cleared at the port in Iran, were diverted to Dubai. It was consequently, alleged that payment for the said goods ought to have been received by the exporter in freely convertible currency instead of Indian currency. During the course of investigation, statements of various persons including the statement of our partner and employee came to be recorded. On the basis of such investigation, it was alleged that the exporter had knowingly, declared the port of discharge as Iran even though the goods were consigned to Dubai thereby violating the condition of receiving the payment of the goods in freely convertible currency. It was further alleged that we were aware of the said infraction on part of the exporter and despite such knowledge, we failed to bring the said violation to the knowledge of the department. It is on such basis that the present show cause notice has been issued to us.

8. Now coming to our contentions against the proposal raised in the show cause notice. We say and submit that the imposition of penalty on us under Section 114 and 114AA of the said Act is de hors of any merit as no penalty under the Customs Act is attracted for failure to comply with obligations imposed on the Customs broker. A mere reference to allegation in the show cause



notice shows that the department has alleged that we have failed to advise our client to comply with the provisions of the Act and have further failed to bring to the notice of the customs authorities such non-compliance. In this regard, the investigating officer has duly referred to the Customs Brokers Licensing Regulations, 2013. We say and submit that violation, if any, of such regulations attract an action under the said regulations and no penalty can be imposed under the Customs Act for such dereliction. Reference in this regard, may be made to recent judgment of the Hon'ble Madras High Court in the case of Commissioner of Customs vs. I.Sahaya Edin Prabhu reported in 2015 (320) ELT 264(a copy of the said decision was handed over during the course of personal hearing) wherein the Hon'ble High Court has held that penal action under the provisions of the Customs Act cannot be pressed into service for any failure on part of the Customs Broker in discharge of its function. In the present case, the show cause notice has alleged against us holding that we did not advise our client to comply with the provisions and also did not bring the said non-compliance to the notice of the Department and hence, we had failed to discharge the duties imposed on us under the aforesaid regulations. This being the fact and situation and in light of the judgment of the Hon'ble High Court of Madras, penal provisions under the Customs Act could not have been invoked against us.

9. We further submit that the penal action under Section 114 and 114A is even otherwise not maintainable in law as the same can only be pressed into service against a natural person and not a legal entity. A perusal of Section 114 of the act shows that penal action is warranted against any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act. Similarly, Section 114AA also mandates imposition of penalty on any person who knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. We submit that scheme of both the sections clearly show that the same is applicable to natural persons and not to legal entities like the noticee. We further submit that the said sections mandate either knowledge or an action or omission on part of the person and hence, the same can be attributed only to a natural person and not a legal entity. In this view of the matter also, the proposal to impose penalty on us is clearly unwarranted and legally untenable.

10. The proposal to impose penalty under Section 114 and 114AA is also clearly without any application of mind or authority in law. Section 114 of the Act provides that any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act shall be liable to penalty in terms of the said section. In the present case, the department has alleged that we have rendered the goods liable for confiscation under Section 113 (i) and therefore, to sustain the penalty against us under the said section, it would be pertinent to see if any action or omission on our part have rendered the goods liable for confiscation under Section 113 (i) of the Act. Sub-section (i) of Section 113 provides for confiscation of goods if the goods entered for exportation, does not correspond in respect of value or in any material particular with the entry made under this Act. We state that it has never been the case of the department that the goods in question i.e., rice, did not correspond in respect of any material particular concerning the said goods. The said sub-section is attracted in a case where the goods do not tally with the description, quantity, quality, classification and/or the valuation of the goods. In the present case, even if the allegation of the department is accepted on its face value, the contravention, if any, was in incorrect declaration of the port of discharge and not with regard to any material particulars concerning the goods in question. We, therefore, submit that Section 113 (i) was not at all attracted in the facts of the case so as to justify imposition of penalty under Section 114 of the Act.

11. Now coming to provisions of Section 114AA, it is our contention that the said section is attracted only if the person knowingly or intentionally makes, signs or uses or causes to be made, signed or used any declaration statement or document which is false or incorrect in any material particular in the transaction of any business under the Act. We submit that the said section is attracted only in a case where the person knowingly enters wrong information in any document submitted with the Customs authority. In the present case, it has come on record by way of series of statements of the exporter that the information of change in port of discharge was brought to our knowledge and notice only subsequent to filing of the export documents. It is, hence, an undeniable fact that we were not guilty of presenting any information which we knew was false or incorrect. This fact is further corroborated in view of the specific averment in the show cause notice that the exporter had contravened the provisions of the Act by not applying for amendment of the shipping bills in question. It is submitted that question of amendment of shipping bill arises only if the change in information or declaration is subsequent to the filing of the shipping documents. If that be the case, it can never be justifiably concluded against us that the information submitted by us was false or incorrect and that we were aware of such information being false or incorrect. In this view of the matter, it is clear and evident that



proposal for imposing penalties on us under Section 114 and 114AA is without any authority of law.

12. It is further emphatically submitted that the factum of change of destination was a subsequent development and was not within our knowledge at the time at which the documents were submitted. The said fact has been confirmed by the exporter themselves in series of statements recorded by the department. Moreover, the department has also alleged that the exporter had contravened the provisions by not amending the shipping bill. Question of amending a shipping bill would only arise if there is a change in circumstances subsequent to the date of filing the shipping bill. Keeping the said facts in mind, it may be noted and appreciated that our responsibility and obligation as a Customs Broker ceased as on the date on which the export documents were filed and hence, any subsequent development warranting any amendment of documents could not be taken as the basis for alleging any violation on our part. Reference in this regard, may be made to decision of the Appellate Tribunal rendered in the case of K.L. Alagu Murugappan vs Commissioner Of Customs reported in 2004 (163) ELT 352 wherein in similar facts and circumstances, the penalty imposed on the CHA has been quashed and set aside.

13. We further state that the grievance of the department in the present case in respect of the impugned transaction is that the remittance in respect of the impugned exports were received in INR and not in convertible foreign currency. We as Customs House Agent have no role whatsoever the determination of the currency in which the remittance was received. Being merely a Customs Broker, we were simply concerned with preparing and filing export documents on the basis of the details shared by the exporter. As a bonafide Customs Broker, we cross verified the documents with the export documents submitted to us and on finding them to be in order and having no reason to suspect the genuineness of the same, we filed the same with the customs authorities as directed. Accordingly, it becomes amply clear that we had no role in the alleged violations and therefore the proposal in the show cause notice for imposing penalty on us deserves to be withdrawn in the interest of justice and fairness.

14. It may also be noted and appreciated that the allegation raised in the show cause notice is based on misconstruction and misinterpretation of some of the statements. The statements recorded during the course of investigation had apparent and irreconcilable contradiction and therefore, blind reliance on such statements which went against us while brushing aside other statements which were in our favour was clearly unfair and unwarranted. We submit that in series of initial statements, the exporter had confirmed the fact that the information regarding the change of port of discharge was not brought to our notice before the goods were exported. However, surprisingly, despite the said specific stand, the statements recorded at the fag end of the investigation took a complete U-turn suggesting that we were aware of the said information even prior to the export of goods. Similarly, reliance on statements of our employee was also misplaced. Our Employee Shri Bhawnani, in one statement confirmed that he was aware of the said aspect prior to the export of goods. However, in a subsequent statement he admitted that he could have filed for an amendment under Section 149 of the Act. We submit that the said assertion by the employee clearly shows that the information of change in port of destination came to his knowledge subsequent to filing the documents as otherwise there was no question of filing any application for amendment under section 149 of the Act. We say and submit that there is otherwise no material evidence on record which shows that we were aware of the fact of different port of discharge prior to filing the documents. Even the statement of the partner of our firm confirms that the said information was given to them only after the goods were already exported. In such circumstances, contradicting statements of the exporter ought not to have been the basis to conclude that we were aware of the fact of change in port of discharge prior to the date of filing the export documents."

**4.8** M/s Ajay Singh & Associates (on behalf of M/s DRRK Foods Pvt. Ltd.) vide their email dated 28.02.2020, submitted a further submission dated 27.02.2020 wherein they further request for cross examination of witnesses. They also referred below mentioned case laws:

1. M/s Andman Timber Industries 2015(324)ELT 641
2. Thilagarathinam Match Works 2013(295) ELT 195 (Mad.)
3. Narendra B. Jain 2014(304) ELT 563 (Tri.-Mumbai)
4. Anil Pannalal Saraogi 2009 (241)ELT 219 ( Tri-Mumbai)
5. Sai Krupa Exim (P) Ltd. 2003(156) ELT 225 (Tri.- Bang.)
6. Dhiren Chemical Industries 2002(143) ELT 19 (S.C.)



They further submitted a translated copy of one SCEM No. 15173141 dated 13.05.2015 (which was at page No. 40 of the compilation submitted during the personal hearing dated 23.01.2020).

Further, M/s Ajay Singh & Associates vide email dated 23.02.2020 submitted a copy of "Certificated of Endorsement" dated 25.02.2020 issued by M/s Thakkar Translation Service.

#### **5. Personal Hearing :**

5.1 Personal hearing in this case was fixed on 09.01.2020 at 12.30 Hrs. and was communicated to the Noticees vide letter F.No.VIII/48-10/Adj/ADC/MCH/19-20 dated 20.12.2020 by post as well as by email. No authorized person from M/s V.Arjoon (Custom Broker) appeared for personal hearing on 09.01.2020. M/s DRRK Foods Pvt. Ltd. and Shri Amit Marwaha (Director of M/s DRRK Foods Pvt. Ltd.) vide their letter dated 27.12.2019 (Received on 08.01.2020), requested to adjourn the personal hearing and to grant them another date after 6 weeks.

5.2 Next personal hearing in this case was fixed on 23.01.2020 at 12.30 Hrs. and was communicated to the Noticees vide letters F.No.VIII/48-10/Adj/ADC/MCH/19-20 dated 07.01.2020 to M/s DRRK Foods Pvt Ltd and Shri Amit Marwaha (Director of M/s DRRK Foods Pvt Ltd) and vide letter dated 09.01.2020 to M/s V. Arjoon by post as well as email.

5.3 Shri Tarun Govil & Shri Ajay Singh (Advocates) , authorized representatives of the noticee Company (M/s DRRK Foods Pvt. Ltd.) and Shri Amit Marwaha ,( Director of M/s DRRK Foods Pvt. Ltd.) appeared for personal hearing on 23.01.2020. They submitted a written defence reply dated 23.01.2020 along with documentary evidences. Further, they requested for cross-examination of Shri Sunjjoy Salve, Vice President or any representative of M/s Goodrich Maritime Pvt. Ltd., Gordhan Bhavnani , Manager of M/s V. Arjoon and Mr. Tushar Anam of C. B. M/s V. Arjoon . They had nothing else to add.

5.4 Shri Paritosh R. Gupta, Advocate, authorized representative of the noticee (M/s V.Arjoon) appeared for personal hearing on 23.01.2020 submitted a written defence reply dated 21.01.2020 and reiterated the same. He had nothing to add.

#### **6. DISCUSSION & FINDINGS:**

6.1 I have carefully gone through the Show Cause Notice dated 02.05.2019, defence replies filed by the notices and oral submissions made during the course of personal hearings.

6.2 The issues to be decided by me in the instant case comes down to the following:

- A. Cross examination of witnesses as requested by the Noticee No. 1 and 2.
- B. Liability to confiscation of export goods under Section 113(d) & (i) of the Customs Act,1962.
- C. Liability of the exporter to penalty under Section 114 & 114AA of the Customs Act, 1962.
- D. Liability of Shri Amit Marwaha , Director of the exporter, and Customs Brokers M/s V.Arjoon to penalty under Section 114 & 114AA of the Customs Act, 1962.



6.3. Before deciding the issues, it is proper to quote the relevant legal provisions, which are as below:

**(i) Section 2(33) of the Act defines “prohibited goods” as under:**

*“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”*

**(ii) Section 50: Entry of goods for exportation.—**

*(1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.*

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

**(iii) Section 51: Clearance of goods for exportation.—***Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.*

**(iv) Section 113 in the Customs Act, 1962**

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

*(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*(i) [any goods entered for exportation which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;”*

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

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;*

*[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:*

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

**(vi) SECTION 114AA. Penalty for use of false and incorrect material: -***If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

**(vii) Shipping Bill (Electronic Declaration) Regulations, 2011**

*“As per Regulation 2(a)“authorised person” means an exporter or a person holding a valid license under the Custom House Agents Licensing Regulations, 2004 and authorised by such exporter;*



Further as per Regulation - 3. the authorised person may enter the electronic declaration in the Indian Customs Electronic Data Interchange System by himself through ICEGATE or by way of data entry through the service centre by furnishing the particulars, in the format set out in Annexure..

