



**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/48-14/Adj/ADC/MCH/19-20
B	Order-in-Original No.	MCH/ADC/SK/17/2020-21
C	Passed by	Shri Sushant Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	29.05.2020
E	Date of Issue	29.05.2020
F	SCN NO. & Date	F.No.DRI/HQ-CI/50D/ENQ-26(INT-24)2015-Pt. dtd. 04.06.2019
G	Noticee / Party / Importer / Exporter	M/s Shree Jagdamba Agrico Exports Pvt Ltd and others
H	DIN	20200571MO00004IF18A

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:

**“ 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 7th 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. dtd. 04.06.2019 issued
to M/s Shree Jagdamba Agrico Exports Pvt Ltd Arainpura Road, Gharaunda-132114
(Karnal), Haryana and others.**

1. BRIEF FACTS OF THE CASE

1.1 Acting upon a specific information regarding violation of the provisions of the Customs Act, 1962, by M/s Shree Jagdamba Agrico Exports Private Limited., (IEC 3305001488) (**hereinafter also referred to as 'the notice no. 1'**) located at Arainpura Road, Gharaunda-132114 (Karnal), India, investigation was initiated by the office of Directorate of Revenue Intelligence (Hqrs.), 7th Floor, "D" Block, I.P. Bhawan, I.P. Estate, New Delhi (**hereinafter referred to as DRI**).

1.2 Statement of Shri Satish Goel, Director, Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal (**hereinafter also referred to as 'the notice no. 2'**) was recorded on 19.01.2016 under Section 108 of the Customs Act, 1962 wherein he stated that all the work relating to export of rice was looked after by him; that **he interacted with their CHA with Shri Gordhan Bhawnani and Sh. Tushar Anam of V. Arjoon, and Shri Harman of M/s Satkar Logistic; that all the export related documents were forwarded to the CHAs through email id export@shreejagdamba.in to M/s V. Arjoon on gordhan@varjoon.com by their employee Shri Parveen Kumar; that he did not interact directly with the shipping lines, their CHAs named above interacted with the shipping lines on their behalf; that they interacted directly with their foreign buyers;** 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 US Dollars, the rates should be quoted in US Dollars and where payments were to be received in Indian Rupees, the rates should be quoted in Indian Rupees; that the remittances of export consignments came in INR from Iran, US\$ from Dubai, Saudi Arab and Yemen; 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 required to be received in freely convertible currency in terms of Foreign Trade Policy. He stated that he was aware that payment in respect of rice exported to other country i.e. Saudi Arab, Iraq, U.A.E., etc. could not be received in Indian Rupees. He stated that as far as he remembered about 40 consignments of rice exported to Iran had been diverted to the port of Jebel Ali in Dubai.

1.3 Statement dated 06.04.2016 of Shri Satish Goel, Director, M/s Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal was recorded under Section 108 of the Customs Act, 1962, wherein he reiterated his earlier statement dated 19.01.2016 except the numbers of consignments of rice exported to Iran and diverted to Jebel Ali Port (Dubai) and stated that following 40 consignments of rice exported to Iran had been diverted to the port of Jebel Ali in Dubai.

Sl. No	SB No.	SB date	Invoice No.	Invoice date	Invoice Amount (Rs.)	Bill of Lading No.
1	6005025	12/11/2014	SJA/407/2014-15	11/11/2014	9819648	BALMUNJEA007849
2	6162935	20/11/2014	SJA/410/2014-15	20/11/2014	19985184	GMLUAEMUNJEA007935
3	6449656	04/12/2014	SJA/416/2014-15	03/12/2014	10012032	GMLUAEMUNJEA008086
4	6652976	16/12/2014	SJA/423/2014-15	15/12/2014	10000082	BALMUNJEA008197

5	7137688	10/01/2015	SJA/436/2014-15	06/01/2015	5433129	GMLUAEMUNJEA008432
6	8597837	25/03/2015	SJA/476/2014-15	25/03/2015	13662000	GMAEMUNJEA009000
7	8682432	30/03/2015	SJA/477/2014-15	30/03/2015	11894220	GMAEMUNJEA009019
8	8749124	01/04/2015	SJA/478/2014-15	30/03/2015	16215000	GMAEMUNJEA009042
9	8829585	06/04/2015	SJA/483/2015-16	04/04/2015	11845000	VASMUNJEA009055
10	8979071	13/04/2015	SJA/490/2015-16	11/04/2015	14076000	VASMUNJEA009102
11	8960479	13/04/2015	SJA/488/2015-16	11/04/2015	12420000	VASMUNJEA009095
12	9121279	21/04/2015	SJA/499/2015-16	20/04/2015	19800000	GMAEMUNJEA009145
13	9121630	21/04/2015	SJA/500/2015-16	20/04/2015	6344550	VASMUNJEA009144
14	9188627	24/04/2015	SJA/502/2015-16	23/04/2015	13080000	GMAEMUNJEA009184
15	9189181	24/04/2015	SJA/503/2015-16	23/04/2015	13080000	GMAEMUNJEA009192
16	9286315	29/04/2015	SJA/505/2015-16	29/04/2015	13080000	VASMUNJEA009246
17	9352534	02/05/2015	SJA/506/2015-16	02/05/2015	15696000	BALMUNJEA009261
18	9380438	05/05/2015	SJA/507/2015-16	04/05/2015	18617200	GMAEMUNJEA009289
19	9381042	05/05/2015	SJA/508/2015-16	04/05/2015	17004000	GMAEMUNJEA009288
20	9558501	14/05/2015	SJA/510/2015-16	13/05/2015	26415410	BALMUNJEA009391
21	9569012	14/05/2015	SJA/515/2015-16	14/05/2015	10620000	GMAEMUNJEA009401
22	9568715	14/05/2015	SJA/512/2015-16	14/05/2015	26040000	BALMUNJEA009396
23	9586921	15/05/2015	SJA/516/2015-16	15/05/2015	19530000	VASMUNJEA009398
24	9587335	15/05/2015	SJA/517/2015-16	15/05/2015	19530000	BALMUNJEA009411
25	9621456	18/05/2015	SJA/518/2015-16	17/05/2015	19530000	BALMUNJEA009422
26	9801143	26/05/2015	SJA/526/2015-16	26/05/2015	19083600	BALMUNJEA009500
27	1061045	08/06/2015	SJA/529/2015-16	08/06/2015	6480000	VASMUNJEA009597
28	1060801	08/06/2015	SJA/523/2015-16	26/05/2015	6480000	VASMUNJEA009598
29	1063511	08/06/2015	SJA/521/2015-16	20/05/2015	11838400	GMAEMUNJEA009501
30	1160961	12/06/2015	SJA/531/2015-16	12/06/2015	12540000	GMAEMUNJEA009659
31	1402878	25/06/2015	SJA/533/2015-16	23/06/2015	13728000	GMAEMUNJEA007969
32	1417369	26/06/2015	SJA/524/2015-16	26/05/2015	6375460	VASMUNJEA009799
33	1538899	01/07/2015	SJA/534/2015-16	01/07/2015	12960000	VASMUNJEA009855
34	1787018	14/07/2015	SJA/536/2015-16	03/07/2015	10052640	GMAEMUNJEA010015
35	1794574	15/07/2015	SJA/528/2015-16	30/05/2015	11570490	GMAEMUNJEA009991
36	1875519	18/07/2015	SJA/538/2015-16	14/07/2015	14976000	VASMUNJEA009989
37	2002573	24/07/2015	SJA/541/2015-16	24/07/2015	12000780	VASMUNJEA010060
38	4572372	08/12/2015	SJA/606/2015-16	08/12/2015	12902650	BALMUNBND011064
39	4641249	11/12/2015	SJA/608/2015-16	11/12/2015	18990000	BALMUNBND011063
40	1558532	01/07/2015	SJA/535/2015-16	02/07/2015	18975110	VASMUNJEA009860
Total=					56,26,82,585	
					/-	

1.3.1 Additionally he was shown the copies of Delivery Orders in respect of Bills of Lading No. GMLUAEMUNJEA007810, BALMUNJEA008859, BALMUNJEA008875, GMAEMUNJEA008981, VASMUNJEA009094, VASMUNJEA009096, GMAEMUNJEA009047, VASMUNJEA009054, BALMUNJEA009092, BALMUNJEA009076, GMAEMUNJEA009112, VASMUNJEA009128, VASMUNJEA009171 and VASMUNJEA009212 and the copies of letters of M/s Shree Jagdamba Agrico Exports (P) Ltd. addressed to M/s Goodrich Maritime Pvt. Ltd., Gandhidham for request to do a telex release and he had put his dated signatures on all the above documents serially numbered page No. 1 to 59 in the token of having seen the same.

1.3.2 He stated that the consignments covered by these letters had also been diverted to Jebel Ali Port (Dubai) at their request; that the details of these fourteen consignments were as under:-

Sl No	SB No.	SB date	Invoice No.	Invoice date	Invoice Amount (Rs.)	Bill of Lading No.
1	6004653	12/11/2014	SJA/402/2014-15	07/11/2014	20014560	GMLUAEMUNJEA007610
2	8243649	09/03/2015	SJA/465/2014-15	07/03/2015	13020000	BALMUNJEA008859
3	8273455	10/03/2015	SJA/470/2014-15	10/03/2015	14374040	BALMUNJEA008875
4	8582289	25/03/2015	SJA/472/2014-15	13/03/2015	10739850	GMAEMUNJEA008991
5	8773357	01/04/2015	SJA/479/2015-16	01/04/2015	15120000	GMAEMUNJEA009047
6	8828784	06/04/2015	SJA/482/2015-16	04/04/2015	19840950	VASMUNJEA009054
7	8880181	08/04/2015	SJA/485/2015-16	07/04/2015	11845000	VASMUNJEA009096
8	8890358	08/04/2015	SJA/486/2015-16	08/04/2015	12474000	BALMUNJEA009076
9	8966049	13/04/2015	SJA/484/2015-16	07/04/2015	13481910	BALMUNJEA009092
10	8960478	13/04/2015	SJA/487/2015-16	09/04/2015	12455100	VASMUNJEA009094
11	9017772	15/04/2015	SJA/493/2015-16	14/04/2015	9955200	GMAEMUNJEA009112
12	9037031	16/04/2015	SJA/495/2015-16	16/04/2015	11364300	VASMUNJEA009128
13	9194440	24/04/2015	SJA/501/2015-16	21/04/2015	17160000	VASMUNJEA009171
14	9272771	28/04/2015	SJA/504/2015-16	28/04/2015	29040000	VASMUNJEA009212
Total=					21,08,84,910/-	

1.3.3 He admitted that a total of fifty four (54) consignments had been diverted to Jebel Ali Port (Dubai) instead of the declared port of discharge in Iran; that the payments for all these fifty four consignments had been received in Indian Rupees through UCO Bank in their Bank Account No. 02360210001776 UCO Bank, Sector 17B, Chandigarh and Bank CC Account No. 205926100205 of Canara Bank, Taraori Branch, Karnal (Haryana). He further stated that they had not received any remittances in foreign exchange from these Accounts.