At serial No 11 & 12 of the Annexure, Port of destination and country of final destination are required to be mentioned.

Further a declaration is signed for filing the checklist wherein the following undertakings are also made:

I/We declare that the particulars given herein above are true, correct and complete.

I/We undertake to abide by the provisions of Foreign Exchange Management Act, 1999, as amended from time to time, including realisation or repatriation of foreign exchange to or from India.”

**(viii). (a) Foreign Trade Policy 2009– 2014**

**Payments and Receipts on Imports / Exports**

Para 2.40 Denomination of Export Contracts

“All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

**(b) Foreign Trade Policy 2015 – 2020**

Payments and Receipts on Imports / Exports

Para 2.52 : Denomination of Export Contracts

“(a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

(b) However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his non-resident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.

(c) Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/Government of India line of credit.”

**(ix) Para 2.53 Export to Iran – Realisations in Indian Rupees to be eligible for FTP benefits / incentives**

“Notwithstanding the provisions contained in Para 2.52 (a) above, export proceeds realized in Indian Rupees against exports to Iran are permitted to avail exports benefits / incentives under the Foreign Trade Policy (2015-20), at par with export proceeds realized in freely convertible currency.

**(ix) Foreign Trade (Development & Regulation) Act, 1992**

**Section 11:** Contravention of provisions of this Act, rules, orders and export and import policy.

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

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of



cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-Section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

**(x) Foreign Trade (Regulation) Rules, 1993**

1. **Rule 11:** "On the importation into, or exportation out of, any Customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962) state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of each Bill of entry or Shipping Bill or any other documents."

2. **Rule 14(2):** "No persons shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods."

**(xi) Section 8 of the Foreign Exchange Management Act, 1999**

"Realisation and repatriation of foreign exchange.—Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank."

**(xii). RELEVANT RBI PROVISIONS**

RBI has issued guidelines in respect of the Third party payments for export / import transactions vide RBI/2013-14 /364, A. P. (DIR Series) Circular No.70 dated November 8, 2013 in connection with various provisions of FEMA Notification No. 14 dated May 3, 2000. It is stated in the circular that normally payment for exports has to be received from the overseas buyer named in the Export Declaration Form (EDF) by the exporter and the payment shall be received in a currency appropriate to the place of final destination as mentioned in the EDF irrespective of the country of residence of the buyer. With a view to further liberalising the procedure relating to payments for exports/imports and taking into account evolving international trade practices, it has been decided as under:

**(xiii) EXPORT TRANSACTIONS**

"AD banks may allow payments for export of goods / software to be received from a third party (a party other than the buyer) subject to conditions as under:

g. Firm irrevocable order backed by a tripartite agreement should be in place;



- h. *Third party payment should come from a Financial Action Task Force (FATF) compliant country and through the banking channel only;*
- i. *The exporter should declare the third party remittance in the Export Declaration Form;*
- j. *It would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;*
- k. *Reporting of outstandings, if any, in the XOS would continue to be shown against the name of the exporter. However, instead of the name of the overseas buyer from where the proceeds have to be realised, the name of the declared third party should appear in the XOS; and*
- l. *In case of shipments being made to a country in Group II of Restricted Cover Countries, (e.g. Sudan, Somalia, etc.), payments for the same may be received from an Open Cover Country."*

Based upon the legal provisions and factual position as discussed in the various statements above, it is clear that: -

In terms of the provisions of the Foreign Trade Policy (FTP) all export proceeds are to be realized in freely convertible currency. However, a few exceptions had been made to allow realization of export proceeds in Indian rupees. Export of rice to Iran was such an exception and export proceeds of rice exported to Iran were allowed to be realized in Indian rupees.

A transaction can be considered bonafide only when the parties concerned exchange goods and payment with each other. Involvement of any other person/party in such transaction can only be considered when the said person/party is actually involved in such transaction either as a buyer or consignee or as a commission agent.

**(xiv)** Section 113(d) & 113 (i) of the Customs Act, 1962 provide for confiscation of improperly exported goods. It reads as under:-

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

.....

*(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.*

.....

*(i) [any goods entered for exportation which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;"]*

- (xv)** The aforesaid Section empowers the competent authority to confiscate any :
- goods attempted to be exported contrary to any 'prohibition' imposed by or under the Act or any other law for the time being in force or
  - the goods which do not correspond in any other particular with the entry made under the Customs Act, 1962.

**(xvi)** Thus in view of the aforesaid Section, the authorities are empowered to confiscate any goods attempted to be exported contrary to any 'prohibition' imposed by or under the Act or any other law for the time being in force.

**(xvii) Section 2(33) of the Act defines "Prohibited goods" as under :**

*"(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;"*

**(xviii)** Thus in terms of definition as provided by this section any goods are considered prohibited goods if:



- there is any prohibition of import or export of goods under the Act for the time being in force,
- there is any prohibition of import or export of goods under or any other law for the time being in force,
- the goods in respect of which conditions prescribed for import or export of goods are not complied with,

**(xix)** Power to prohibit importation or exportation of goods by Central Government is also dealt in the section 11 of the Act which provides that import or export of goods of any specified description may be prohibited either absolutely or subject to such conditions (to be fulfilled before or after clearance) for several purposes including the prevention of smuggling; the conservation of foreign exchange and the safeguarding of balance of payments;

**(xx)** The dispute regarding scope of prohibition has been long ago settled by Hon'ble Apex Court in the case of SHEIKH MOHD. OMER Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS {1983(13)1439 ELT} wherein while referring to section 111 of the Act it has been inter alia observed by the Court that Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words, all types of prohibitions. Restrictions are one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues.

**(xxi)** Further in the case Om Prakash Bhatia Versus Commissioner of Customs, Delhi {2003(155)423 ELT} Hon'ble Supreme Court in a landmark judgment has inter alia settled the dispute on the following points:

- ❖ Section 113 of the Customs Act, 1962 empowers the authority to confiscate any goods attempted to be exported contrary to any 'prohibition' imposed by or under the Act or any other law for the time being in force.
- ❖ Hence, for application of the said provision, it is required to be established that attempt to export the goods was contrary to any prohibition imposed under any law for the time being in force.
- ❖ If there is any prohibition of export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods;

**(xxii)** This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 of the Customs Act, 1962 which empowers the Central



Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This was also made clear by the Hon'ble Supreme Court in *Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negated the said contention and held thus:-

*'... What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues.'*

**(xxiii)** In terms of Section 11 (1) of the Foreign Trade (Development & Regulation) Act, 1992 (as amended), no export or import shall be made by any person except in accordance with the provisions of the said Act, the rules and orders made there-under and the Foreign Trade Policy for the time being in force. Thus, it is clear that any goods exported in contravention of any of the provisions of the Foreign Trade Policy would bring such goods within the prohibition envisaged in the Foreign Trade (Development and Regulation) Act, 1992 which allows Section 113(d) and Section 114 to be invoked for confiscation of export goods that breach the said Act.

**(xxiv)** It is clear that the liability of export goods, already exported, to confiscation under Section 113 of the Act *ibid* and subsequent imposition of penalty under Section 114 of the Act *ibid*, as in the present case, has already been settled in a catena of judgments. The Hon'ble Calcutta High Court in the case of *M/s. Euresian Equipments & Chemicals v. Commissioner of Customs and Others* (1980 (6) E.L.T. 38 (Cal.)) had the opportunity to deal with the said issue. In that case the issue before the Hon'ble Court was whether or not goods exported in violation of prohibition/restriction imposed under Sec. 12(1) of the Foreign Exchange Regulation Act, 1947 will be deemed to be a violation leading to penalty under Sec. 114, with respect to goods already exported. In that case as it was argued by the appellants that penalties under Sec. 114 of the Customs Act, 1962 can only be imposed with respect to 'export goods' which are not yet exported. Paras 26 to 30 of the order passed by Calcutta High Court in the above case are relevant and are reproduced below:

**Quote**

*"26. It is quite clear that violation of any prohibition or restriction imposed under Section 12 of the Foreign Exchange Regulation Act, 1947 will result in a violation, of the prohibition or restriction under Section 11 of the Customs Act, 1962 by virtue of the deeming provisions contained in Section 23A of the Foreign Exchange*



Regulation Act; and necessarily, all the provisions of the Customs Act which may be attracted because of violation Section 11 of the Customs Act will have effect. The question is whether the violation of the prohibition or restriction imposed under Section 11 of the Customs Act will attract the provisions of Sections 113 and 114 of the Act in a case where goods had already been exported. The answer to this question will depend on proper construction of the relevant provisions of the Customs Act and of the provisions contained in Section 113 in particular. Section 113 lays down conditions when export goods become liable to confiscation. It makes provision as to under what circumstances 'export goods' incur the liability to confiscation. Section 113 does not deal with actual confiscation of the goods or the physical possibility of confiscation thereof. It only provides that 'export goods' shall be liable to confiscation, if any of the conditions stipulated in Section 113 are satisfied, in other words, it makes provision as to the incurring of liability to confiscation of the 'export goods'. Section 113(d) makes it clear that 'export goods' shall incur the liability to confiscation if the goods are attempted to be exported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. 'Export goods' as defined in Section 2(19) of the Customs Act means 'any goods which are to be taken out of India to a place outside India'. Any goods which are to be taken out of India to a place outside India will incur the liability to confiscation under Section 113(d), if the said goods are attempted to be exported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. The liability to confiscation arises and is incurred as soon as the 'export goods' are attempted to be exported contrary to any such prohibition and attempt to export the goods must necessarily precede the actual exportation of the goods. The liability of the goods to confiscation, therefore, arises as soon as the said goods are attempted or sought to be exported contrary to such prohibition. This liability which "accrues or arises as soon as the attempt to export the goods is made is in no way dependent and has not been made dependent on the possibility or feasibility of actual confiscation of the goods. This accrued liability of the goods to confiscation clearly under Section 114 of the Customs Act which provides that any person who in relation to any goods, does or omits to do any act, which act or omission would render such goods liable to confiscation under Section 113 or abets the doing or omission of such an act, shall be liable to penalty as provided in the said Section. With the incurring of liability of the goods to confiscation under Section 113, any person who in relation to such goods has done or omitted to do any act which act or omission has rendered such goods liable to confiscation under Section 113 or abets the doing or omission of such an act, renders himself liable to penalty under Section 114. **On a proper construction of Sections 113 and 114 of the Customs Act with reference to the language used in the said sections this position, in our opinion, clearly emerges. We fail to appreciate how the accrued liability of the goods to confiscation with the attempt made for exporting the same contrary to prohibition is extinguished or wiped out with the said illegal attempt succeeding, resulting in the actual exportation of the goods.** A plain reading of Section 113 of the Customs Act providing for liability to confiscation of export goods and of Section 2(19) of the Act defining 'export goods' does not appear to indicate or suggest that the accrued liability to confiscation is so extinguished or wiped out. It may be noticed that this liability to confiscation attaches to the goods at the time the goods are sought to be exported contrary to prohibition and at that point of time the goods which are to be taken out of India to a place outside India have not been taken out of India to a place outside India. In other words at the point of time when the liability to confiscation accrues, the goods are 'export goods' well within the meaning of the definition of export goods in Section 2(19) of the Act.

27. In our opinion, this appears to be the proper interpretation of Sections 113 and 114 of the Customs Act, applying the well settled principles of construing the said sections with reference to the language used therein. This interpretation further appears to be in accord with the objects for which this particular legislation has been enacted by the Parliament.