1.3.4 He stated that they had not intimated to their bank about the change of destination of above fifty four consignments. On being asked as to why the same was not intimated to the bank as the payment in INR, he stated that they were not aware about that and he undertook not to do so in future.

1.3.5 He stated that the fact of diversion of these consignments was in the knowledge of their CHA M/s. V. Arjoon as they were communicating with shipping line through their CHA only; that they had not got the shipping bills amended from the Customs as their CHA did not advise for the same; that he undertook not to repeat such mistake in future.

1.4 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 stated that Shri Jagdamba Rice Mills was their major exporter clients; that his client exported rice to Iran and various other countries. He stated that he understood that the remittance can be received in freely convertible currency against exports made to countries other than Iran. He stated 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. He stated that he was not aware of the provisions of the Foreign Trade Policy and was not in the position to guide their clients to ensure compliance of the provisions of Foreign Trade Policy. He stated 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 Gordhan Bhawnani, H-card holder of M/s. V. Arjoon and himself interacted with all the shipping lines on behalf of their clients. **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. 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.**

1.4.1 M/s Shree Jagdamba Agrico Exports Private Limited vide their letter dated 29.03.2016 submitted a demand draft No. 865589 dated 21.03.2016 for Rs. 10,00,000/- (Rupees Ten lakhs only) in favour of Principal Commissioner of Customs, Mundra, towards probable adjudication levies.

1.5 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, has stated that they have handled customs clearance of M/s. Shree Jagdamba Agrico Export 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. He stated that he had dealt with Shri Satish Goel of M/s. Shree Jagdamba Agrico Export Pvt. Ltd. He further stated that on behalf of this exporter he dealt with the shipping lines and got their customs clearance work; that whatever handling of export consignments with shipping line, Customs custodians and exporter 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. 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; 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. He stated 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, who's 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 appears 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."

1.5.1 Further vide his letter dated 21.01.2017 M/s V Arjoon, Customs Broker submitted copies of Request letters and other documents issued by M/s Shree Jagdamba Agrico Exports Private Limited to the shipping line for doing a telex release for diversion of containers in respect of the following shipping bills to buyer in Dubai. He also submitted documents which are collectively marked as RUD-7 to the SCN:

S.No.	Shipper	Qty	Line	BL NO.	Dated	Vessel
1	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	8	GOODRICH	GMAEMUNJEA00 9112	18-04-2015	OEL DUBAI/1026
2	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	GOODRICH	GMAEMUNJEA00 9184	28-04-2015	SUDAIR/1516
3	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	13	GOODRICH	GMAEMUNJEA00 9164	24-04-2015	CI MBRIA/0123
4	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	12	BALTIC	BALMUNJEA0092 61	05-05-2015	INTER MUMBAI/0032
5	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	VASCO	VASMUNJEA0092 46	04-05-2015	INTER MUMBAI/0032

6	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	22	VASCO	VASMUNJEA0092 12	04-05-2015	VILLE D ORION/21
7	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	VASCO	VASMUNJEA0090 96	14-04-2015	INTER MUMBAI/0030
8	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	5	VASCO	VASMUNJEA0091 44	22-04-2015	INTER MUMBAI/0031
9	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	GOODRICH	GMAEMUNJEA00 9145	22-04-2015	INTER MUMBAI/0031
10	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	9	VASCO	VASMUNJEA0091 28	20-04-2015	X-PRESS EUPHRATES/59
11	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	VASCO	VASMUNJEA0090 94	13-04-2015	INTER MUMBAI/0030
12	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	VASCO	VASMUNJEA0090 95	13-04-2015	INTER MUMBAI/0030
13	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	BALTIC	BALMUNJEA0090 92	13-04-2015	INTER MUMBAI/0030
14	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	BALTIC	BALMUNJEA0090 76	10-04-2015	CIMBRIA/0122
15	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	VASCO	VASMUNJEA0090 55	07-04-2015	INTER MUMBAI/0030
16	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	GOODRICH	GMAEMUNJEA00 9042	02-04-2015	OEL DUBAI/1025
17	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	GOODRICH	GMAEMUNJEA00 9019	31-03-2015	LAL BAHADUR SHASTRI/274
18	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	20	GOODRICH	GMAEMUNJEA00 9006	30-03-2015	LAL BAHADUR SHASTRI/274
19	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	GOODRICH	GMAEMUNJEA00 9000	31-03-2015	LAL BAHADUR SHASTRI/274
20	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	13	BALTIC	BALMUNJEA0089 77	26-03-2015	INTER MUMBAI/0029
21	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	GOODRICH	GMAENIUNJEA00 8981	26-03-2015	INTER MUMBAI/0029
22	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	BALTIC	BALMUNJEA0088 59	11-03-2015	INTER MUMBAI/0028
23	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	BALTIC	BALMUNJEA0088 75	13-03-2015	CI MBRIA/0120
24	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	2	GOODRICH	GMAEMUNJEA00 8751	23-02-2015	RAJIV GANDHI/270-
25	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	3	GOODRICH	GMAEMUNJEA00 8719	18-02-2015	OEL DUBAI/1022
26	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	GOODRICH	GMAEMUNJEA00 8747	20-02-2015	RAJIV GANDHI/270
27	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	5	BALTIC	BALMUNJEA0081 97	19-12-2014	CIMBRIA/0114
28	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	5	GOODRICH	GMLUAEMUNJEA 008086	05-12-2014	VILLE D ORION/11
29	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	12	GOODRICH	GMLUAEMUNJEA 007810	14-11-2014	INDIRA GANDHI/260
30	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	6	BALTIC	BALMUNJEA0078 49	18-11-2014	INDIRA GANDHI/260
31	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	12	VASCO	VASMUNJEA0091 02	15-04-2015	OEL DUBAI/1026

32	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	BALTIC	BALMUNJEA0094 22	19-05-2015	VILLE D AQUARIUS/0028
33	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	20	BALTIC	BALMUNJEA0093 91	15-05-2015	VILLE D ORION/22
34	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	20	BALTIC	BALMUNJEA0093 96	16-05-2015	VILLE D AQUARIUS/0028
35	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	VASCO	VASMUNJEA0093 98	18-05-2015	VILLE D AQUARIUS/0028
36	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	GOODRICH	GMAEMUNJEA00 9401	18-05-2015	VILLE D AQUARIUS/0028
37	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	BALTIC	BALMUNJEA0094 11	18-05-2015	VILLE D AQUARIUS/0028
38	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	VASCO	VASMUNJEA0094 37	20-05-2015	INTER MUMBAI/0033
39	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	8	GOODRICH	GMAEMUNJEA00 9439	20-05-2015	INTER MUMBAI/0033 -
40	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	16	VASCO	VASMUNJEA0090 54	07-04-2015	INTER MUMBAI/0030
41	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	GOODRICH	GMAEMUNJEA00 9047	06-04-2015	INTER MUMBAI/0030
42	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	GOODRICH	GMAEMUNJEA00 9192	29-04-2015	ER HELGOLAND/28
43	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	3	GOODRICH	GMLUAEMUNJEA 008432	13-01-2015	INTER MUMBAI/0024
44	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	13	VASCO	VASMUNJEA0085 73	30-01-2015	CIMBRIA/0117
45	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	7	VASCO	VASMUNJEA0086 30	09-02-2015	AS CARINTHIA/228
46	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	6	VASCO	VASMUNJEA0086 26	09-02-2015	AS CARINTHIA/228
47	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	13	GOODRICH	GMAEMUNJEA00 8761	24-02-2015	RAJIV GANDHI/270
48	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	12	GOODRICH	GMLUAEMUNJEA 007935	24-11-2014	CIMBRIA/0112
49	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	GOODRICH	GMAEMUNJEA00 9659	15-06-2015	INTER MUMBAI- 0030
50	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	5	GOODRICH	VASMUNJEA0097 99	29-06-2015	X-PRESS EUPHRATES-64
51	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	GOODRICH	GMAEMUNJEA00 9769	25-06-2015	CIMBRIA-128
52	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	GOODRICH	GMAEMUNIEA009 856	03-07-2015	CIMBRIA-128
53	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	VASCO	VASMUNJEA0098 55	03-07-2015	SUDAIR-1526
54	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	VASCO	VASMUNJEA0098 60	03-07-2015	SUDAIR-1526
55	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	GOODRICH	GMAEMUNJEA00 9927	09-07-2015	CIMBRIA-129
56	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	11	GOODRICH	GMAEMUNJEA00 9991	16-07-2015	CIMBRIA-129
57	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	8	GOODRICH	GMAEMUNJEA01 0015	20-07-2015	CIMBRIA-129

58	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	VASCO	VASMUNJEA0100 60	27-07-2015	AS CARELIA-0066
59	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	GOODRICH	GMAEMUNJEA01 0061	27-07-2015	AS CARELIA-0066
60	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	12	GOODRICH	VASMUNJEA0099 89	16-07-2015	INTER MUMBAI- 0038
61	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	5	VASCO	VASMUNBND0101 75	13-08-2015	INTER MUMBAI- 0039
62	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	BALTIC	BALMUNBND0110 64	12-12-2015	X-PRESS ANNAPURNA-007
63	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	BALTIC	BALMUNBND0110 63	12-12-2015	X-PRESS ANNAPURNA-007
64	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	13	GOODRICH	GMAEMUNJEA00 9289	07-05-2015	VILL D AUARIUS- 0027
65	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	14	GOODRICH	GMAEMUNJEA00 9288	07-05-2015	VILL D AUARIUS- 0027
66	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	10	GOODRICH	GMAEMUNJEA00 9501	09-06-2015	VILL D AUARIUS- 0030
67	SHREE JAGDAMBA AGRICO EXPORTS (P) LTD	15	GOODRICH	BALMUNJEA0095 00	10-06-2015	VILL D AUARIUS- 0030

1.6 Statement dated 01.02.2018 of Sh. Satish Goel was recorded under section 108 of the Customs Act, 1962 wherein he stated that on that day he was shown photocopies of some documents from Page No.1 to 464, which he had been told, were provided by their CHA i.e. M/s V. Arjoon; that he had signed on each page of the said documents as a token of his having seen the same; he stated that all the documents referred above which had been produced by CHA i.e. M/s V. Arjoon issued from their office were true and were issued by them. The details of the diverted consignments were as follows:

Annexure -A					
1	6004653	12-Nov-2014	GMLUAEMUNJEA007810	14/11/2014	DIVERTED
2	6005025	12-Nov-2014	BALMUNJEA007849	18/11/2014	DIVERTED
3	6162935	20-Nov-2014	GMLUAEMUNJEA007935	24/11/2014	DIVERTED
4	6449656	4-Dec-2014	GMLUAEMUNJEA008086	5/12/2014	DIVERTED
5	6652976	16-Dec-2014	BALMUNJEA008197	19/12/2014	DIVERTED
6	1060801	8-Jun-2015	VASMUNJEA009598	10/6/2015	DIVERTED
7	1061045	8-Jun-2015	VASMUNJEA009597	10/6/2015	DIVERTED
8	1063511	8-Jun-2015	GMAEMUNJEA009501	9/6/2015	DIVERTED
9	1160961	12-Jun-2015	GMAEMUNJEA009659	15/06/2015	DIVERTED
10	1402878	25-Jun-2015	GMAEMUNJEA009769	25/06/2015	DIVERTED
11	1417369	26-Jun-2015	VASMUNJEA009799	29/06/2015	DIVERTED
12	1538899	1-Jul-2015	VASMUNJEA009855	3/7/2015	DIVERTED
13	1558532	2-Jul-2015	VASMUNJEA009860	3/7/2015	DIVERTED
14	1787018	14-Jul-2015	GMAEMUNJEA010015	20/07/2015	DIVERTED
15	1794574	15-Jul-2015	GMAEMUNJEA009991	16/07/2015	DIVERTED
16	1875519	18-Jul-2015	VASMUNJEA009989	16/07/2015	DIVERTED
17	2002573	24-Jul-2015	VASMUNJEA010060	27/07/2015	DIVERTED
18	7137688	10-Jan-2015	GMLAEMUNJEA008432	13/01/2015	DIVERTED
19	8243649	9-Mar-2015	BALMUNJEA008859	11/3/2015	DIVERTED
20	8273455	10-Mar-2015	BALMUNJEA008875	13/03/2015	DIVERTED
21	8582289	25-Mar-2015	GMAEMUNJEA008981	26/03/2015	DIVERTED
22	8582363	25-Mar-2015	BALMUNJEA008977	26/03/2015	DIVERTED

23	8597837	25-Mar-2015	GMAEMUNJEA009000	31/03/2015	DIVERTED
24	8611901	26-Mar-2015	GMAEMUNJEA009006	30/03/2015	DIVERTED
25	8682432	30-Mar-2015	GMAEMUNJEA009019	31/03/2015	DIVERTED
26	8749124	1-Apr-2015	GMAEMUNJEA009042	2/4/2015	DIVERTED
27	8773357	1-Apr-2015	GMAEMUNJEA009047	8/4/2015	DIVERTED
28	8829585	6-Apr-2015	VASMUNJEA009055	7/4/2015	DIVERTED
29	8880181	8-Apr-2015	VASMUNJEA009096	14/04/2015	DIVERTED
30	8890358	8-Apr-2015	BALMUNJEA009076	10/4/2015	DIVERTED
31	8960478	13-Apr-2015	VASMUNJEA009094	13/04/2015	DIVERTED
32	8960479	13-Apr-2015	VASMUNJEA009095	13/04/2015	DIVERTED
33	8966049	13-Apr-2015	BALMUNJEA009092	13/04/2015	DIVERTED
34	8979071	13-Apr-2015	VASMUNJEA009102	15/04/2015	DIVERTED
35	9017772	15-Apr-2015	GMAEMUNJEA009112	18/04/2015	DIVERTED
36	9037031	16-Apr-2015	VASMUNJEA009128	20/04/2015	DIVERTED
37	9121279	21-Apr-2015	VASMUNJEA009145	22/04/2015	DIVERTED
38	9121630	21-Apr-2015	VASMUNJEA009144	22/04/2015	DIVERTED
39	9188627	24-Apr-2015	GMAEMUNJEA009184	28/04/2015	DIVERTED
40	9189181	24-Apr-2015	GMAEMUNJEA009192	29/04/2015	DIVERTED
41	9194440	24-Apr-2015	GMAEMUNJEA009164	24/04/2015	DIVERTED
42	9272771	28-Apr-2015	VASMUNJEA009212	4/5/2015	DIVERTED
43	9286315	29-Apr-2015	VASMUNJEA009246	4/5/2015	DIVERTED
44	9352534	2-May-2015	VASMUNJEA009261	5/5/2015	DIVERTED
45	9558501	14-May-2015	BALMUNJEA009391	15/05/2015	DIVERTED
46	9568715	14-May-2015	BALMUNJEA009396	16/05/2015	DIVERTED
47	9569012	14-May-2015	GMAEMUNJEA009401	18/05/2015	DIVERTED
48	9586921	15-May-2015	VASMUNJEA009398	18/05/2015	DIVERTED
49	9587335	15-May-2015	BALMUNJEA009411	18/05/2015	DIVERTED
50	9621456	18-May-2015	BALMUNJEA009422	19/05/2015	DIVERTED
51	9650969	19-May-2015	VASMUNJEA009437	20/05/2015	DIVERTED
52	9801143	26/05/2015	BALMUNJEA009500	10/6/2015	DIVERTED
53	9194440	24-Apr-2015	VASMUNJEA009171	24/04/2015	DIVERTED
54	4641249	11/12/2015	BALMUNBND011063	12/12/2015	DIVERTED
55	4572372	12/08/2015	BALMUNBND011064	12/12/2015	DIVERTED

1.6.1 Further he stated that the following consignments had not been diverted to Dubai and had been discharged at Iran:

Annexure -B					
S.No.	Shipping Bill No.	Shipping Bill Date	Bill of Lading No.	BILL OF LADING DATE	Diverted or Not
1	7693117	9-Feb-2015	GMAEMUNJEA008719	18/02/2015	NOT DIVERTED
2	7884893	18-Feb-2015	GMAEMUNJEA008751	23/02/2015	NOT DIVERTED
3	7921242	20-Feb-2015	GMAEMUNJEA008747	20/02/2015	NOT DIVERTED

1.6.2 He stated that the fact of diversion of those consignments was in the knowledge of their CHA, M/s. V. Arjoon as they were communicating with shipping line through their CHA only; that the payment with respect to all the consignments destined to Iran whether or not diverted had been received in Indian Rupees only.

1.7 Statement of Shri Gian Bhushan Goel, Director of Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnawas recorded on 06.07.2018 under section 108 of the Customs Act, 1962 wherein he stated that he

is involved in the processing and export/sale of the paddy; that in this company, he and his brother, Shri Satish Kumar Goel are the Directors; he stated that he looked after only the work related to the purchase of paddy and that he did not look after the export related work such as contacting with the purchasers/CHA/Shipping Line; that all the works related to the sale and export in M/s. Shree Jagdamba Agrico Exports Private Limited are looked after by his brother Shri Satish Goel; that his brother can state all the facts related to export and sales.