28. We have earlier set out the provisions of Section 11 of the Customs Act which confers power on the Central Government to prohibit importation or exportation of goods for purposes mentioned therein. These purposes indeed cover very very wide fields. Some of the purposes for which the prohibition may be imposed as stated in Section 11(2) are, prevention of smuggling, prevention of shortage of goods of any description and prevention of the contravention of any law for the time being in force. Section 113 provides for liability of the goods to



confiscation in case of any violation of the prohibition imposed under Section 11 of the Act and Section 114 provides for personal penalty for those whose acts or omissions render the goods liable to confiscation under Section 113. To construe the said sections to mean that Section 114 can only be attracted when the goods are attempted to be exported and will have no application when goods have in fact been exported will defeat the purpose and object for which the said provisions have been introduced. The submissions that the legislature has so intended by using the words 'attempt to export' in Sections 113(a), (b) and (d) and the analogy of the offence of attempt to commit suicide given in this connection are, in our opinion, misleading and devoid of merit. An attempt to commit suicide is indeed an offence and the act of committing suicide resulting from the successful attempt may not be considered to be an offence. This is so for the simple reason that once a person attempting to commit suicide succeeds in his attempt he places himself beyond the reach of law and no punishment is intended to be inflicted on the dead person or his heirs and legal representatives by imposing any fine or penalty, as they may in no way be liable or responsible for the said act. **As we have earlier observed, the liability of the goods to confiscation arises under Section 113(d), as soon as the goods are attempted to be exported and the attempt to export the goods necessarily precedes the actual export of the goods. Goods become liable to confiscation as soon as the attempt is made. There is no provision in the Act to suggest that this accrued liability is wiped out or extinguished with the exportation of the goods. It may be that after the goods had in fact been exported the liability of the goods to be confiscated may not be enforceable by actual confiscation of the goods.** Personal penalty of any person who, in relation to the goods, does or omits to do any act which act or omission renders the goods liable to confiscation under Section 113 or abets the doing or omission of such an act has been provided in Section 114. This provision is attracted as soon as the goods incur the liability to confiscation under Section 113 and such liability, as we have earlier held, arises when the goods are attempted to be exported contrary to any prohibition. It is to be noted that at the time when the goods are sought to be exported they are undoubtedly 'export goods' within the meaning of Section 2(19) of the Customs Act. The liability of personal penalty provided in Section 114 of the Act, which arises with the accrual of the liability of the goods to confiscation under Section 113 of the Act at the stage of the attempt to export the said goods, clearly remains and the said liability is capable of enforcement. In the case of illegal export of any goods contrary to prohibition the effect may be that the liability of the goods to confiscation which arises and accrues may not be capable of enforcement but the personal liability which arises with the accrual of liability of the goods to confiscation can be enforced and by enforcement of the personal liability the offender can still be brought to book and this kind of offence may be checked. We must, therefore hold that by virtue of Section 23A of the Foreign Exchange Regulation Act, 1947 the provisions of Sections 113 and 114 of the Customs Act, 1962 are attracted, when there is a contravention of Section 12(1) of the Foreign Exchange Regulation Act, 1947 in relation to goods which had in fact been exported. This was indeed the first question which came up for consideration before the Division Bench and has been referred to the Full Bench and our answer to this question is therefore in the affirmative.

29. An order by the proper officer permitting clearance and loading of the goods under Section 51 of the Customs Act does not affect the position.

30. We have earlier noticed that under Section 113 of the Customs Act export goods incur the liability to confiscation at the stage when they are attempted to be exported."

**A. Cross examination of witnesses as requested by the Noticee No. 1 and 2.**

6.4 Vide letters-dated 15.01.2020 & 23.01.2020, the advocate of the Noticee No. 1 & 2, M/s Ajay Singh & Associates have contended that the allegations and charges leveled in the Notice are solely based on various statements recorded under Section 108 of the Customs Act, 1962, as detailed in the list of RUDs to the SCN. Further, they contend that averments contained in these statements are not corroborated by any independent evidence and therefore, veracity of these statements need to be tested by way of examination/cross-examinations of all the witnesses making such statements. They



further contended that denial of such cross-examination will lead to denial of justice to their client. In support of their claim to avail cross-examination of all the witnesses, they have referred the provisions of Section 138B of the Customs Act, 1962, directions contained in Master Circular No. 1053/2/2017-CX, dated 10.03.2017 issued from F. No. 96/1/2017-CX.I on Adjudication proceedings etc. and specifically to Para 14.9 thereof and also cited following case Laws:

1. M/s Ambika International Vs. UOI & others in CWP No. 12615-12618 decided on 17.06.2016 by the Hon'ble High Court of Punjab and Haryana at Chandigarh.

2. M/s Him Logistics Pvt. Ltd. Vs. Principal Commissioner of Customs in WP (C) No. 1697 of 2016 and CM Nos. 7257 of 2016 decided on 26.02.2016 by the Hon'ble High Court of Delhi.

3. M/s G-Tech Industries Vs. Union of India in C.W.P. 12747 of 2016 decided on 22.06.2016 by the Hon'ble High Court of Punjab & Haryana at Chandigarh.

M/s Jindal Drugs Vs. Union of India in C.W.P. No. 13714 of 2016, decided on 21.06.2016 by the Hon'ble High Court of Punjab & Haryana at Chandigarh.

4. M/s Hi Tech Abrasives Vs. Commissioner of Central Excise & Customs, Raipur - 2018 decided by the Hon'ble High Court of Chhattisgarh at Bilaspur.

Thus, they requested to grant cross-examination of:

- a) Shri Sunjjoy Salve, Vice President (Western Region) of M/s Goodrich Maritime Pvt. Ltd. (Shipping Line)
- b) Shri Tushar H. Anam of M/s V. Arjoon (Custom Broker)
- c) Shri Gordhan Bhavnani, Manager of M/s V. Arjoon (Custom Broker)

**6.4.1** As regards the issue of cross-examination of the above-stated three persons as requested by Noticee No. 1 and 2 above, reference need to be invited to the statements of Shri Amit Marwah, Director of the Noticee exporter (M/s DRRK Foods Pvt. Ltd. Punjab) and averments made by him in the said statements dated 15.03.2016 and 26.03.2018. In his statement dated 15.03.2016, he admitted that his responsibilities in the firm, M/s DRRK, include processing and export of rice and he further stated that export of rice to Iran had taken place from Mundra Port and his Custom House agent for these consignments was M/s V. Arjoon, {Contact person is Sh. Gordhan Bhowani (Mobile No. 9925237882)} for Mundra. He further stated that he interacted with the above CHA regarding export of rice to Iran and Shri Rakesh Kumar, Export Manager interacted with the Shipping Lines on their behalf. They used the services of M/s Goodrich Maritime Pvt. Ltd. as Shipping Lines for export of rice to Iran. He also stated that they interacted either directly or through brokers with their all foreign buyers and the remittances of export consignments come in INR from Iran and in US \$ from Dubai and other countries. On being asked about diversion to Dubai or other ports of rice exported to Iran, he confessed that 07 consignments which were shipped for Iran were discharged at Port of Jebel Ali, Dubai and delivered to different buyers. On being further asked, he stated that Shri Rakesh Kumar, their export manager had requested vide different letters to the shipping lines i.e. Vasco Maritime Pvt. Ltd. or Goodrich Maritime Pvt. Ltd. surrendering the original B/L and for delivery to the notify party at Dubai. Further, he



stated that they have not intimated to the bank (i.e. UCO Bank, Amritsar Branch) about the change in destination of above 07 consignments. On being asked as to why the same was not intimated to the bank as the payment in INR can be received only against those consignments which were delivered in Iran and not for the consignments which were discharged at Jebel Ali port, he admitted that they had incorrectly relied upon the verbal assurances given by the buyer regarding ultimate destination being Iran, which was a mistake. In his statement dated 26.03.2018, Shri Amit Marwah admitted that apart from the 07 consignments of rice that he mentioned in his earlier statement, one more shipment of rice, shipped from Iran was diverted to Dubai. Thus during 2014-15, 03 consignments were diverted to Jebel Ali Port (Dubai) and during 2015-16, 05 consignments were diverted to Jebel Ali Port (Dubai) and for the same they have received payment from Iran in Indian Rupees only. He further stated that in the case of aforementioned 08 consignments of Rice meant for export to Iran subsequently the buyer asked them to deliver the goods at Jebel Ali and they accordingly instructed their CHA and provided him the necessary documents for change of destination from Iran to Jebel Ali. Their Customs Broker, M/s V Arjoon and their employee Shri Gordhan Bhavnani were fully aware about the diversion of rice to Dubai/Jebel Ali before leaving of the goods from India whereas in the export documents the destination was mentioned to be Iran. He also confirmed the copies of letters issued by M/s DRRK foods (Pvt) Ltd. to M/s Goodrich Maritime Pvt. Ltd. and M/s Vosco Maritime Pvt. Ltd. with 'request to do a telex release' for delivery of goods at Dubai which itself is corroborative evidence of diversion of the goods by them to Jebel Ali, UAE instead of Iran. Thus, the request letter of the Noticee Company for telex release of goods and delivery order for delivery of goods at Jebel Ali and surrender of the original B/L are corroborative documentary evidences in addition to the statements of witnesses recorded under Section 108 of the Customs Act, 1962, which they want to confirm by way of cross examination.

In light of the above, it is pertinent to go through relevant points emerging from their statements vis-à-vis the allegations to come to a conclusion as to whether cross-examination of the said witnesses is called for or otherwise.

Shri Tushar H. Anam of M/s V. Arjoon (Custom Brokers) {RUD-3 to the SCN}: In his statement dated 22.12.2015, he has stated that some shipments of Rice which were originally cleared from Customs for export to Iran were later on delivered at Jebel Ali port. On being asked whether this fact of diversion of goods to Dubai after clearance for Iran was brought to the notice of Customs authorities at the port of export by exporter or shipping lines, he replied in negative and as reasons for the same, he stated "because cargo has already left Indian water and had reached Jebel Ali & respective exporter/shipping line had not requested for any amendment in the Shipping bills". Thus his statement is in agreement with that of Shri Amit Marwaha, Director of M/s DRRK. Further, in support of his statement, Shri Anam vide letter-dated 21.01.2017 had provided the copies of 'Request to do a Telex Release' issued by M/s DRRK which corroborates his statement & therefore his cross-examination in the matter is not required.

Further, Shri Sunjjoy Salve of M/s Goodrich Maritime Pvt. Ltd. in his statement dated 16.12.2015 (RUD-2 to the SCN) had not mentioned anything specific about the



Bills of Lading involved in the SCN. Also, he had not mentioned even the name of the noticee firm and its director. Also, Shri Salve in his statement dated 30.12.2015 (RUD-4 to the SCN) had stated that routing of shipments consigned for Bandar Abbas through Jebel Ali port has been seen by him only in case of Rice. He stated that such requests for delivery of shipments of rice meant for Bandar Abbas at Jebel Ali Port were frequently received by them and after taking request letters along with letter of indemnity from shipper /consigner, the shipments were delivered at Jebel Ali Port.

Thus, he has not specifically indicated about the noticee or its Director and therefore, his cross-examination is not justified in the matter.

Furthermore, Shri Gordhan Bhavnani , Manager of M/s V. Arjoon in his statement dated 09.01.2017 , on being asked about the consignments of rice meant for export to Iran and shown in the Shipping Customs documents as being exported to Iran but diverted to Jebel Ali, had stated that he always acted on the directions of the exporter. He had never done it without directions of the exporter. He admitted that it was known to him in advance i.e. before leaving of the consignment from Indian shore the goods are actually going to Dubai in place of Iran as mentioned in the shipping bill but as CHA they had no choice but to act in accordance with the directions of the exporter. Even in some of the cases they came to know of the diversion of the goods to Dubai after loading of the goods in the vessel and leaving the vessel from Indian shore. By way of reference to statements of Directors/partners of some of the exporters viz. M/s Gurdaspur Overseas Ltd., Shree Jagdamba Agrico Exports Pvt. Ltd., M/s Guranditta Mal Tilak Raj, M/s Bansal Finefoods Pvt. Ltd., M/s Puranchand Rice Mills Pvt. Ltd., he has reiterated that the fact of mentioning port of discharge as Bandar Abbas in place of Jebel Ali in Dubai was in his knowledge but as explained above, he acted on behalf of his company , as per the directions of the exporters. He referred names of Rice exporters in general but not pointed out a particular exporter in his statement.

From the above, It is clear that the statement of Shri Gordhan Bhavnani is a general statement in respect of all the Rice Exporters for which M/s V. Arjoon was handling the customs clearance and diversion of the goods to Jebel Ali port as stated by him is corroborated by the statement of Shri Amit Marwaha, Director (M/s DRRK). Thus, the statement of Shri Bhavnani is in agreement with that of Shri Amit Marwaha, Director of the Noticee Company and a co-noticee himself. Therefore, cross examination of Shri Bhavnani is not required.

Vide their letters dated 21.01.2017 and 02.04.2018, M/s V. Arjoon, CHA submitted certain documents including copies of letters addressed to the shipping lines, M/s Goodrich Maritime Pvt. Ltd. and M/s Vosco Maritime Pvt. Ltd. requesting them to do a telex release of their export consignments of rice being exported vide the impugned B/Ls at Jebel Ali, Dubai and also surrendered original Bills of Lading in this regard.

From the above discussion, it is seen that the contention of the Noticees that the Show Cause Notice is solely based on various statements recorded under Section 108 of the Customs and averments contained in these statements are not corroborated by any independent evidence and therefore veracity of these statements need be tested by way of cross-examination of all the witnesses making such statements is not



sustainable. The letters of the noticee company to the shipping lines to do a telex release for delivery of goods at Jebel Ali Port, Dubai are independent corroborative evidences buttressing the statements made under Section 108 which are also admissible as evidence as ruled by the Hon'ble Supreme Court in the matter of Percy Rustomji Basta Vs Statement of Maharashtra in Criminal Appeal No. 267 of 1968, Bhana Khalpa Bhai Patel Vs. Assistant Collector of Customs Bulsar in Criminal Appeal Nos. 566-568 of 1981 and Naresh J Sukhwani Vs. Union of India in SLP(c) No. 23708 of 1995.