1.8 Statement of Shri Gopal Mehrotra, Assistant Vice President (North Region), M/S Goodrich Maritime Pvt. Ltd. was recorded on 29.08.2018, under section 108 of the Customs Act, 1962 wherein he stated that he was handling the North Region in the company, that he was well aware about the procedures of Shipping Lines and the working of their company; that he was shown a copy of Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 issued by M/s. Goodrich Maritime Pvt. Ltd. to M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. having particulars as detailed below-

B/L NO./DATE	SHIPPING BILL NO./DATE	NO. OF CONTAINERS	ISSUED TO	CONSIGNEE NAME	NOTIFY PARTY	Port of Discharge
GMAEMUNJEA009164/ 24.04.2015	9194440 dtd. 24.04.2015	Thirteen	M/s. Shree Jagdamba Agrico Exports Pvt. Ltd.	To order	Rahavards ahraye Iranian co.	Bandar Abbas, Iran

Further, he was shown another Bill of lading with the same number as GMAEMUNJEA009164 but to have been issued on 27.04.2015; that he was asked to read both of these Bills of Lading having the same unique no. issued to two different parties with different description; he was asked to explain about it; on this, he stated that he clarified about the above mentioned facts from their Operational Office situated at Mundra and that the Bill of Lading GMAEMUNJEA009164 dated 24.04.2015 was earlier prepared in the name of M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. bearing the details as mentioned above, however, the same was cancelled before sailing of the goods; that sometimes the draft bill of lading was forwarded to the party for confirmation, but the final bill of lading, in original, was issued only after completion of their formalities; that with regard to this Bill of Lading GMAEMUNJEA009164 dated 24.04.2015, he stated that this might have been prepared but, later on, was cancelled and the BL No. GMAEMUNJEA009164 was finally allotted to M/s. Bharat Cereals Pvt. Ltd. on 27.04.2015; that the Original Bill of Lading in respect of this no. was later on issued in respect of Shipping Bill No.- 9163643 dated 23.04.2015 of M/s. Bharat Cereals Pvt. Ltd., thereafter, a fresh Bill of Lading No. VASMUNJEA009171 dated 24.04.2015, was issued to M/s. Shree Jagdamba Agrico Pvt. Ltd. in respect of shipment covered by Shipping Bill NO. 9194440 dated 24.04.2015 (which was mentioned in the cancelled Bill of Lading); that the containers' details mentioned in the above said cancelled Bill of Lading dated 24.04.2015, were accordingly correctly mentioned in the Bill of Lading No. GMAEMUNJEA009164, which was issued to M/s. Bharat Cereals Pvt. Ltd. on 27.04.2015; that the copy of "Request To Do A Telex Release" dated 27.04.2015 in respect of Bill of Lading No. GMAEMUNJEA09164 DT-24.04.2015 was shown to

him, he had checked and discussed from their Operational Office and stated that this document was not available in their official records; further he clarified that the BL No.- GMAEMUNJEA009164 issued on 24.04.2015 to M/s. Shree Jagdamba Agrico Pvt. Ltd. stood cancelled and the BL No.- GMAEMUNJEA009164 was later on issued to M/s. Bharat Cereals Pvt. Ltd. on 27.04.2015.

1.9 Further statement of Shri Satish Goel, Director of Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal was recorded under Section 108 of the Customs Act, 1962 on 07.09.2018 wherein he stated that he was shown a copy of Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 issued by M/s. Goodrich Maritime Pvt. Ltd. to M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. having particulars as detailed below-

B/L NO./DATE	SHIPPING BILL NO./DATE	NO. OF CONTAINERS	ISSUED TO	CONSIGNEE NAME	NOTIFY PARTY	Port of Discharge
GMAEMUNJEA009164/ 24.04.2015	9194440 dtd. 24.04.2015	Thirteen	M/s. Shree Jagdamba Agrico Exports Pvt. Ltd.	To order	Rahavar dsahraye Iranian co.	Bandar Abbas, Iran

He was asked to read the above Bill of Lading and related documents, having the same unique no. issued to two different parties with different description, he was asked to explain about it; on this, he replied that he had seen the above mentioned documents and he had signed on them in token of having seen the same; that in this regard, he stated that the above said Bill of Lading GMAEMUNJEA009164 dated 24.04.2015 was earlier raised in the name of M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. bearing the details as mentioned above, however, the same was later on not issued to them and even the containers nos. mentioned in this Bill of Lading were not booked by them; that it seemed to have been inadvertently raised in their name; that in respect of shipment covered by Shipping Bill NO. 9194440 dated 24.04.2015 (which was mentioned in the Bill of Lading No.- GMAEMUNJEA009164), a fresh Bill of Lading No. VASMUNJEA009171 dated 24.14.2015, was issued to them and the goods covered by this Shipping Bill were discharged at Jebel Ali; that on being asked about the "Request To Do A Telex Release" dated 27.04.2015 in respect of the Bill of Lading No. GMAEMUNJEA009164, he stated that it was inadvertently issued by their employee based upon GMAEMUNJEA009164 dated 24.04.2015; further, he clarified that due to confusion at their end, it was wrongly mentioned by him in his previous statement that the goods covered by Bill of Lading No. GMAEMUNJEA009164 were discharged at Jebel Ali, therefore, he clarified the factual position with respect to this bill of lading (i.e. No. GMAEMUNJEA009164) that the BL No.- GMAEMUNJEA009164 dated 24.04.2015 in respect of M/s. Shree Jagdamba Agrico Pvt. Ltd. was not issued and no goods was exported against this Bill of Lading and the position stated by him with regard to diversion of goods vide Bill of Lading GMAEMUNJEA009164 was due to confusion.

1.10 Shipping Line M/s Goodrich Maritime Pvt. Ltd. vide their emails dated 29.10.2018 and 30.10.2018 to the DRI has provided the revised details of the shipments which were shipped by them i.e. the details of shipments which were loaded for Bandar Abbas Port via Jebel Ali and were discharged at Jebel Ali Port as well as the details of shipments which were not diverted i.e. shipments loaded for Bandar Abbas and discharged at Bandar Abbas for the year 2014, 2015 and 2016.

1.11 Statement of Shri Satish Goel, Director, Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal was recorded under Section 108 of the Customs Act, 1962 on 15.01.2019 wherein, in continuation of his previous statements dated 06.04.2016, 01.02.2018 and 07.09.2018, he inter alia stated that on the day, he was shown printouts of emails dated 29.10.2018 and 30.10.2018 received from M/s. Goodrich Maritime providing the details of shipments which were originally shipped for Iran but later on diverted to Jebel Ali; that he had put his dated signatures on the printouts of the emails in token of having seen the same; that further, **he confirmed from his record available in his office and found that the under mentioned shipments, which were originally destined to Iran had been diverted to Dubai;** that the data submitted by him in his previous statements were incomplete and inadvertently submitted by him, therefore, he requested to update the information provided by him in his previous statements in respect of shipments exported by M/s. Jagdamba Agrico Exports Pvt. Ltd. during the year 2014-15 and 2015-16; that the correct data in respect of the export of rice by M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. was as under:-

S.No.	Shipping Bill No.	S.B. Date	Bill of Lading No.	B.L. Date	Status
1	6004653	12-11-2014	GMLUAEMUNJEA007810	14-11-2014	DIVERTED
2	6005025	12-11-2014	BALMUNJEA007849	18-11-2014	DIVERTED
3	6162935	20-11-2014	GMLUAEMUNJEA007935	24-11-2014	DIVERTED
4	6449656	04-12-2014	GMLUAEMUNJEA008086	05-12-2014	DIVERTED
5	6652976	16-12-2014	BALMUNJEA008197	19-12-2014	DIVERTED
6	1060801	08-06-2015	VASMUNJEA009598	10-06-2015	DIVERTED
7	1061045	08-06-2015	VASMUNJEA009597	10-06-2015	DIVERTED
8	1063511	08-06-2015	GMAEMUNJEA009501	09-06-2015	DIVERTED
9	1160961	12-06-2015	GMAEMUNJEA009659	15-06-2015	DIVERTED
10	1402878	25-06-2015	GMAEMUNJEA009769	25-06-2015	DIVERTED
11	1417369	26-06-2015	VASMUNJEA009799	29-06-2015	DIVERTED
12	1538899	01-07-2015	VASMUNJEA009855	03-07-2015	DIVERTED
13	1558532	02-07-2015	VASMUNJEA009860	03-07-2015	DIVERTED
14	1787018	14-07-2015	GMAEMUNJEA010015	20-07-2015	DIVERTED
15	1794574	15-07-2015	GMAEMUNJEA009991	16-07-2015	DIVERTED
16	1875519	18-07-2015	VASMUNJEA009989	16-07-2015	DIVERTED
17	2002573	24-07-2015	VASMUNJEA010060	27-07-2015	DIVERTED
18	7137688	10-01-2015	GMLAEMUNJEA008432	13-01-2015	DIVERTED
19	8243649	09-03-2015	BALMUNJEA008859	11-03-2015	DIVERTED
20	8273455	10-03-2015	BALMUNJEA008875	13-03-2015	DIVERTED
21	8582289	25-03-2015	GMAEMUNJEA008981	26-03-2015	DIVERTED
22	8582363	25-03-2015	BALMUNJEA008977	26-03-2015	DIVERTED
23	8597837	25-03-2015	GMAEMUNJEA009000	31-03-2015	DIVERTED
24	8611901	26-03-2015	GMAEMUNJEA009006	30-03-2015	DIVERTED
25	8682432	30-03-2015	GMAEMUNJEA009019	31-03-2015	DIVERTED
26	8749124	01-04-2015	GMAEMUNJEA009042	02-04-2015	DIVERTED

27	8773357	01-04-2015	GMAEMUNJEA009047	08-04-2015	DIVERTED
28	8829585	06-04-2015	VASMUNJEA009055	07-04-2015	DIVERTED
29	8880181	08-04-2015	VASMUNJEA009096	14-04-2015	DIVERTED
30	8890358	08-04-2015	BALMUNJEA009076	10-04-2015	DIVERTED
31	8960478	13-04-2015	VASMUNJEA009094	13-04-2015	DIVERTED
32	8960479	13-04-2015	VASMUNJEA009095	13-04-2015	DIVERTED
33	8966049	13-04-2015	BALMUNJEA009092	13-04-2015	DIVERTED
34	8979071	13-04-2015	VASMUNJEA009102	15-04-2015	DIVERTED
35	9017772	15-04-2015	GMAEMUNJEA009112	18-04-2015	DIVERTED
36	9037031	16-04-2015	VASMUNJEA009128	20-04-2015	DIVERTED
37	9121279	21-04-2015	VASMUNJEA009145	22-04-2015	DIVERTED
38	9121630	21-04-2015	VASMUNJEA009144	22-04-2015	DIVERTED
39	9188627	24-04-2015	GMAEMUNJEA009184	28-04-2015	DIVERTED
40	9189181	24-04-2015	GMAEMUNJEA009192	29-04-2015	DIVERTED
41	9272771	28-04-2015	VASMUNJEA009212	04-05-2015	DIVERTED
42	9286315	29-04-2015	VASMUNJEA009246	04-05-2015	DIVERTED
43	9352534	02-05-2015	VASMUNJEA009261	05-05-2015	DIVERTED
44	9558501	14-05-2015	BALMUNJEA009391	15-05-2015	DIVERTED
45	9568715	14-05-2015	BALMUNJEA009396	16-05-2015	DIVERTED
46	9569012	14-05-2015	GMAEMUNJEA009401	18-05-2015	DIVERTED
47	9586921	15-05-2015	VASMUNJEA009398	18-05-2015	DIVERTED
48	9587335	15-05-2015	BALMUNJEA009411	18-05-2015	DIVERTED
49	9621456	18-05-2015	BALMUNJEA009422	19-05-2015	DIVERTED
50	9650969	19-05-2015	VASMUNJEA009437	20-05-2015	DIVERTED
51	9801143	26-05-2015	BALMUNJEA009500	10-06-2015	DIVERTED
52	9194440	24-04-2015	VASMUNJEA009171	24-04-2015	DIVERTED
53	4641249	11-12-2015	BALMUNBND011063	12-12-2015	DIVERTED
54	4572372	12-08-2015	BALMUNBND011064	12-12-2015	DIVERTED
55	7884893	18.02.2015	GMAEMUNJEA008751	23-02-2015	DIVERTED
56	7693117	09.02.2015	GMAEMUNJEA008719	18-02-2015	DIVERTED
57	7921242	20.02.2015	GMAEMUNJEA008747	20-02-2015	DIVERTED
58	9650965	19.05.2015	GMAEMUNJEA009439	20-05-2015	DIVERTED
59	8828784	06.04.2015	VASMUNJEA009054	07-04-2015	DIVERTED
60	7403237	24.01.2015	VASMUNJEA008573	30-01-2015	DIVERTED
61	7649838	06.02.2015	VASMUNJEA008630	09-02-2015	DIVERTED
62	7650136	06.02.2015	VASMUNJEA008626	09-02-2015	DIVERTED
63	7970931	23.02.2015	GMAEMUNJEA008761	24.02.2015	DIVERTED
64	1536145	01.07.2015	GMAEMUNJEA009856	03-07-2015	DIVERTED
65	1609759	06.07.2015	GMAEMUNJEA009927	09-07-2015	DIVERTED
66	2025051	25.07.2015	GMAEMUNJEA010061	27-07-2015	DIVERTED
67	9380438	05.05.2015	GMAEMUNJEA009289	07-05-2015	DIVERTED
68	9381042	05.05.2015	GMAEMUNJEA009288	07-05-2015	DIVERTED

1.12 Vide their letter dated 21.01.2019 and 01.02.2019, M/s Goodrich Maritime Pvt. Ltd. forwarded the 68 landing Certificates pertaining to the shipments destined to Bandar Abbas but discharged at Jebel Ali during the year 2014 and 2015. The details of landing Certificates submitted by the Shipping Line are as under: -

S.No.	Shipping Bill No.	S.B. Date	Bill of Lading No.	B.L. Date	Status
1	6004653	12-11-2014	GMLUAEMUNJEA007810	14-11-2014	DIVERTED
2	6005025	12-11-2014	BALMUNJEA007849	18-11-2014	DIVERTED
3	6162935	20-11-2014	GMLUAEMUNJEA007935	24-11-2014	DIVERTED
4	6449656	04-12-2014	GMLUAEMUNJEA008086	05-12-2014	DIVERTED
5	6652976	16-12-2014	BALMUNJEA008197	19-12-2014	DIVERTED
6	1060801	08-06-2015	VASMUNJEA009598	10-06-2015	DIVERTED
7	1061045	08-06-2015	VASMUNJEA009597	10-06-2015	DIVERTED

8	1063511	08-06-2015	GMAEMUNJEA009501	09-06-2015	DIVERTED
9	1160961	12-06-2015	GMAEMUNJEA009659	15-06-2015	DIVERTED
10	1402878	25-06-2015	GMAEMUNJEA009769	25-06-2015	DIVERTED
11	1417369	26-06-2015	VASMUNJEA009799	29-06-2015	DIVERTED
12	1538899	01-07-2015	VASMUNJEA009855	03-07-2015	DIVERTED
13	1558532	02-07-2015	VASMUNJEA009860	03-07-2015	DIVERTED
14	1787018	14-07-2015	GMAEMUNJEA010015	20-07-2015	DIVERTED
15	1794574	15-07-2015	GMAEMUNJEA009991	16-07-2015	DIVERTED
16	1875519	18-07-2015	VASMUNJEA009989	16-07-2015	DIVERTED
17	2002573	24-07-2015	VASMUNJEA010060	27-07-2015	DIVERTED
18	7137688	10-01-2015	GMLAEMUNJEA008432	13-01-2015	DIVERTED
19	8243649	09-03-2015	BALMUNJEA008859	11-03-2015	DIVERTED
20	8273455	10-03-2015	BALMUNJEA008875	13-03-2015	DIVERTED
21	8582289	25-03-2015	GMAEMUNJEA008981	26-03-2015	DIVERTED
22	8582363	25-03-2015	BALMUNJEA008977	26-03-2015	DIVERTED
23	8597837	25-03-2015	GMAEMUNJEA009000	31-03-2015	DIVERTED
24	8611901	26-03-2015	GMAEMUNJEA009006	30-03-2015	DIVERTED
25	8682432	30-03-2015	GMAEMUNJEA009019	31-03-2015	DIVERTED
26	8749124	01-04-2015	GMAEMUNJEA009042	02-04-2015	DIVERTED
27	8773357	01-04-2015	GMAEMUNJEA009047	08-04-2015	DIVERTED
28	8829585	06-04-2015	VASMUNJEA009055	07-04-2015	DIVERTED
29	8880181	08-04-2015	VASMUNJEA009096	14-04-2015	DIVERTED
30	8890358	08-04-2015	BALMUNJEA009076	10-04-2015	DIVERTED
31	8960478	13-04-2015	VASMUNJEA009094	13-04-2015	DIVERTED
32	8960479	13-04-2015	VASMUNJEA009095	13-04-2015	DIVERTED
33	8966049	13-04-2015	BALMUNJEA009092	13-04-2015	DIVERTED
34	8979071	13-04-2015	VASMUNJEA009102	15-04-2015	DIVERTED
35	9017772	15-04-2015	GMAEMUNJEA009112	18-04-2015	DIVERTED
36	9037031	16-04-2015	VASMUNJEA009128	20-04-2015	DIVERTED
37	9121279	21-04-2015	VASMUNJEA009145	22-04-2015	DIVERTED
38	9121630	21-04-2015	VASMUNJEA009144	22-04-2015	DIVERTED
39	9188627	24-04-2015	GMAEMUNJEA009184	28-04-2015	DIVERTED
40	9189181	24-04-2015	GMAEMUNJEA009192	29-04-2015	DIVERTED
41	9272771	28-04-2015	VASMUNJEA009212	04-05-2015	DIVERTED
42	9286315	29-04-2015	VASMUNJEA009246	04-05-2015	DIVERTED
43	9352534	02-05-2015	VASMUNJEA009261	05-05-2015	DIVERTED
44	9558501	14-05-2015	BALMUNJEA009391	15-05-2015	DIVERTED
45	9568715	14-05-2015	BALMUNJEA009396	16-05-2015	DIVERTED
46	9569012	14-05-2015	GMAEMUNJEA009401	18-05-2015	DIVERTED
47	9586921	15-05-2015	VASMUNJEA009398	18-05-2015	DIVERTED
48	9587335	15-05-2015	BALMUNJEA009411	18-05-2015	DIVERTED
49	9621456	18-05-2015	BALMUNJEA009422	19-05-2015	DIVERTED
50	9650969	19-05-2015	VASMUNJEA009437	20-05-2015	DIVERTED
51	9801143	26-05-2015	BALMUNJEA009500	10-06-2015	DIVERTED
52	9194440	24-04-2015	VASMUNJEA009171	24-04-2015	DIVERTED
53	4641249	11-12-2015	BALMUNBND011063	12-12-2015	DIVERTED
54	4572372	12-08-2015	BALMUNBND011064	12-12-2015	DIVERTED
55	7884893	18.02.2015	GMAEMUNJEA008751	23-02-2015	DIVERTED
56	7693117	09.02.2015	GMAEMUNJEA008719	18-02-2015	DIVERTED
57	7921242	20.02.2015	GMAEMUNJEA008747	20-02-2015	DIVERTED
58	9650965	19.05.2015	GMAEMUNJEA009439	20-05-2015	DIVERTED
59	8828784	06.04.2015	VASMUNJEA009054	07-04-2015	DIVERTED
60	7403237	24.01.2015	VASMUNJEA008573	30-01-2015	DIVERTED
61	7649838	06.02.2015	VASMUNJEA008630	09-02-2015	DIVERTED
62	7650136	06.02.2015	VASMUNJEA008626	09-02-2015	DIVERTED
63	7970931	23.02.2015	GMAEMUNJEA008761	24.02.2015	DIVERTED

64	1536145	01.07.2015	GMAEMUNIEA009856	03-07-2015	DIVERTED
65	1609759	06.07.2015	GMAEMUNJEA009927	09-07-2015	DIVERTED
66	2025051	25.07.2015	GMAEMUNJEA010061	27-07-2015	DIVERTED
67	9380438	05.05.2015	GMAEMUNJEA009289	07-05-2015	DIVERTED
68	9381042	05.05.2015	GMAEMUNJEA009288	07-05-2015	DIVERTED

1.13 Statement of Shri Satish Goel, Director, Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal, Haryana was recorded on 19.03.2019 under Section 108 of the Customs Act, wherein he stated that in continuation of his previous statements dated 06.04.2016,01.02.2018,07.09.2018 and 15.01.2019, he submitted the printouts BRCs in respect of shipments exported by M/s Shree Jagdamba Agrico Exports Pvt. Ltd. during the year 2014-15 and 2015-16; that he put his dated signature on all the pages in token of submission made by him and their correctness; that he was shown letters dated 21.01.2019 and 01.02.2019 both received from Goodrich Maritime Pvt. Ltd. regarding submission of landing certificates; that he put his dated signature on all the pages in token of submission made by him and their correctness; that he was shown letters dated 21.01.2019 and 01.02.2019 both received from Goodrich Maritime Pvt. Ltd regarding submission of landing certificates; that he put his dated signature on the body of the letters and Landing certificates provided vide the said letters in token of having seen the same. He further stated that the details mentioned in the landing certificates provided by the Shipping line i.e. Goodrich Maritime Pvt. Ltd. are correct. Further, he was shown his earlier statement dated 15.01.2019, wherein he had submitted the details of shipments exported by M/s Shree Jagdamba Agrico Pvt. Ltd. In this regard, he has mentioned the Bill of Lading No. at Sr. No. 37 & 43 in the table of his said statement as VASMUNJEA009145 and VASMUNJEA009261 respectively, however, on after checking the Landing Certificates and record available with his office, he found that the correct Bill of lading Nos. were GMAEMUNJEA009145 and BALMUNJEA009261 instead of VASMUNJEA009145 and VASMUNJEA009261 respectively.