6.4.2 I find that all the submissions of the Noticee No. 1 & 2 regarding non relevance of statements recorded under section 108 of the Customs Act, 1962 are not correct; as the SCN is not only based on the statements recorded under Section 108 of the Customs Act, 1962, but is also supported by corroborative evidences such as Shipping Bills, Bills of lading, landing Certificates, BRCs, emails requesting diversion of destination and statements of other persons having no contradiction of facts in them and hence the plea put forth by him is not tenable. Further, I find that the documents submitted by M/s Goodrich Maritime Pvt. Ltd., M/s V.Arjoon and acceptance of trueness of such documents which are strong corroborative evidences establishing the fact and charges mentioned in the SCN.

6.4.3 In view of the discussion made in para supra, I find that the persons whose cross examination have been sought have only stated facts related to the case and mostly stated general practice regarding rice consignments exported to Iran but diverted to UAE and clarification on some documents, nothing new facts other than what is available on record are likely to come out of cross-examination. In this regard, I put reliance on various Judicial pronouncements/decisions, wherein Hon'ble Court/Tribunal has also upheld order for rejection of cross-examination in similar circumstances:-

1. Dharampal Satyapal Ltd. Versus Dy. Commissioner of C. Ex., Gauhati [2015 (320) E.L.T. 3 (S.C.)] wherein it was held that *"the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula."*
2. Patel Engineering Ltd. Vs. Union of India [2014 (307) E.L.T. 862 (Bom.)] wherein it was held that *"we are of the opinion that it will not be correct to hold that irrespective of the facts and circumstances and in all inquiries, the right of cross examination can be asserted. Further, as held above which rule or principle of natural justice must be applied and followed depends upon several factors and as enumerated above. Even if there is denial of the request to cross examine the witnesses in a inquiry, without anything more, by such denial alone, it will not be enough to conclude that principles of natural justice have been violated."*
3. N.S. Mahesh Vs. Commissioner of Customs, Cochin [2016 (331) E.L.T. 402 (Ker.)] wherein it was held that *"that adjudicating authority rightly denied cross-examination of co-noticee on ground that firstly no specific reasons was given and secondly, co-noticee cannot be directed to be a part of proceedings that may incriminate him."*
4. Chennai Marine Trading (P) Ltd. Vs. C.C. (Seaport-Import), Chennai [2014 (304) E.L.T. 354 (Mad.)] wherein it was held that *"there was no straight jacket formula to*



*allow cross-examination in all the cases, consequently, there was no violation of principles of natural justice."*

5. Pundole Shahrukh & Co. Vs. Commissioner of Customs (GEN.), Mumbai [2014 (313) E.L.T. 573 (Tri-Mumbai)]
6. GTC Industries Ltd. Vs. Commissioner of Customs, New Delhi [2011 (264) E.L.T. 433 (Tri.-Del.)]
7. Krishnaram Dyeing & Finishing Works Vs. Commr. of C. Ex. & Cus., Surat - 2007 (209) E.L.T. 410 (Tri. - Mumbai).

In view of the above discussion and findings, I am not inclined to grant cross examination of the witnesses as sought by the Noticee No. 1 & 2.

6.4.4 M/s Ajay Singh & Associates, Advocate of the Noticee No. 1 & 2 Vide letters dated 15.01.2020 and 23.01.2020 requested to communicate the outcome of their request for cross examination in terms of the Hon'ble Tribunal Mumbai Judgment in case of M/s Bharti Bhutada Vs Commissioner of Customs (CSI Airport) Mumbai -2011(266) E.L.T. 97(Tri-Mumbai). Accordingly, they were informed regarding non acceptance of their request with reasoning thereof vide letter F. No. VIII/48-14/Adj/ADC/MCH/2019-20 dated 21.02.2020 and were also requested to make additional submissions (if any) in the matter latest by 28.02.2020. Till date, they have not submitted the same.

From the above, it is clear that the show cause notice is not only based on statements of the witnesses but also supported by documentary evidences which includes exporters letter to the shipping lines for telex release of the goods at Jebel Ali , landing certificates , surrender of B/L and confessional statement by the active Director of the noticee exporter , Shri Amit Marwaha and therefore , the principles of natural justice are amply met with in the instant case as ruled by the High Court of Delhi in case of Harminder Singh Chadha Vs Commissioner of Cus. (Preventive), New Delhi in C. M. Appeal Nos. 28246, 28340 of decided on 20.07.2018.

6.4.5 In view of the detailed discussion above, I find that there are number of independent and corroborative evidences, as discussed above, which supports statements of these three persons/witnesses. No new fact is likely to come out from their cross-examinations. The statements were not retracted. The statements are not contradictory. Therefore, there does not appear any cogent reason for granting permission of cross-examination of these three persons. In this context, I rely decision in the case of Jagdish Shankar Trivedi Vs. Commissioner of Customs, Kanpur [2006 (194) E.L.T. 290 (Tri. - Del.)], wherein it was pronounced by the Hon'ble Tribunal that "*As noted above, all the noticees including the appellants were informed about all the material which was sought to be relied on against them along with the relevant documents and statements as stated in the detailed show cause notices issued to them, and they sent their replies to the show cause notices. Some of the appellants were represented by consultants. The appellants remained absent on various dates resulting delay in the proceedings. Statements of the two drivers of the vehicles from which contraband silver was recovered, the employee of the appellant Ashish Kumar Chaurasia and the statements of the persons who were travelling in the vehicles for taking the contraband silver to Delhi as also the statements of Ram Avatar Singhal, and the statements of independent persons before whom seizures were made clearly establish that all the appellants were persons concerned with prohibited silver and were liable to imposition of penalty under Section 112 of the said Act. In such a situation insistence for cross-examining one of them can be purely strategic with a view to raise a contention of violation of principles of natural justice. In almost all the*



cases such persons dealing in contraband would refuse to be cross-examined on the ground that they are accused of an offence and, had a fundamental right against testimonial compulsion under Article 20(3), and thereby create a situation where each one of them, in the same breath, would ask for cross-examination of the other and refuse to be cross-examined, and then contend that refusal has resulted in failure of proper hearing. Therefore, principles of natural justice do not require that in matters like this, persons who had given information should be allowed to be cross-examined by the co-noticees on the statements made before the customs authorities. If cross-examination is to be allowed as a matter of right then in all cases of conspiracy and joint dealings between the co-noticees in the commission of the offences in connection with the contraband goods, they can bring about a situation of failure of natural justice by a joint strategic effort such co-noticees by each one refusing to be cross-examined by resorting to Article 20(3) of the Constitution and simultaneously claiming cross-examination of the other co-noticees. We, therefore, hold that the appellants, including the appellant Ashish Kumar Chaurasia were not entitled to claim cross-examination as a matter of right." The said decision was also maintained by the Apex Court.

Further, in the case of N.S. Mahesh Vs. Commissioner of Customs, Cochin [2016 (331) E.L.T. 402 (Ker.)], before the Hon'ble High Court of Kerala, it was pronounced in the court that "Apart from a broad statement that noticee No. 2 was seeking cross-examination of Sri Reji Cherian for rebutting the allegations of abetting evasion of duty by furnishing false and fabricated incorrect materials, no specific reasons or points have been attributed for seeking his cross-examination. Further noticee No. 2 has not given any specific fact that would emerge in his favour upon the cross-examination of Sri Reji Cherian. Further as Sri Reji Cherian is a co-noticee, this authority cannot direct him to be present for proceedings that may cause him to incriminate himself and therefore the request for cross-examination of Sri Reji Cherian cannot be acceded to."

In the instant case, two of the persons whose cross-examination has been sought by Noticee No. 1 & 2 are related to CHA firm, which is also co-noticee. Also, Records/ reports are already on record and the notice no. 1 & 2 had all the opportunities to argue against such records/reports. Therefore, I find it appropriate to deny cross-examination of the above-stated three persons/witnesses as discussed above.

## **B. Liability to confiscation of export goods under Section 113(d) & (i) of the Customs Act, 1962.**

**6.5.1** In the show cause notice, it is alleged that M/s DRRK Foods Pvt Ltd (the Noticee) have shown in the export documents that the export goods are consigned to Bandar Abbas, Iran but in fact, the goods had been delivered at Jebel Ali UAE. This mis-declaration / mis-statement by the noticee violates section 50(1) & 50(2) of the Customs Act, 1962 read with Shipping Bill (Electronic Declaration) Regulations, 2011.

**6.5.2** Against this, the Noticees Nos.1 & 2 contend that in respect of Bills of Lading at Sr. No. 1 to 7 of the table below, the export goods i.e. rice ultimately reached the destination country i.e. Iran , for Bill of Lading at Sr. No. 8, the export goods were discharged and delivered at Bandar Abbas, Iran (and as an evidence thereof , they submitted a Revised Landing Certificate dated 12.06.2019) & for Bill of Lading at Sr. No. 9, the export goods were offloaded at Jebel Ali , Dubai and export proceeds for the same was received in convertible foreign exchange and they submitted BRC in support of their claim.

Sl. No.	SB No. / date	BL No.	Date	FOB Value
1	8539391/ 23/03/2015	GMAEMUNJEA009062	08.04.2015	1,56,97,500
2	8703227/ 30/03/2015	BALMUNJEA009110	17.04.2015	1,58,70,000



3	8753224/ 01/04/2015	VASMUNJEA009071	10.04.2015	21,89,600
4	9285022/ 29/04/2015	GMAEMUNJEA009326	11.05.2015	34,15,500
5	1304961/ 20/06/2015	GMAEMUNJEA009792	29.06.2015	42,32,000
6	1714648/10/07/2015	VASMUNJEA10021	20.07.2015	55,77,500
7	1712656 /10/07/2015	VASMUNJEA10023	20.07.2015	1,63,87,500
8	4609807/26.08.2014	MUNBND327822	30.08.2014	66,24,000
9	2270936/07/08/2015	BALMUNJEA010169	13.05.2018	1,67,48,373
		<b>Total</b>		<b>8,67,41,973</b>

In respect of the export goods mentioned at Sr. No. 1 to 7 of the table, they claim that the said goods offloaded / discharged at Jebel Ali were further transported to Creek/Launch Customs , Dubai, from where the exported goods (Rice) was shipped to Iran through the Coastal Cargo system as revealed from the documents received from the Dubai Customs . Thus, they claim that merely due to the fact that the Containers were offloaded at Jebel Ali as stated by the Shipping Companies, it is not established that the goods did not reach the consignee in Iran.

As an example, they have referred to the B/L No. GMAEMUNJEA009062 wherein the Port of Discharge and Delivery is shown as Bandar Abbas, Iran, but as per the Port Landing Certificate issued by shipping company namely M/s. Goodrich Maritime Pvt. Ltd., Port of Discharge/Country is shown as Jebel Ali, UAE. In the said B/L, notify party is shown as M/s. Kian Mehr Tejarat Jonoub Iranian Co., Iran. On basis of the above document, it is alleged that the goods were delivered to the party at UAE and then solely on basis of above, an assumption was drawn in the SCN that the exported goods did not reach the consignee at Iran. The Noticees submit that they made inquiries with the foreign buyer, who informed that the rice unloaded at Jebel Ali, was firstly transported to Creek/Launch Customs by the foreign buyer's agent M/s Shabeelah Food & Beverages Trading, Dubai, through the Cargo Transport Agency namely M/s. Khalsa Transport LLC, Dubai, which was duly registered with Government of Dubai since 18.03.2007 as a Cargo Transporter by heavy and light truck and the said M/s. Khalsa Transport LLC, Dubai issued bills for transportation charges from Jebel Ali to Launch / Creek Customs & issued receipt for receipt of transport charges. Thereafter the said consignment was transshipped by M/s Shabeelah Food & Beverages Trading, Dubai to Iran in small boats.