1.14 From the investigation conducted in the matter it appeared that the goods in the case of below mentioned 68 shipping bills were though originally booked for Iran but were delivered to Jebel Ali on the directions of M/s Shree Jagdamba Agrico Exports Private Limited:

S. No.	Shipping Bill No.	S.B. Date	Bill of Lading No.	B.L. Date	Status	Fob Value (Rs.)
1	6004653	12-11-2014	GMLUAEMUNJEA007810	14-11-2014	DIVERTED	19717855.2
2	6005025	12-11-2014	BALMUNJEA007849	18-11-2014	DIVERTED	9671295.6
3	6162935	20-11-2014	GMLUAEMUNJEA007935	24-11-2014	DIVERTED	19688479.2
4	6449656	04-12-2014	GMLUAEMUNJEA008086	05-12-2014	DIVERTED	9886984
5	6652976	16-12-2014	BALMUNJEA008197	19-12-2014	DIVERTED	9875237.4
6	1060801	08-06-2015	VASMUNJEA009598	10-06-2015	DIVERTED	6410362
7	1061045	08-06-2015	VASMUNJEA009597	10-06-2015	DIVERTED	6410362
8	1063511	08-06-2015	GMAEMUNJEA009501	09-06-2015	DIVERTED	11698494
9	1160961	12-06-2015	GMAEMUNJEA009659	15-06-2015	DIVERTED	12400862
10	1402878	25-06-2015	GMAEMUNJEA009769	25-06-2015	DIVERTED	13574970
11	1417369	26-06-2015	VASMUNJEA009799	29-06-2015	DIVERTED	6308356
12	1538899	01-07-2015	VASMUNJEA009855	03-07-2015	DIVERTED	12820724
13	1558532	02-07-2015	VASMUNJEA009860	03-07-2015	DIVERTED	18766345
14	1787018	14-07-2015	GMAEMUNJEA010015	20-07-2015	DIVERTED	9941323

15	1794574	15-07-2015	GMAEMUNJEA009991	16-07-2015	DIVERTED	11418172
16	1875519	18-07-2015	VASMUNJEA009989	16-07-2015	DIVERTED	14809058
17	2002573	24-07-2015	VASMUNJEA010060	27-07-2015	DIVERTED	11871820
18	7137688	10-01-2015	GMLAEMUNJEA008432	13-01-2015	DIVERTED	5366112
19	8243649	09-03-2015	BALMUNJEA008859	11-03-2015	DIVERTED	12753024
20	8273455	10-03-2015	BALMUNJEA008875	13-03-2015	DIVERTED	14107064
21	8582289	25-03-2015	GMAEMUNJEA008981	26-03-2015	DIVERTED	10445226
22	8582363	25-03-2015	BALMUNJEA008977	26-03-2015	DIVERTED	12671958
23	8597837	25-03-2015	GMAEMUNJEA009000	31-03-2015	DIVERTED	13367376
24	8611901	26-03-2015	GMAEMUNJEA009006	30-03-2015	DIVERTED	24304320
25	8682432	30-03-2015	GMAEMUNJEA009019	31-03-2015	DIVERTED	11626380
26	8749124	01-04-2015	GMAEMUNJEA009042	02-04-2015	DIVERTED	15813240
27	8773357	01-04-2015	GMAEMUNJEA009047	08-04-2015	DIVERTED	14555490
28	8829585	06-04-2015	VASMUNJEA009055	07-04-2015	DIVERTED	11467446
29	8880181	08-04-2015	VASMUNJEA009096	14-04-2015	DIVERTED	11467446
30	8890358	08-04-2015	BALMUNJEA009076	10-04-2015	DIVERTED	12058690.6
31	8960478	13-04-2015	VASMUNJEA009094	13-04-2015	DIVERTED	12039790.6
32	8960479	13-04-2015	VASMUNJEA009095	13-04-2015	DIVERTED	12042446
33	8966049	13-04-2015	BALMUNJEA009092	13-04-2015	DIVERTED	13066600.6
34	8979071	13-04-2015	VASMUNJEA009102	15-04-2015	DIVERTED	13622935.2
35	9017772	15-04-2015	GMAEMUNJEA009112	18-04-2015	DIVERTED	9653156.8
36	9037031	16-04-2015	VASMUNJEA009128	20-04-2015	DIVERTED	11024501.4
37	9121279	21-04-2015	VASMUNJEA009145	22-04-2015	DIVERTED	19235945.25
38	9121630	21-04-2015	VASMUNJEA009144	22-04-2015	DIVERTED	6156531.75
39	9188627	24-04-2015	GMAEMUNJEA009184	28-04-2015	DIVERTED	12703963.5
40	9189181	24-04-2015	GMAEMUNJEA009192	29-04-2015	DIVERTED	12703963.5
41	9272771	28-04-2015	VASMUNJEA009212	04-05-2015	DIVERTED	28212719.7
42	9286315	29-04-2015	VASMUNJEA009246	04-05-2015	DIVERTED	12703963.5
43	9352534	02-05-2015	VASMUNJEA009261	05-05-2015	DIVERTED	15244756.2
44	9558501	14-05-2015	BALMUNJEA009391	15-05-2015	DIVERTED	25646948
45	9568715	14-05-2015	BALMUNJEA009396	16-05-2015	DIVERTED	25271538
46	9569012	14-05-2015	GMAEMUNJEA009401	18-05-2015	DIVERTED	10235769
47	9586921	15-05-2015	VASMUNJEA009398	18-05-2015	DIVERTED	18953653.5
48	9587335	15-05-2015	BALMUNJEA009411	18-05-2015	DIVERTED	18953653.5
49	9621456	18-05-2015	BALMUNJEA009422	19-05-2015	DIVERTED	19191028.5
50	9650969	19-05-2015	VASMUNJEA009437	20-05-2015	DIVERTED	12794019
51	9801143	26-05-2015	BALMUNJEA009500	10-06-2015	DIVERTED	18874803
52	9194440	24-04-2015	VASMUNJEA009171	24-04-2015	DIVERTED	16671152.55
53	4641249	11-12-2015	BALMUNBND011063	12-12-2015	DIVERTED	18916233
54	4572372	12-08-2015	BALMUNBND011064	12-12-2015	DIVERTED	12853393
55	7884893	18.02.2015	GMAEMUNJEA008751	23-02-2015	DIVERTED	3287707.2
56	7693117	09.02.2015	GMAEMUNJEA008719	18-02-2015	DIVERTED	4945571.4
57	7921242	20.02.2015	GMAEMUNJEA008747	20-02-2015	DIVERTED	15818589.6
58	9650965	19.05.2015	GMAEMUNJEA009439	20-05-2015	DIVERTED	8315215.2
59	8828784	06.04.2015	VASMUNJEA009054	07-04-2015	DIVERTED	19236863.6
60	7403237	24.01.2015	VASMUNJEA008573	30-01-2015	DIVERTED	24283495.6
61	7649838	06.02.2015	VASMUNJEA008630	09-02-2015	DIVERTED	11522866.6
62	7650136	06.02.2015	VASMUNJEA008626	09-02-2015	DIVERTED	9876742.8
63	7970931	23.02.2015	GMAEMUNJEA008761	24.02.2015	DIVERTED	18692731.2
64	1536145	01.07.2015	GMAEMUNJEA009856	03-07-2015	DIVERTED	11529645
65	1609759	06.07.2015	GMAEMUNJEA009927	09-07-2015	DIVERTED	13574970
66	2025051	25.07.2015	GMAEMUNJEA010061	27-07-2015	DIVERTED	12410862
67	9380438	05.05.2015	GMAEMUNJEA009289	07-05-2015	DIVERTED	18090748.9
68	9381042	05.05.2015	GMAEMUNJEA009288	07-05-2015	DIVERTED	16515152.55
						94,01,49,099

1.15 Legal Provisions- The following legal provisions are relevant in the matter.

- 1.15.1** The Customs Act, 1962
- 1.15.2** Section 2(33) of the Customs Act, 1962 defines "prohibited goods".
- 1.15.3** SECTION -50. Entry of goods for exportation.
- 1.15.4** SECTION -51. Clearance of goods for exportation.
- 1.15.5** SECTION -113. Confiscation of goods attempted to be improperly exported, etc.
- 1.15.6** SECTION - 114. Penalty for attempt to export goods improperly, etc.
- 1.15.7** SECTION-114AA--Penalty for use of false and incorrect material.
- 1.15.8** Shipping Bill (Electronic Declaration) Regulations, 2011
- 1.15.9** Foreign Trade Policy 2009-2014
- 1.15.10** Payments and Receipts on Imports / Exports
- 1.15.11** 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.
- 1.15.12** Foreign Trade Policy 2015 - 2020
- 1.15.13** Para 2.52 Denomination of Export Contracts
- 1.15.14** Para 2.53 Export to Iran - Realisations in Indian Rupees to be eligible for FTP benefits / incentives
- 1.15.15** Section 11 of Foreign Trade (Development & Regulation) Act, 1992
- 1.15.16** Rule 14 & Rule 14 (2) of Foreign Trade (Regulation) Rules, 1993
- 1.15.17** Section 8 of the Foreign Exchange Management Act, 1999.
- 1.15.18** **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:

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.

1.15.19 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.

1.15.20 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.

1.15.21 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 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.

1.15.22 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.

1.15.23 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.

1.15.24 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.”

1.15.25 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,

1.15.26 Power to prohibit importation or exportation of goods by central government is dealt in the section 11 of the 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;

1.16 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)**

1.17 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;

1.18 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.'

1.19 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 appears 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) to be invoked for confiscation of export goods that breach the said Act.

1.20 It appears 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 being proposed 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:

"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 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 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. 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."

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

1.22 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*.

1.23 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.

1.24 A perusal of the documents on record (referred above) reveals that M/s Shree Jagdamba Agrico Exports Private Limited had made declaration in the aforementioned 54 Shipping Bills. In these Shipping Bills the consignee country, port of discharge and county of BL is mentioned as Iran, whereas the goods had been discharged at UAE and instructions for delivery of the goods at a place other than the place mentioned in the shipping documents had been given by the exporter.

1.25 M/s Shree Jagdamba Agrico Exports Private Limited 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. 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. If a person makes false statement in the export documents then whole of the processing of his case is based upon the edifice of that false declaration which would have gone undetected but for the investigation initiated.

1.26 The acts of M/s Shree Jagdamba Agrico Exports Private Limited 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 terms of section 50 of the Act.

1.27 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 Shree Jagdamba Agrico Exports Private Limited have filed the export documents for export of goods to Iran;
- In their applications filed in terms of Shipping Bill (Electronic Declaration) Regulations, 2011, M/s Shree Jagdamba Agrico Exports Private Limited/CHA had declared that all the facts stated in the declaration filed under this regulations to be true;
- The impugned goods have been shown in the respective export documents to be consigned to Iran but in fact the goods have been diverted to and delivered at UAE;
- Thus mis-declaration/mis-statement was made in the export documents filed by M/s Shree Jagdamba Agrico Exports Private Limited.
- 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 sold in UAE are mandatorily required to be realized in freely convertible foreign currency;
- The proceeds of impugned goods, exported to UAE are stated to 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 Shree Jagdamba Agrico Exports Private Limited
- Shri Satish Goel, Director of M/s Shree Jagdamba Agrico Exports Private Limited 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 smuggling of goods to Jebel Ali under the garb of export to Iran, they were fully aware about the alleged offence;
- M/s Shree Jagdamba Agrico Exports Private Limited its Director Shri Satish Goel 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 Shree Jagdamba Agrico Exports Private Limited and its, Director Shri Satish Goel appeared 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.

1.28 As discussed above the following prohibitions appeared to have been violated by M/s Shree Jagdamba Agrico Exports Private Limited and its Director Shri Satish Goel, attracting provision of section 113(d) of the Customs Act, 1962:

Reference of the Relevant provisions	Provisions	How it is violated/not complied with
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 Shree Jagdamba Agrico Exports Private Limited. and its Director Shri Satish Goel 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 mentioned in the EDF irrespective of the country of residence of the buyer.	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)
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1.29 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.

1.30 M/s Shree Jagdamba Agrico Exports Private Limited, its Director Shri Satish Goel and Customs Broker firm M/s V. Arjoon appeared to have made the following violations attracting action in terms of section 113(i) of the Customs Act,1962:

Reference of the Relevant provisions	Provisions	How it is violated/not complied with by the noticees
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 Shree Jagdamba Agrico Exports Private Limited its Director Shri Satish Goel and Customs Broker firm M/s V Arjoon made/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 Shree Jagdamba Agrico Exports Private Limited, its Director Shri Satish Goel 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	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.	M/s Shree Jagdamba Agrico Exports Private Limited, its Director Shri Satish Goel and 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

1.31 Thus the various consignments of M/s Shree Jagdamba Agrico Exports Private Limited (as per details above), which as per their respective shipping bills were destined for Iran had been diverted to UAE, appear liable to confiscation in terms of Section 113(d) and (i) of the Customs Act, 1962.

1.32 Thus from the above, it appeared that the M/s Shree Jagdamba Agrico Exports Private Limited and its Director Shri Satish Goel had violated the following provisions of law:-

Sr. No.	Relevant provisions	Description of violation

1	SECTION 50. – (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	SECTION 50. (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.	False certification of the entries to be true whereas they have mis-stated the facts in the shipping bills
3	Shipping Bill (Electronic Declaration) Regulations, 2011 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.	Making of false entries in the shipping bills declarations with regard to actual destination of the export consignments
4	FTP 2009-14 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.	The export proceeds have been realised in Indian rupees as against statutory requirement of their realisation in freely convertible foreign currency.
5	FTP 2015-20 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.	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. Conditions under which the payment may be realised from third party were not fulfilled.

1.33 Thus from the above, it 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.

1.34 Imposition of penalty

From the above, it appeared that M/s Shree Jagdamba Agrico Exports Private Limited and its Director Shri Satish Goel and Customs Broker firm M/s V Arjoon are liable to penal action in terms of the following provisions of law:

Relevant Section	Description of offence warranting imposition of penalty
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	M/s Shree Jagdamba Agrico Exports Private Limited, its Director Shri Satish Goel and 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

confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty.	destined to Iran. They appear to have smuggled the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism.
<p>SECTION 114AA</p> <p>Penalty for use of false and. incorrect material.-</p> <p>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>	<p>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>

1.35 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 Shree Jagdamba Agrico Exports Private Limited in their UCO bank account are claimed to be towards export of impugned goods. These payments had been received from Iranian entity in whose names the shipping bills had been filed as consignee of the goods;
- ❖ M/s Shree Jagdamba Agrico Exports Private Limited 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;

1.36 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 Shree Jagdamba Agrico Exports Private Limited having collective FOB value of Rs.94,01,49,099/- as per details in the Table in the impugned SCN, appeared to be liable to confiscation under Sections 113 (d) and 113 (i) of the Customs Act, 1962 .
- B. M/s Shree Jagdamba Agrico Exports Private Limited, its Director Shri Satish Goel and Customs Broker firm M/s V Arjoon appeared liable to penalty under Section 114 and 114AA of the Customs Act,1962 in view of the acts of omission and commission as discussed above.

1.37 In view of the above, Show Cause Notice F.No. DRI/HQ-CI/50D/ENQ-26(INT-24)/2015-Pt dated 04.06.2019 was issued to M/s Shree Jagdamba Agrico Exports Private Limited, Arainpura Road, Gharaunda, Karnal (Haryana)-132114 thereby calling upon them to show cause to the Joint/Additional Commissioner of Customs, Mundra Port & SEZ, Mundra, Dist. Kutch, Gujarat, as to why :-

- (i) The goods of the declared FOB value of Rs.94,01,49,099/- exported under 68 Shipping Bills, as per details in the table to the Show Cause

Notice should not be held liable to confiscation under Section 113(d) and 113(i) of the Customs Act;

- (ii) The penalty under Section 114 of the Customs Act, 1962 for the act of omission and commission should not be imposed upon them;
- (iii) The penalty under Section 114 AA of the Customs Act, 1962 for the acts of omission and commission should not be imposed upon them;
- (iv) An amount of Rs. 10 Lakh (Rupees Ten Lakh only) deposited by them vide demand draft No. 865589 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.

1.38 Further, vide the Show Cause Notice F.No. DRI/HQ-CI/50D/ENQ-26(INT-24)/2015-Pt dated 04.06.2019, Shri Satish Goel Director of M/s Shree Jagdamba Agrico Exports Private Limited and M/s V Arjoon, Customs Broker firm were also called upon to show cause to the Joint/Additional Commissioner of Customs, Mundra Port & SEZ, Mundra, Dist Kutch, Gujarat, as to why penalty should not be imposed upon them under Section 114 & 114AA of the Customs Act, 1962.

2. DEFENCE SUBMISSION:

2.1 M/s V. Arjoon vide their letter dated 23.07.2019 denied the allegations and charges leveled against them and requested for personal hearing in the case. Further, M/s Gupta Law Associates vide their letter dated 13.09.2019 on behalf of M/s V.Arjoon, requested to grant extension of a period of two months for filing written reply to the Show Cause Notice. Furthermore, M/s V. Arjoon vide their letter dated 21.01.2020 submitted their written submission to the SCN; wherein they *inter alia* submitted the following:

2.1.1 They submitted that there has been no violation/contravention of any of the provisions of the Act to invite penalty on them. 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 their part and therefore, the proposal to impose penalty on them is clearly misplaced and unwarranted. Even assuming, that there had been dereliction of duty on their 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 114AA are also not fulfilled in the facts of the present case. They denied all the allegations levelled against them in this show cause notice, and submitted that the proposal levelled against them in the show cause notice deserve to be vacated because, as they are unsustainable in facts as well as in law.

2.1.2 Further, they submitted that in normal course of business, they were approached and engaged as Customs Broker by one, M/s Jagdamba Agrico Exports Pvt. Ltd. for export of various consignments of 'rice' to Iran. The exporter had issued an authorization letter in their 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 them as a CHA of the exporter with various Shipping Bills filed during the period 2014-15.

Further, 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. They were 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 they were concerned or aware about.

2.1.3 Further, 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 their 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 they were aware of the said infraction on part of the exporter and despite such knowledge; they 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 them.

2.1.4 Furthermore, they submitted that the imposition of penalty on them 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 they have failed to advise their 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. They also submitted 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. They cited the 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, 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 them holding that they did not advise their client to comply with the provisions and also did not bring the said non-compliance to the notice of the Department and hence, they had failed to discharge the duties imposed on them 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 them.

2.1.4.1 They further submitted that the penal action under Section 114 and 114AA 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.