The noticees further submits that similarly all other consignments under 6 Bills of lading viz. BALMUNJEA009110, VASMUNJEA009071, GMAEMUNJEA009326, GMAEMUNJEA009792, VASMUNJEA10021 and VASMUNJEA10023 exported by M/s DRRK Foods Pvt. Ltd., the goods unloaded at Jebel Ali and thereafter the same were first transported to Creek / Launch Customs & corresponding receipts and thereafter transshipped in partial shipments by small boats from Dubai to Iranian Ports. Copies of Bills issued for transport charges of containers from Jebel Ali to Creek / Launch Customs, Copies "Sea Cargo Export Manifest" of Dubai Customs evidencing the rice being transshipped to Iran from Jebel Ali by the respective agent of the foreign buyer namely (a) M/s Shabeelah Food & Beverages Trading, Dubai & (b) M/s. TRV General Trading Co., Dubai. On payment of applicable fee, Dubai Customs (in whose jurisdiction the exported rice was unloaded) provided copies of "Sea Cargo Export Manifest" under which M/s Shabeelah Food & Beverages Trading, Dubai & M/s. TRV General Trading



Co., Dubai further transshipped the goods to Iran. These documents of Dubai Customs conclusively establish that the rice offloaded at Jebel Ali was in fact sent to Iran by smaller vessels and therefore the entire allegations and charges as leveled by Notice are erroneous, misconceived and cannot be sustained.

They submit that the quantity of rice in the "Sea Cargo Export Manifest" of Dubai Customs is mentioned in the number of bags and enclosed a table showing the number of bags transshipped and the number of bags covered by the 7 Bills of Ladings under which the goods were exported. They submit that the quantity shipped through smaller coastal vessel is marginally lower due to reason of damaged bags and remaining quantity being shipped in other consignments and the documents they submit clearly demonstrate that the exported goods ultimately reached Iran and therefore the charges and allegations as levelled by the impugned Notice cannot be sustained.

The noticees submit that in 7 cases, the transshipment took place from Dubai Creek/launch Customs under respective "Sea Cargo Export Manifests" as obtained from the Dubai Customs and submitted alongwith the confirmation certificate from the respective buyer in Iran that the goods indeed has been received in Iran by them. In the ninth case, they have submitted that the goods are cleared at UAE and the remittances for the same were received in convertible foreign exchange. Thus, there has been no violation of any of the provisions of the Foreign Trade Policy read with regulations issued in this regard.

The noticees submit that the Iran rupee trade is akin to the Rupee Ruble trade with Russia in past, which was formulated to offset the balance of payment against supply of arms etc. by Russia. Similarly, the Rupee Trade with Iran has been formulated to set off the balance of payment for oil being exported by Iran to India. It is our submission that in the Foreign Trade Policy there is no embargo of any kind as being proposed by the present Notice against them.

They further contend that the changes were made in the Bill of lading and Port of discharge was changed as per the directions of foreign buyer or consignee and in terms of the Indian Bills of Lading Act, 1865, once the Bill of Lading is executed, the property of goods are transferred to the consignee, in this case the Iranian party. In this scenario, any changes effected in the Bill of Lading after the Bills of Lading were issued by the Shipping company, the exporter cannot be held liable in any manner and therefore, allegations and charges leveled against the said exporter vide the impugned notice are liable to be dropped.

Regarding consignments of Rice at Sr. No. 8 & 9 of the table in the SCN, the Noticees in their written defence submission dated 23.01.2020 have submitted that the goods covered under Shipping Bill No. 4609807 dated 26.08.2014 and B/L No. MUNBND327822 dated 30.08.2014, the shipping company did transship the goods to Iran and revised Landing certificate has been enclosed. They have submitted a copy of the revised landing certificate dated 12.06.2019, issued by M/s IAL Logistics India Limited.

Regarding the consignment at Sr. No. 9 of the table in the SCN, they have accepted that the goods were actually discharged and delivered at Jabel Ali Port and the



export proceeds were received in convertible foreign currency against the same consignment. They have also submitted a copy off Bank Certificate of Remittance (BRC) downloaded from the DGFT website.

**6.5.3** In the backdrop of the above said contentions of the noticees and the facts on record and circumstances relating thereto, I find that the export of the impugned goods was carried out during 2014-15 & 2015-16 and investigation in the matter was initiated in 2015-16 by the DRI and on completion of the said investigation, the impugned SCN was issued in May-2019. Thus, the noticees had sufficient time and ample opportunity during the investigation to submit documentary evidence in support of their claim that the export goods discharged at Jebel Ali, UAE was further transshipped to Bandar Abbas, Iran (their final destination). However, they kept mum during the investigation (when verification of their claim and supporting documents could have been done with certain degree of accuracy) and chose to submit such documents (i.e. Sea Cargo Export Manifest issued by Dubai Customs) on 23.01.2020, which put doubt on these documents. Further, the subject export goods were destined to Bandar Abbas, Iran for different consignees whereas for transshipment of cargo from Jebel Ali, UAE to Iran, M/s Shabeelah Food and Beverages Trading, Dubai & M/s TRV General Trading Co., Dubai are shown as exporter for three consignments each and M/s Fateh Bin General Trading LLC as exporter for seventh consignment. It is hardly believable that all their foreign buyers wished to have these parties as transshipper and it is very likely that the said firms were selected at the direction of the Exporter. The contention of the Noticee that the said export goods were transshipped from Jebel Ali UAE to Bandar Abbas, Iran; is not tenable as the transport invoices issued by M/s Khalsa Transport LLC, Dubai are showing details of goods in containers, B/L wise whereas the Noticees submitted that the goods were transshipped in small boats with details of goods in the Sea Cargo Export Manifests shown in bags from Dubai to Iran which is contradictory.

Some other observations in this regard are also noted below:-

- (i) Though the Sea Cargo Export Manifests (SCEMs) show export of some goods by M/s Shabeelah Food and Beverages Trading, Dubai M/s TRV General Trading Co., Dubai and M/s Fateh Bin General Trading LLC from Dubai to Iran, there is no mention of Bills of Lading Number/Import declaration regarding import of the said goods. Thus, there is nothing to ascertain that the goods thus exported from Dubai to Iran had been imported from India.
- (ii) It is also seen from the SCEMs that the goods have been exported from Dubai to Iran in bags and not in containers in which they have been imported to Dubai from India & therefore, the integrity of the consignment appears to have been breached and it cannot be said that the goods exported from Dubai were one and the same as had been imported from India.
- (iii) Further, it is also seen that the number of bags covered under the bills of Lading with respect to goods exported from India to Dubai are not matching with the number of bags mentioned in corresponding SCEMs submitted by the noticee.

In the light of the above, I find that the goods exported from Dubai to Iran under the SCEMs cannot be considered to be the same as has been exported from India to Dubai.



Therefore submission of documents in support of the claim that the export goods discharged at Jebel Ali, UAE was further transshipped to Iran was an afterthought and cover up for their wrong doing. Even if it is taken to be exported from UAE to Iran, it was only further trade from UAE and not the export of goods from India to Iran. Moreover, the number of bags as declared in commercial invoices , Shipping Bills etc. filed before the Indian Customs and the same declared in the corresponding Sea Cargo Export Manifest issued by Dubai Customs as submitted by the Noticees do not match with each other. Identity of goods exported from India vis-à-vis the goods transshipped from UAE to Iran in small boats have also not been established and therefore, I find that the submissions of the Noticee No. 1 and 2 is not sustainable.

Regarding contention of the noticees that the goods covered under B/L No. MUNBND327822 dated 30.08.2014 was shipped to Iran and the concerned shipping company M/s IAL Logistics India Ltd, Gandhidham has issued Revised Landing Certificate dated 12.06.2019 which establishes beyond doubt that the goods was delivered at Bandar Abbas, Iran, I find that the said certificate cannot be accepted because of following reasons:-

- (a) It has not been issued in routine on time.
- (b) It has been issued based on information available in the goods carrier's backup database and not based on actual landing of the goods.
- (c) It is issued after almost five years of landing of the goods (in terms of B/L No. MUNBND327822 dated 30.08.2014, the export goods were received for shipment on 30.08.2014)
- (d) It is issued after issuance of SCN in the instant case which makes it doubtful. If at all the export goods were discharged at Bandar Abbas , the landing certificate in this regard should have been issued earlier and submitted to the investigating agency for verification during the investigation.
- (e) Shri Amit Marwaha, Director of M/s DRRK Foods, in his statement dated 26.03.2018 has informed "However, later from my records, I found that apart from the above mentioned shipments, one more shipment of rice, shipped for Iran , was diverted to Dubai during the period 2014-15." The details of the shipments are as under :

Sr. No.	SB No. / date	BL No.	Invoice No. / date	Invoice Amount (INR)
1.	4609807/26.08.2014	MUNBND327822	DRRK/0209/ 11.08.2014	6624000.00

From this, it is clear that the said consignment was also discharged at Jebel Ali and this Revised Landing Certificate dated 12.06.2019 is not acceptable as there is no means to verify the same after lapse of almost five years.

Regarding export goods covered under B/L No. BALMUNJEA010169 Dt. 13.08.2015, the noticee contends that these goods were always (since shipment) entered for UAE only and the goods were offloaded at Jebel Ali .The allegation that export proceeds of these goods were received in Indian currency is erroneous as the export proceeds against these goods were received in convertible foreign exchange and the BRC downloaded from DGFT site certifies the said fact. In this regard, I find that in the Shipping Bill No.2270936 dated 07.08.2015 country of destination is mentioned as



United Arab Emirates. Also in bill of Lading No. BALMUNJEA010169 Dt. 13.08.2015, port of delivery is Jebel Ali, UAE. Also, BRC No. ORBC0100870000499262 Dt. 18.11.2015 shows realization of USD 269065.00 against Shipping Bill No.2270936 dated 07.08.2015. In view of the above, it is concluded that the contention of the noticees appears to be proper and the amount of impugned goods need be deducted from the amount of impugned export goods under the notice. Also, the said goods covered under B/L No.BALMUNJEA010169 Dt.13.08.2015 & Shipping Bill No.2270936 dated 07.08.2015 are not liable to confiscation under Section 113(d) & 113(i) *ibid*.

**6.5.4** The Noticee contends that the impugned goods were packed in 10 Kgs. bags bearing markings in Iranian language and the brands /trade names of the Iranian buyer and hence as per the UAE Laws, no goods such as rice can be sold into UAE unless and until they are bearing the markings in Arabic language and also other relevant details but for which the sale of goods is not permitted in UAE. However, the Noticees have failed to produce any documentary evidence to the effect. Moreover, re-packing of the goods for making them compliant with UAE Laws cannot be ruled out. Moreover, for the consignment covered B/L No. BALMUNJEA010169 Dt.13.08.2015 which was originally destined for Dubai, the marks and number mentioned in the said B/L are identical to the marks and numbers in other Bills of Lading and therefore to claim that the discharged goods at Jebel Ali Port were not consumed in UAE is without any substance and is totally baseless and illogical.

6.5.4.1 The contention of the Noticees that the export goods were diverted from Iran to Dubai on the direction of their foreign buyers is not tenable as the date of message for diversion of goods to UAE was just after issuance of Bill of Lading. Further, in none of Bills of Lading and export documents, it was declared that the consignments were to be exported to Iran via UAE. Further, had such diversion been on request of their Iranian buyers, they must have some communications from them and they might have submitted the same to the Investigating agency i.e. the DRI. However, they have failed to bring out the same and therefore, they have failed to establish that such diversion of goods was done on request of their Iranian buyers. Their contention that once Bills of Lading were issued by the Shipping company, in terms of the Indian Bills of Lading Act, 1865, property in goods are transferred to the consignee (the Iranian buyers), the Noticees had no control over the goods and the goods were at complete disposal of the consignees and any changes effected in the Bill of Lading was effected at the instance of foreign buyer is also not tenable as no documentary evidence with regard to any direction from their foreign buyers has been submitted by the Noticees. Rather in his statement dated 15.03.2016, Shri Amit Marwaha has confessed that all the seven consignments involved in the impugned notice were discharged at Jebel Ali Port, Dubai and delivered to different buyers. He also stated that Sh. Rakesh Kumar, their Export Manager, had requested vide different letters to the shipping lines i.e. M/s Vosco Maritime Pte Ltd or Goodrich Maritime Pvt. Ltd surrendering the original B/L and for delivery to the notify party at Dubai. He further stated that they had not intimated to the Bank (i.e. UCO Bank, Amritsar Branch) about the change in destination of above seven consignments. On being asked as to why the same was not intimated to the bank as the payment in INR can be received only against those consignments which were delivered in Iran and not for the consignments which were discharged at Jebel Ali port, he admitted that they had incorrectly relied upon the verbal assurances given by the buyer regarding ultimate destination being Iran, which was a mistake. In his statement dated



26.03.2018, Shri Amit Marwaha admitted that apart from the 07 consignments of rice that he mentioned in his earlier statement, one more shipment of rice, shipped from Iran was diverted to Dubai. Thus during 2014-15, 03 consignments were diverted to Jebel Ali Port (Dubai) and during 2015-16, 05 consignments were diverted to Jebel Ali Port (Dubai) and for the same they have received payment from Iran in Indian Rupees only. He further stated that in the case of aforementioned 08 consignments of Rice meant for export to Iran subsequently the buyer asked them to deliver the goods at Jebel Ali and they accordingly instructed their CHA and provided him the necessary documents for change of destination from Iran to Jebel Ali. Their Customs Broker, M/s V Arjoon and their employee **Shri Gordhan Bhavnani were fully aware about the diversion of rice to Dubai/Jebel Ali before leaving of the goods from India** whereas in the export documents the destination is mentioned to be Iran. He also confirmed the copies of letters issued by M/s DRRK foods (Pvt) Ltd to M/s Goodrich Maritime Pvt Ltd and M/s Vosco Maritime Pvt Ltd with request to do a telex release' for delivery of goods at Dubai which itself is corroborative evidence of diversion of the goods by them to Jebel Ali, UAE instead of Iran. Thus, the Noticee have completely failed to establish that such diversion of goods was done on request of their Iranian buyers. Also it is an undisputed fact that containerized cargo was unloaded at Jebel Ali and no declaration was made by them at any stage regarding transshipment of such cargo. Also, it was mandatory for the exporter and CHA to get the Customs Documents amended at port of export, but the same was not done either by the exporter or by the CHA or agents concerned at any stage. Rather in his statement dated 15.03.2016 Shri Amit Marwaha, Director of the Exporter, has stated that they had not got carried out any amendment in the respective shipping bills for change of destination port, he stated that since payment was to be received from Iran in Indian rupees, the amendment was not made.

**6.5.5** In addition to the statement of Shri Amit Marwaha, statements of various other persons (which are as under) have been relied upon in the SCN. All of them have given incriminating statements with regard to diversion of export consignments.

Shri Sunjjoy Salve, Vice President (Western Region) of M/s Goodrich Maritime Pvt Ltd in his statement dated 16.12.2015 has stated that during January 2014 to till date they had received the request from the shipper i.e. exporter to divert the cargo from one port i.e. Bandar Abbas port to Jebel Ali. In his statement dated 30.12.2015 he has stated that the routing of the shipment is decided by them as per the direction of the CHA. He further stated that the direct shipment to Bandar Abbas would take approximately 4 days after sailing from Mundra and in case of shipments via Jebel Ali, it take approximately 8 to 10 days from date of sailing from Mundra. He further stated that routing of shipments consigned for Bandar Abbas through Jebel Ali port has been seen by him only in case of rice and they have not received request / instruction for routing the shipments meant for Iran through Jebel Ali in any other case. Such request for delivery of shipments of rice meant for Bandar Abbas at Jebel Ali Port had been received by them frequently and after taking request letters alongwith letter of indemnity from shipper or consignee, the shipments were delivered at Jebel Ali port. On being asked about the reasons for routing the shipments through Jebel Ali when it is faster and economical for the shippers to sail it directly to Bandar Abbas, he stated that the reasons can only be explained by CHA or the shipper as they acted upon the instructions given to them. It is pertinent to mention



that M/s DRRK used the services of M/s Goodrich Maritime Pvt Ltd for export of their rice cargo.

Shri Tushar H. Anam of M/s V. Arjoon in his statement dated 22.12.2015 has stated that Shri Gordhan Bhavnani, H-Card holder of M/s V. Arjoon and himself interacted with all the shipping lines on behalf of their clients. Further, he stated that some shipments of rice, which were cleared for export to Iran were later on diverted at Jebel Ali port after customs clearance and such diversion of goods to Dubai after clearance for Iran was not brought to the notice of Customs authorities at the port of export by the exporters or shipping lines, because cargo had already left Indian waters and had reached Jebel Ali and Exporters/Shipping Line had not requested for any amendment in the Shipping Bill. Major exporter clients of M/s V. Arjoon included M/s DRRK Foods Pvt. Ltd also.

Shri Gordhan Bhawnani, Manager of M/s V. Arjoon in his voluntary statement dated 09.01.2017 recorded under Section 108 of the Customs Act, 1962 stated that on behalf of exporters, he dealt with the shipping lines and also got their customs clearance work. Further, handling of export consignments with shipping line, Customs, custodians and exporters and other related person was done by him as employees of the CHA firm, was in the knowledge of owner of the CHA firm and was done for the CHA firm as per the practice being followed by them. Further, on being asked about the consignments of rice meant for export to Iran and shown in the shipping customs documents as being exported to Iran but diverted to Jebel Ali, Dubai **he stated that he always acted on the direction of the exporter.** Further, he admitted that **it was known to him in advance i.e. before leaving of the consignment from Indian shore that the goods were actually going to Dubai in place of Iran as mentioned in the shipping bills** but as CHA they had no choice but to act in accordance with the directions of the exporter; that even in some cases they came to know of the diversion of the goods to Dubai after loading of the goods in the vessel and leaving the vessel from Indian shore. Further, he confessed that he had diverted the goods on the request and direction of the exporter and whatever statement had been made is without any intention to avail any benefit. He also admitted that he could have filed amendment under Section 149 of the Customs Act, 1962, which he did not do as no request from exporter or shipping line was received.

In addition to the above said statements of witnesses recorded under Section 108 of the Customs Act, 1962, the noticee's request letter for telex releases of good and delivery order for delivery of goods at Jebel Ali and surrender of the original B/L together with confessionary statement of Sh. Amit Marwaha, Director of M/s DRRK are corroborative evidences to show that the goods declared in export documents to be destined to Iran were diverted to Jebel Ali, Dubai.

From the above detailed discussion, it is clear that the impugned goods as mentioned in the table below were discharged and delivered at Jebel Ali Port, UAE and not at Bandar Abbas, Iran :-

Sl. No.	SB No. / date	BL No.	Date	FOB Value
1	8539391/ 23/03/2015	GMAEMUNJEA009062	08.04.2015	1,56,97,500
2	8703227/ 30/03/2015	BALMUNJEA009110	17.04.2015	1,58,70,000



3	8753224/ 01/04/2015	VASMUNJEA009071	10.04.2015	21,89,600
4	9285022/ 29/04/2015	GMAEMUNJEA009326	11.05.2015	34,15,500
5	1304961/ 20/06/2015	GMAEMUNJEA009792	29.06.2015	42,32,000
6	1714648/10/07/2015	VASMUNJEA10021	20.07.2015	55,77,500
7	1712656 /10/07/2015	VASMUNJEA10023	20.07.2015	1,63,87,500
8	4609807/26.08.2014	MUNBND327822	30.08.2014	66,24,000
		<b>Total</b>		<b>6,99,93,600</b>

From the detailed discussion hereinbefore, I find that the Noticee M/s DRRK Foods Pvt Ltd has filed the export documents for export of the goods to Iran. In their applications filed in terms of Shipping Bill (Electronic Declaration) Regulations, 2011, the Noticee/CB had declared all the facts stated in the declaration filed under these regulations to be true under Section 50 of the Customs Act, 1962. The goods have been shown in the export documents to be consigned to Iran but in fact the good had been delivered at UAE. Thus this mis-declaration of actual destination of the export consignments in the shipping bills and/mis-statement by way of falsely certifying the said mis-declaration to be true was made in the export documents in contravention of Section 50 of the Customs Act, 1962. In this process, they have also violated the Shipping Bill (Electronic Declaration) Regulations, 2011 as brought out amply in the SCN.

The export proceeds for the impugned goods had been realised in Indian rupees from Iranian buyers as against statutory requirement of their realization in freely convertible foreign currency for export to UAE. In terms of para 2.40 of FTP 2019-2014 or para 2.52 of FTP 2015-2020, all export contracts and invoices shall be denominated either in freely convertible currency or Indian Rupees but export proceeds shall be realised in freely convertible currency. In terms of para 2.53 of the FTP, export proceeds realised in Indian Rupees against exports to Iran are permitted to avail export benefits/incentives under the FTP at par with export proceeds realised in freely convertible currency. The fact that the impugned goods have been offloaded / discharged at UAE, even though the declared destination of the consignment was Bandar Abbas, Iran has not been successfully countered by the notices. Despite this, certain payments which have been received by M/s DRRK Foods Pvt Ltd are claimed to be towards export of impugned goods. These payments had actually been received from Iranian entities in whose names the shipping bills had been filed as consignees of the goods. M/s DRRK Foods Pvt Ltd had been unable to demonstrate as to how this payment is related to the goods delivered in UAE in absence of their establishing relationship with the export goods; the same cannot be considered to be the proceeds of export goods. Thus, it is clear that the export proceeds have been realised from a third party and have not been received from the actual buyer of the goods. This results into violation of the RBI Circular No. RBI/13-14/364,A.P. (DIR Series) Circular No. 70 dated 08.11.2013 in as much as its conditions have not been complied with. This violation further leads to contravention of Section 8 of the Foreign Exchange Management Act, 1999 (which requires that the due amount of Foreign Exchange should be realised and repatriated to India in such manner as may be specified by the Reserve Bank) . This further leads to violation of Rule 11 read with Rule 14(2) of the Foreign Trade Regulation Rules, 1993 in as much as they attempted to obtain export incentives. Receiving payment in Indian Rupees in lieu of freely convertible foreign currency in contravention



of the FTP as discussed above, is violation of Section 11(1) of the Foreign Trade (Development & Regulation) Act. These violations have been taken to be covered under the expression "prohibition" used in Section 113(d) by referring to the Hon'ble Supreme Court Judgment in the matter in Sheikh Mohd. Omar Vs. Collector of Customs Calcutta & Others [(1970)2 SCC 728] read with the Apex Court judgment in case of Omprakash Bhatia Versus. Commissioner of Customs, Delhi {2003(155)423 ELT}. This matter has been amply elaborated in the show cause notice and in relevant legal provision section of this order. Owing to the above said violations, the impugned goods (at Sr. No. 1 to 8 of the table in the impugned SCN) are rendered liable to confiscation under section 113(d) of the Customs Act, 1962.

As discussed hereinbefore, the exporter M/s DRRK Foods Pvt. Ltd. made/got made false entries in the shipping Bills with regard to actual destination of the export consignments [Violation of Section 50(1) of the Customs Act, 1962 and Shipping Bill (Electronic Declaration) Regulations-2011]. They also made and subscribed to a declaration as to the truth of its contents on the impugned shipping bills & thus they have falsely certified / got certified the entries to be true whereas they have misstated the facts in the shipping bills. Thus the impugned goods entered for exportation do not correspond with the declaration in the shipping bills in respect of actual destination of the export consignments and therefore the export goods are rendered liable to confiscation in terms of Section 113(i) *ibid*.

**6.5.6** As the impugned goods are found to be liable for confiscation under Section 113(d) and Section 113(i) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation. The Section 125(1) *ibid* reads as under:

**Section 125.** *Option to pay fine in lieu of confiscation. — (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.*

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. In the matter of Commissioner of Customs (Imp.), Nhava Sheva Vs. S.B. Impex [2017 (358) E.L.T.358 (Tri. Mumbai)], it was held:

*"6. It is noticed that the goods on which the Revenue has sought imposition of redemption fine were cleared and disposed of by the appellant. The said goods are not available for confiscation. The said goods were also not seized and released under any bond or undertaking. In these circumstances, the same cannot be confiscated and therefore, no redemption fine could have been imposed".*

Further, in the matter of Weston Components Ltd. Vs. Commissioner of Customs, New Delhi [2000 (115) E.L.T. 278 (SC)], it was held by the Hon'ble Supreme Court that:

*"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the*



*custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine”.*

The above judgment was delivered on specific issue and facts of the case were not discussed in detail in the said judgment. The above judgment was delivered by the Hon'ble Supreme Court in Civil Appeal No. 7144 of 1999, filed against the order of Hon'ble Tribunal reported at 1999 (84) ECR 259 (Tri Delhi). In the said order, Hon'ble Tribunal discussed the issue in brief wherein it is also mentioned that the goods involved in that case were provisionally released. Therefore, it emerges from the said judicial pronouncements that redemption fine can be imposed against those goods also which are not physically available but were provisionally released against bond.

In the matter of Lubrizol Advanced materials India Pvt. Ltd. Vs. C.C.E. Vadodara-I [2013 (290) E.L.T. 453 (Tri.-Ahmd.)], it was held by the Hon'ble Tribunal that:

*“Moreover, in the case of Weston Components reported in [2000 (115) E.L.T. 278 (SC)], the goods had been released provisionally under a bond and it is nobody's case in this case that goods were seized and released provisionally under a bond. In the absence of seizure, the decision of the Hon'ble Supreme Court in the case of Weston Components cannot be applied”.*

In the matter of Commissioner of Central Excise, Surat-II Vs. Citizen Synthesis [2010 (261) E.L.T. 843 (Tri. Ahmd.)], it was held by the Hon'ble Tribunal that:

*“Learned SDR on behalf of the Revenue submits that Revenue is in appeal against the conclusion of Commissioner that clandestinely cleared goods which are not available for confiscation, cannot be confiscated and setting aside redemption fine of Rs. 50,000/- imposed. He relies on the decision of Hon'ble Supreme Court in the case of M/s. Weston Components as reported in [2000 (115) E.L.T. 278 (SC)], in support of his contention that redemption fine is imposable even when the goods are not available for confiscation. I find that the decision of Hon'ble Supreme Court in the case of M/s. Weston Components was rendered wherein the goods had been released to the appellant after execution of bond. Obviously, it was the case of provisional release. Learned SDR fairly admitted that in this case, the goods had not been provisionally released, but removed clandestinely. Therefore, the judgment cited by the learned SDR is not relevant.*

In the matter of Commissioner of Central Excise, Surat Vs. Gunjan Exports [2013 (295) E.L.T. 733 (Tri. Ahmd.)], it was held that:

*“5. I have considered the submissions and I find myself unable to appreciate the submissions. The Hon'ble Supreme Court had clearly held in the case of Weston Components Limited that when the goods are released provisionally on execution of bond, confiscation can be affected even if the goods are not available. The natural conclusion is that the goods should have been released on bond which would mean that the goods have been taken possession of by way of seizure and subsequently released on execution of bond. Admittedly that is not the situation in this case also. In this case, respondents themselves have diverted the goods and after diversion, proceedings have been initiated. There is no seizure of the diverted goods and release of the same provisionally on execution of bond. Therefore, the issue is covered by the decision of the Hon'ble Supreme Court and in the absence of release on the basis of execution of a bond,*



*goods could not have been confiscated. The decision of the Larger Bench of the Tribunal relied upon by the learned Commissioner is also applicable since in this case also there is no bond with a security is available. The B-17 Bond is a general purpose bond undertaking to fulfil the conditions of notification and other requirements and does not help the Revenue to confiscate the goods not available and impose the redemption fine in lieu of confiscation. Further, the confiscation always presumes availability of goods and presumption normally is that goods have been seized and thereafter the proceedings would culminate into confiscation or release. Confiscation would mean that seized goods become the property of the Government and the party to whom it is ordered to be released on payment of fine, will have to pay fine and redeem the goods. When the goods have been diverted and not released on execution of bond with conditions, the question of confiscation of the same does not arise since goods have already become someone else's property. Under these circumstances, I find no merits in the appeal filed by the Revenue and accordingly, reject the same".*

**6.5.7** In view of the above discussion and judicial pronouncements, I find that redemption fine can be imposed only in those cases where goods are either available or the goods have been released provisionally under Section 110A of the Customs Act, 1962, against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings. In the instant case, the impugned goods are neither available physically nor released provisionally on bond under Section 110A *ibid* and therefore, redemption fine cannot be imposed in this case.

**C. Liability of the exporter to penalty under Section 114 & 114AA of the Customs Act, 1962.**

**6.6** The Show Cause proposes to impose penalty on the exporter under section 114 and 114AA of the Customs Act, 1962.

In this regards, the noticee contends that since the provisions of Section 113(d) and 113(i) are not at all attracted, provisions of Section 114 *ibid* are not applicable in the facts and circumstances of the present case. Further, they contend that all the information and details contained in the Shipping bills were correctly declared by them to the best of their knowledge and belief and it is only after exportation of the goods, at the behest of foreign buyer the request was made for changing the port of discharge and therefore the allegations as contained in the notice are not at all sustainable in the facts and circumstances of the case and Section 114AA *ibid* is not invocable.

**6.6.1** In their defence reply, the exporter, M/s DRRK Foods Pvt Ltd have not contended the fact that the impugned goods which was declared for export to Iran was offloaded/ discharged at Jebel Ali Port (UAE). They have not contended that the export proceeds were realised in Indian Rupees from Iranian buyers even though the goods were offloaded at Jebel Ali, Dubai. Only vide their written defence reply dated 31.01.2020, they claimed (in respect of the goods at Sr.No. 1 to 7) that the subject goods reached its ultimate destination i.e. Iran through small boats from Dubai and was transhipped to Iran. To support this claim, they have submitted some documents viz. copies of "Sea Cargo Export Manifests" of Dubai Customs, transport receipts from M/s Khalsa Transport and Revised landing certificate for the goods at Sr.No. 8 of the table in the Impugned SCN. In respect of the export goods at Sr. No. 8 of the table, they have submitted that the goods offloaded at Bandar Abbas port only and not at Jebel Ali, UAE



as alleged in the SCN. However, the said claim of the exporter is not acceptable as discussed hereinbefore including on following grounds:

1. During the inquiry conducted by the DRI, no person from the Noticees have submitted that the impugned goods actually reached to Iran and to the real buyer as declared in their export documents.
2. No such declaration was made before the Customs Authorities regarding transshipment of impugned goods to Iran through Jebel Ali Port.
3. The noticee company has failed to submit any document / evidence to prove that their Iranian buyers sought delivery of their goods through Jebel Ali Port.

Moreover, the Noticees have failed to prove that there is any provision for export made from India to Jebel Ali Port, if further exported to Iran to be treated as export from India to Iran particularly when the export to Iran is carried out under a treaty between India and Iran; wherein no such provisions to transship the goods through any other Country is provided. Also no such provision is found in the FTP (2009-2014 & 2015-20). Hence, the contention of the noticee that the impugned goods reached Iran is not tenable.

**6.6.2** Further, I find that Shri Amit Marwaha , Director of M/s DRRK Foods Pvt Ltd in his statement dated 15.03.2016 has confessed that these 7 consignments have been discharged at Jebel Ali Port, Dubai and delivered to different buyers. He also confessed that Sh. Rakesh Kumar , their Export Manager had requested vide different letters to the shipping line i.e. Vasco Maritime Pte Ltd or Goodrich Maritime Pvt Ltd surrendering the original B/L and for delivery to the notify party at Dubai . That they had not intimated to their bank about the change of destination of above seven consignments; that on being asked as to why the same was not intimated to the bank as the payment in INR can be received only against those consignments which were delivered in Iran and not for the consignments which were discharged at Jebel Ali Port, he admitted in his statement dated 15.03.2006 that they had incorrectly relied upon the verbal assurance given by the buyer regarding ultimate destination being Iran, **which was a mistake** . He also stated that **they instructed their CHA** and provided the necessary documents for change of destination from Iran to Jebel Ali Port. I find that Shri Sunjjoy Salve, Vice President (Western Region) of M/s Goodrich Maritime Pvt. Ltd. in his statement dated 30.12.2015 has stated that routing of shipments consigned for Bandar Abbas through Jebel Ali Port has been seen by him only in case of Rice and they have not received request/instruction for routing the shipments meant for Iran through Jebel Ali in any other case. He also stated that requests had been received by them frequently and after taking request letters along with letter of indemnity from Shippers/Consignee, the shipments were delivered at Jebel Ali Port. Thus , Shri Amit Marwaha has admitted that 7 consignments of rice covered under the impugned SCN, which were destined to Iran were offloaded at Jabel Ali Port , UAE.

Further, Shri Gordhan Bhavnani, Manager of M/s V. Arjoon in his voluntary statement dated 09.01.2017 has admitted that it was known to him in advance i.e. before leaving the consignment from Indian shore that the goods were actually going to Dubai in place of Iran as mentioned in the impugned Shipping bills but as CHA, they had no



choice but to act in accordance with the directions of the exporter. He also admitted that he could file amendment under Section 149 of the Customs Act, 1962 which he did not do as no request from exporter or shipping line was received. I find that all these statements are in agreement with the statement of Shri Amit Marwaha, Director of M/s DRRK Foods Pvt Ltd that the goods meant for export to Iran were diverted to Jebel Ali on their instructions. Thus, Shri Amit Marwaha has admitted that 7 consignments of rice covered under the impugned SCN, which were destined to Iran were offloaded at Jebel Ali, UAE.

**6.6.3** From the above, it is clear that the goods declared in the export documents to be exported to Iran were diverted to Jebel Ali, UAE and no amendment for the same was sought either by the exporter or their agent. The export proceeds for the impugned goods had been realised in Indian rupees from Iranian buyers as against statutory requirement of their realization in freely convertible foreign currency for export to UAE. In terms of para 2.40 of FTP 2019-2014 or para 2.52 of FTP 2015-2020, all export contracts and invoices shall be denominated either in freely convertible currency or Indian Rupees but export proceeds shall be realised in freely convertible currency. In terms of para 2.53 of the FTP-2015-20, export proceeds realised in Indian Rupees against exports to Iran are permitted to avail export benefits/incentives under the FTP at par with export proceeds realised in freely convertible currency. The fact that the impugned goods have been offloaded / discharged at UAE, even though the declared destination of the consignment was Bandar Abbas, Iran has not been successfully countered by the notices. Despite this, certain payments which have been received by M/s DRRK Foods Pvt Ltd in their Bank account are claimed to be towards export of impugned goods. These payments had actually been received from Iranian entities in whose names the shipping bills had been filed as consignees of the goods. M/s DRRK Foods Pvt Ltd had been unable to demonstrate as to how this payment is related to the goods delivered in UAE. In absence of their establishing relationship with the export goods, the same cannot be considered to be the proceeds of export goods. Thus, it is clear that the export proceeds have been realised from a third party and have not been received from the actual buyer of the goods. This results into violation of the RBI Circular No. RBI/13-14/364,A.P. (DIR Series) Circular No. 70 dated 08.11.2013 in as much as its conditions have not been complied with. This violation further leads to contravention of Section 8 of the Foreign Exchange Management Act, 1999 (which requires that the due amount of Foreign Exchange should be realised and repatriated to India in such manner as may be specified by the Reserve Bank) . This further leads to violation of Rule 11 read with Rule 14(2) of the Foreign Trade Regulation Rules, 1993 in as much as they attempted to obtain export incentives. Receiving payment in Indian Rupees in lieu of freely convertible foreign currency in contravention of the FTP as discussed above, is violation of Section 11(1) of the Foreign Trade (Development & Regulation) Act. These violations have been taken to be covered under the expression "prohibition" used in Section 113(d) by referring to the Hon'ble Supreme Court Judgment in the matter in Sheikh Mohd. Omar Vs. Collector of Customs Calcutta & Others [(1970)2 SCC 728] read with the Apex Court judgment in case of Omprakash Bhatia Versus. Commissioner of Customs, Delhi {2003(155)423 ELT}. This matter has been amply elaborated in the show cause notice and in relevant legal provision section of this order. Owing to the



above said violations, the impugned goods are rendered liable to confiscation under section 113(d) of the Customs Act, 1962. In view of the above, the contention of the Noticee that the export goods were diverted to Jebel Ali; cannot be termed as intentional; is not tenable.

**6.6.4** As discussed hereinbefore, the exporter M/s DRRK Foods Pvt Ltd made/got made false entries in the shipping Bills with regard to actual destination of the export consignments [Violation of Section 50(1) of the Customs Act, 1962 and Shipping Bill (Electronic Declaration) Regulations-2011]. They have also made and subscribed to a declaration as to the truth of its contents on the impugned shipping bills thus they have falsely certified / got certified the entries to be true whereas they have mis-stated the facts in the shipping bills. Thus, the impugned goods entered for exportation do not correspond with the declaration in the shipping bills in respect of actual destination of the export consignments and therefore the export goods are rendered liable to confiscation in terms of Section 113(i) *ibid*.

**6.6.5** I find that M/s DRRK Foods Pvt Ltd had not disclosed the fact of mis-statement in shipping bills at their own. The facts came to the knowledge of the Department only subsequent to initiation of investigation. In today's era of self-assessment, the department is not privy to the certain information which is in exclusive control of the exporter. In case of self-assessment, it is bounden duty of the exporter to make true declarations in the shipping bills and make and subscribe to an undertaking in the same shipping bills as regards truthfulness of its contents. The mis-declaration and mis-statement as detailed above on the part of M/s DRRK Foods Pvt Ltd are not inadvertent failure to state correct details but are deliberate acts on their part and therefore, the impugned goods having collective fob value of Rs.6,99,93,600/- (Rupees Six Crore Ninety Nine Lakhs Ninety Three Thousand Six hundred only) at Sr. No. 1 to 8 as per details in Table provided in the SCN, are liable for confiscation under Sections 113 (d) and 113 (i) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 (as amended) Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules, 1993, read with provisions of Section 50 of the Customs Act, 1962 and the exporters are liable to penalty under section 114(i) and 114AA of the Customs Act, 1962.

**D. Liability of Shri Amit Marwaha, Director of the exporter, and Customs Brokers M/s V.Arjoon to penalty under Section 114 & 114AA of the Customs Act, 1962.**

**6.7 Penalty on Shri Amit Marwaha, Director of M/s DRRK Foods Pvt. Ltd.:-**

**6.7.1** In his statement dated 15.03.2016, Shri Amit Marwaha stated that he joined his family business (M/s Daulat Ram Ramesh Kumar) in 1997 which is engaged in procurement, processing and trading of Rice and in 2013, they floated M/s DRRK Foods Private Limited (DRRK) which is engaged in rice milling and export thereof. Presently he is one of the directors on board in the company. He further stated that his responsibilities include processing and export of rice in DRRK. From his other statements also, it is seen that he was the key person who carried out the relevant operations for the purpose of



export. Further, I find that Shri Amit Marwaha in his confessional statements dated 15.03.2016 and 26.03.2018 has already accepted the diversion of goods from Iran to Jebel Ali. In his statement dated 26.03.2018, he stated that they instructed their CHA and provided him the necessary documents for change of destination from Iran to Jebel Ali. Their Custom Broker, M/s V. Arjoon and their employee i.e. Shri Gordhan Bhavnani were fully aware about the diversion of rice to Dubai / Jebel Ali before leaving of the goods from India whereas in the export documents the destination is mentioned to be Iran. Further, he has got no amendment made in the relevant shipping bills in this regard. Also, he got the export proceeds received in Indian currency from Iranian buyers. In his statement dated 15.03.2016, he stated that they have not intimated to their bank about the change of destination of above seven consignments. On being asked as to why the same was not intimated to the bank, as the payment in INR can be received only against those consignments which were delivered in Iran and not for the consignments which were discharged at Jebel Ali Port., he admitted that they had incorrectly relied upon the verbal assurances given by the buyer regarding ultimate destination being Iran, which was a mistake. Thus he played an active role in smuggling the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism. As discussed hereinbefore, he had exported the goods in violation of the relevant legal provisions rendering the impugned goods liable for confiscation under Section 113 (d) and (i) of the Customs Act, 1962. He has also made/got made false entries in the Shipping Bills with regards to actual destination of export consignments and certified / got certified the same to be true in the Shipping Bills and thus used false and incorrect material to get benefit of para 2.53 of the FTP (2009-14/2015-20). In view of the acts of omissions and commissions on his part, Amit Marwaha, Director of DRRK Foods Pvt Ltd is liable for penalty under Section 114(i) and 114AA of the Customs Act, read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 (as amended), Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules, 1993, read with provisions of Section 50 of the Customs Act, 1962.

#### **6.8 Penalty on Customs Brokers M/s V.Arjoon:**

**6.8.1** It is alleged in the SCN that M/s V Arjoon had made/got made false entries in the Shipping Bills with regard to actual destination of the export consignments [violation of Section 50(1) *ibid* and Shipping Bill (Electronic Declaration) Regulations, 2011]. Further, they had falsely certified / got certified the entries to be true; whereas they have mis-stated the fact in the shipping bills [Violation of Section 50(2) *ibid*]. The goods which were actually destined for UAE have been shown to be destined to Iran. They facilitated in smuggling the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism. Custom Broker firm M/s V. Arjoon have violated the relevant provisions of law in as much they have facilitated the mis-declaration in export of goods to Jebel Ali under the garb of export to Iran, they were fully aware about the alleged offence. Thus, they have knowingly and intentionally made, signed and caused to be made or signed declaration in the export documents which are false and incorrect. Thus, they appeared to have facilitated the export of the goods in violation of the prohibitions discussed hereinbefore rendering the goods liable to confiscation under Section 113 (d) and 113 (i) of the Customs Act, 1962 and thereby rendered themselves liable to penalty under Section 114 & 114AA *ibid*.



**6.8.2** M/s V. Arjoon in their written defence submission dated 21.01.2020 have denied the charges framed against them. They contend that imposition of penalty on them under Section 114 and 114AA *ibid* is *de hors* of any merit as no penalty under the Customs Act is attracted for failure to comply with obligations imposed on the Customs Broker. In this regard, he has referred to the judgment of Madras High Court in case of Commissioner of Customs Vs. I Sahaya Edin Prabhu reported in 2015(320)ELT 264 . In this regard, I find that in the impugned show cause notice, they have not been charged for their failure to discharge their obligations under the Customs Brokers Licensing Regulations- 2013 and hence this contention is totally irrelevant. They further contend that penalty under Section 114 & 114AA *ibid* can only be imposed on natural persons and not a legal entity. It is a trite law that any person under these sections include a legal person and therefore, the contention of the noticee is not only absurd but also incorrect. They further contend that Section 113 (i) for confiscation of impugned is not attracted in the facts of the case so as to justify imposition of penalty under section 114 *ibid*. In this regard, I find that confiscation of goods under section 113 (d) *ibid* has been proposed in the SCN for violation of Section 50(1) read with Shipping Bill (Electronic Declaration) Regulations, 2011 and section 50(2) *ibid* which have been discussed in detail hereinbefore and therefore the contention of the noticee is not tenable.

**6.8.3** The noticee further contends that provisions of Section 114AA *ibid* is attracted only in a case where a person knowingly enters wrong information in any document submitted to the Customs authority. In the present case, it has come on record by way of series of statements of the exporter that the information of change of port of discharge was brought to their knowledge and notice only subsequent to filing the export documents. Therefore they are not guilty of presenting any information which was false or incorrect. They claim that this is further corroborated by the averment in the show cause notice that the exporter has contravened the provisions of the Act by not applying for amendment of the shipping bills in question. In this regard, I find that in the show cause notice, the exporter has not been charged for contravention of provisions of the Act for not applying for amendment of the shipping bills in question. Moreover, as mentioned in para 11 of their reply, and also recorded in the statement of Sh. Gordhan Bhavnani, it is confirmed that it was known to him in advance i.e. before leaving of the consignment from Indian shore that the goods were actually going to Dubai in place of Iran as mentioned in the shipping bill but as CHA, they had no choice but to act in accordance with the directions of the exporter. In his statement dated 26.03.2018, Shri Amit Marwaha (Director of M/s DRRK Foods Pvt Ltd, the noticee exporter) stated that they instructed their CHA and provided him the necessary documents for change of destination from Iran to Jebel Ali. Their Custom Broker, M/s V. Arjoon and their employee i.e. Shri Gordhan Bhavnani were fully aware about the diversion of rice to Dubai / Jebel Ali before leaving of the goods from India whereas in the export documents the destination is mentioned to be Iran. Thus, it is amply obvious that the fact of diversion of the export goods (rice) to Jebel Ali, Dubai in lieu of Bandar Abbas, Iran (which was declared as port of discharge in the impugned Shipping Bills) was known to M/s V. Arjoon and their employee Shri Gordhan Bhavnani before the goods left from India. Therefore, the contention of the noticee is not sustainable.



**6.8.4** As regards, liability of the Custom Broker M/s V. Arjoon is concerned, it is alleged in the SCN that they have violated the provisions of Section 50 of the Customs Act and the Shipping Bill (Electronic Declaration) Regulations. At Sr. No. 11 & 12 of the Annexure, Port of destination and country of final destination are required to be mentioned. Further a declaration is signed for filing the checklist wherein the following undertakings are also made:

*I/we declare that the particulars given herein above are true, correct and complete.*

*I/we undertake to abide by the provisions of Foreign Exchange Management Act, 1999 as amended from time to time, including realisation or repatriation of foreign exchange to or from India.*

By making false entries in the Shipping Bills declarations with regard to actual destination of the export consignments, they have contravened the above said regulation and also contravened section 50 of the Customs Act, 1962. It has been amply discussed hereinbefore to conclude that the goods are liable to confiscation under section 113 (d) & (i) ibid. The custom broker M/s V.Arjoon have facilitated in mis-declaration and mis- \statement of facts in the export documents filed by them. The goods which was destined to UAE has been shown to be destined to Iran. Thus, they facilitated in smuggling the goods to UAE under the garb of export to Iran under Rupee trade mechanism. Therefore, I hold that they are liable to penalty under Section 114(i) and 114AA of the Customs Act, 1962.

**7.** In view of the above discussions and findings, I pass the following order:

**:: ORDER ::**

- (i) I hold the goods exported under 08 Shipping Bills by M/s DRRK Foods Pvt. Ltd., Khasra No.12/1, Village Alladinpur, Govindwal Road, Trantaran Punjab, valued at Rs.6,99,93,600/- (Rupees Six Crore Ninety Nine Lakh Ninety Three thousand Six Hundred only) and detailed at Sr. No. 1 to 8 of the table in the Show Cause Notice liable to confiscation under Section 113(d) and 113(i) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of confiscation; as the goods are neither available physically for confiscation nor released provisionally on bond under Section 110A of the Customs Act, 1962. Further, I **do not hold** the goods exported under B/L No. BALMUNJEA010169 dt. 13.08.2015 & Shipping Bill No.2270936 dated 07.08.2015 by M/s DRRK Foods Pvt. Ltd., Khasra No.12/1, Village Alladinpur, Govindwal Road, Trantaran Punjab, valued at Rs. 1,67,48,373/- (Rupees One Crore Sixty Seven Lakh Forty Eight Thousand Three Hundred and Seventy Three only) and detailed at Sr No. 9 of the table in the Show Cause Notice, liable to confiscation under Section 113(d) & 113(i) of the Customs Act, 1962.
- (ii) I impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakh only) on M/s DRRK Foods Pvt Ltd, Khasra No.12/1, Village Alladinpur, Govindwal Road, Trantaran , Punjab under Section 114 of the Customs Act, 1962.
- (iii) I impose a penalty of ₹25,00,000/- (Rupees Twenty Five Lakh only) on M/s DRRK Foods Pvt Ltd, Khasra No.12/1, Village Alladinpur, Govindwal Road, Trantaran , Punjab under Section 114AA of the Customs Act, 1962.
- (iv) I hereby order to appropriate an amount of ₹10,00,000/- (Rupees Ten Lakh only) deposited by M/s DRRK Foods Pvt Ltd, Khasra No.12/1, Village Alladinpur, Govindwal Road, Trantaran , Punjab vide Demand draft no. 006636 dated 21.03.2016 during the investigation towards penalty imposed on M/s DRRK Foods Pvt Ltd.
- (v) I impose a penalty of ₹15,00,000/- (Rupees Fifteen Lakh only) on Shri Amit Marwaha, Director of M/s DRRK Foods Pvt Ltd, Trantaran , Punjab under Section 114 of the Customs Act, 1962 read with Section 50 of the Customs Act, 1962.
- (vi) I impose a penalty of ₹15,00,000/- (Rupees Fifteen Lakh only) on Shri Amit Marwaha, Director of M/s DRRK Foods Pvt Ltd , Trantaran , Punjab under Section 114 AA of the Customs Act, 1962 read with Section 50 of the Customs Act, 1962.



- (vii) I impose a penalty of ₹14,00,000/- (Rupees Fourteen Lakh only) on Custom Broker firm M/s V. Arjoon under Section 114 of the Customs Act, 1962 read Section 50 of the Customs Act, 1962.
- (viii) I impose a penalty of ₹14,00,000/- (Rupees Fourteen Lakh only) on Custom Broker firm M/s V. Arjoon under Section 114AA of the Customs Act, 1962 read with Section 50 of the Customs Act, 1962.

*19*  
*28/04/2020*

**[SUSHANT KUMAR]**  
**ADDITIONAL COMMISSIONER**  
**CUSTOM HOUSE: MUNDRA**

F. No. VIII/48-10/Adj/ADC/MCH/2019-20

Dated: 28.04.2020

**BY SPEED POST TO:**

- 1 M/s DRRK Foods Pvt. Ltd, Khasra No.12/1, Village Alladinpur, Govindwal Road, Trantaran , Punjab
2. Shri Amit Marwaha, Director M/s DRRK Foods Pvt. Ltd. 283-E, Basant Avenue, Amritsar-143001
3. M/s V. Arjoon, 6, Hafizain Bldg. 3rd Floor, 129/131, Kazi Syed Street, Masjid (W), Mumbai – 400 003

**Copy to:**

1. The Additional Director (CI), Directorate of Revenue Intelligence, 7th Floor, D-Block, I.P. Estate, New Delhi-110002.
2. The Deputy / Assistant Commissioner (RRA), Custom House Mundra
3. The Deputy / Assistant Commissioner (Export Assessment), C. H. Mundra
- ✓ 4. The Deputy / Assistant Commissioner (EDI), Custom House Mundra
5. The Deputy / Assistant Commissioner (TRC), Custom House Mundra
6. Guard File