They also stated that scheme of both the sections clearly show that the same is applicable to natural persons and not to legal entities like the noticee, They submitted 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 them is clearly unwarranted and legally untenable.

2.1.4.2 Further, 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 they had rendered the goods liable for confiscation under Section 113 (i) and therefore, to sustain the penalty against them under the said section, it would be pertinent to see if any action or omission on their 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. They stated 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. They, therefore, submitted 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.

2.1.4.3 Further, as regards provisions of Section 114AA, they contended 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. They submitted 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 their knowledge and notice only subsequent to filing of the export documents. It is, hence, an undeniable fact that they were not guilty of presenting any information which they 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. They also 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 them that the information submitted by them was false or incorrect and that they 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 them under Section 114 and 114AA is without any authority of law.

2.1.5 They submitted that the factum of change of destination was a subsequent development and was not within their 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, their 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 their part. Further, they referred the decision of the Appellate Tribunal rendered in the case of KL Alagu Murugappanvs 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.

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

2.1.7 Further, they submitted 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 them while brushing aside other statements which were in their favour was clearly unfair and unwarranted. They submitted 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 their 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 they were aware of the said information even prior to the export of goods. Similarly, reliance on statements of their employee was also misplaced. Their 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. They submitted 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. They also submitted that there is otherwise no material evidence on record which shows that they were aware of the fact of different port of discharge prior to filing the documents. Even the statement of the partner of their 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 they were aware of the fact of change in port of discharge prior to the date of filing the export documents.

2.2 M/s Jagdamba Agrico Exports (P) Ltd. vide their letter dated 22.07.2019 submitted for grant of 12 weeks' time to submit their written reply to the Show Cause Notice. M/s Ajay Singh & Associates on behalf of M/s Shree Jagdamba Agrico Exports Pvt. Ltd. and Shri Satish Goel vide letter dated 07.01.2020 denied the allegation and charges leveled against them by the Show Cause Notice. Further, they requested for cross examination of Shri Gopal Mehrotra, Assistant Vice President (North Region) of M/s Goodrich Maritime Pvt. Ltd., Shri Tushar H. Anam of M/s V. Arjoon, CHA and Shri Gordhan Bhawnani, Manager of M/s V. Arjoon, CHA. They referred provisions of Section 138B of the Customs Act, 1962 referred case laws as below:

- a. M/s Ambika International Vs Union of India and others in CWP No. 12615 of 2016 (Hon'ble Punjab and Haryana High Court)
- b. M/s Him Logistics Pvt.Ltd Vs. Pr. Commissioner of Customs published in 2016(336)ELT15(Delhi).
- c. M/s G-Tech Industries Vs. Union of India 2016(339)ELT 209 (P & H)
- d. M/s Jindal Drugs Pvt. Ltd. Vs. Union of India 2016(340) ELT 67 (P & H)
- e. M/s Hi Tech Abrasives Vs. Commissioner of Central Excise & Customs , Raipur-2018(362) ELT 961 (Chhattisgarh).
- f. M/s Bharti Bhutada Vs. CCE-2011 (266)ELT 97(Tri.-Mumbai)

Further, they submitted at para 11 of the letter that "For any reason if the Hon'ble Adjudicating Authority is not inclined to accept their above submissions, then they may be communicated accordingly in writing keeping in view the law as laid down by Hon'ble Tribunal in the case of Bharti Bhutada Vs. CCE-2011(266) E.L.T.97 (Tri-Mumbai)".

3. PERSONAL HEARING:

3.1 The personal hearing in the case was fixed for 09.01.2020 at 3.30 PM and was intimated to the Noticees vide letter F. No. VIII/48-14/Adj./ADC/MCH/19-20 dated 20.12.2019. M/s Jagdamba Agrico Exports (P) Ltd. and its Director Sh. Satish Goel vide their letter dated 27.12.2019 requested to adjourn the personal hearing for six weeks.

3.2 Further personal hearing was fixed for 23.01.2020 at 11.30 AM and was intimated to the Noticees vide letter F. No. VIII/48-14/Adj./ADC/MCH/19-20 dated 07.01.2020.

3.3 Shri Tarun Govil and Shri Ajay Singh Advocates, (authorized representatives of M/s Shree Jagdamba Agrico Exports Pvt. Ltd. and its Director Shri Satish Goel) appeared for personal hearing on 23.01.2020 before the Adjudicating authority and sought time of 4 week to submit their written reply as they would gather documentary evidences in their support from abroad. Also, they requested for cross examination of President (North Region) or any representative of M/s Goodrich Maritime Pvt. Ltd., Shri Gordhan Bhawnani, Manager of M/s V. Arjoon and Shri Tushar Anam of M/s V. Arjoon.

3.4 Mr. Paritosh Gupta, Advocate authorized representative of M/s V. Arjoon appeared before the Adjudicating authority on 23.01.2020 and submitted a written defence reply dated 21.01.2020 and reiterated the same.

4. DISCUSSION & FINDINGS:

4.1 I have carefully gone through the Show Cause Notice dated 04.06.2019, defence replies filed by the noticees, oral submissions made during the course of personal hearings and the available records.

4.2 The issue involved in this case relates to allegations of diversion of export consignments to Jebel Ali Port (Dubai) instead of Bandar Abbas Port (Iran), consequent proposals of confiscation and penalty on the noticees. The exported goods pertaining to 68 (Sixty Eight) Shipping Bills having declared FOB value of Rs. 94,01,49,099/- are involved in this case. Therefore, the issues to be decided in the instant case come 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 Satish Goel, Director of the noticee company/Exporter and Customs Brokers M/s V. Arjoon to penalty under Section 114 & 114AA of the Customs Act, 1962.

4.3 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.

(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.

(b) Foreign Trade Policy 2015 – 2020

Payments and Receipts on Imports / Exports

Para 2.52 : Denomination of Export Contracts

(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

1. *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 evident 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."(emphasis supplied).

(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 11(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 11 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 11(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 11(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 appears 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."

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

4.5.1 Vide letter dated 07.01.2020 the advocate of the Noticee No. 1 & 2, M/s Ajay Singh & Associates have contended that the allegations and charges levelled by 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. In support of their claim to avail cross-examination of all the witnesses, they have referred to the provisions of Section 9D(1) of the Central Excise Act, 1944 and Section 138B of the Customs Act, 1962 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 Gopal Mehrotra, Assistant Vice President(North Region) of M/s Goodrich Maritime Pvt. Ltd.
- b) Shri Tushar H. Anam of M/s V. Arjoon (CHA)
- c) Shri Gordhan Bhawnani, Manager of M/s V. Arjoon (CHA)

They also requested that if their request of cross examination is not accepted by the Adjudicating authority, the same may be communicated to them in writing keeping in view the law as laid down by Hon'ble Tribunal in the case of Bharti Bhutada Vs CCE-2011 (266)E.L.T.97(Tri.-Mumbai).

During personal hearing held on 23.01.2020, their representative requested for cross examination of President (North Region) or any representative of M/s Goodrich Maritime Pvt Ltd apart from other two mentioned above.

4.5.2 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 Satish Goel, Director of the Noticee exporter (M/s Shree Jagdamba Agrico Exports Pvt. Ltd., Haryana) and averments made by him in the said statements dated 19.01.2016, 06.04.2016, 01.02.2018, 07.09.2018, 15.01.2019 and 19.03.2019. In his statement 19.01.2016, he admitted that in the firm M/s Shree Jagdamba Agrico Exports Pvt Ltd, he was looking after all the work relating to export of rice and he was also dealing with the foreign buyers and all negotiations with them was being done by him . He further stated that they export rice mainly to Saudi Arab, U.A.E., Iran and Yeman. On being asked, he stated that their CHA are M/s V. Arjoon for Mundra Port and M/s Sakar Logistics for ICD Loni and ICD Dadri. That he interacted with Shri Gordhan Bhawnani (09925237882) and Sh. Tushar Anam (09820541111) of M/s V. Arjoon (their CHA). On being asked, he stated that he interacted with these personal telephonically through his mobile No. 9996300021. He further stated that all the export related documents were

forwarded to the CHA through email id export@shreejagdamba.in to M/s V. Arjoon on gordhan@varjoon.com by their employee, Shri Praveen Kumar. That he did not interact directly with the shipping lines, their CHA named above (M/s V. Arjoon) interacted with the shipping lines on their behalf. He further stated that he interacted directly with their foreign buyers. On being asked, he stated that negotiations with foreign buyers are carried out in the currency in which payment is received by them i.e. where payment is to be received in US Dollars, the rates shall be quoted in US Dollars and where payments are to be received in Indian Rupees, the rates shall be quoted in Indian Rupees. On being asked, he stated that the remittances of export consignments come in INR from Iran and in US\$ from Dubai, Saudi Arab and Yemen. On being asked, he stated that the remittances in Indian Rupees in respect of rice exported to Iran is allowed as per agreement between India and Iran and in respect of export of rice to all other countries , payment is required to be received in freely convertible currency in terms of Foreign Trade Policy. Further on being asked about the procedure for receiving remittances n INR from Iran, he stated that they receive payment through UCO Bank, Chandigarh Branch. On being asked, he stated that the remittances in Indian Rupees in respect of rice exported to Iran is allowed as per the agreement between India and Iran and in respect of export of rice to all other countries, payment was to be received in freely convertible currency in terms of Foreign Trade Policy. On being specifically asked, he stated that he was aware that payment in respect of rice exported to other country i.e. Saudi Arab, Iraq, U.A.E. etc. cannot be received in Indian Rupees. Further, in his statement dated 06.04.2016, has admitted that he was shown copies delivery orders in respect of 14 B/Ls and copies of the letters of M/s Shree Jagdamba Agrico Exports Pvt Ltd addressed to M/s Goodrich Maritime Pvt Ltd., Gandhidham for request to do a telex release, he put his dated signatures on all the documents in the token of having seen the same .On being asked to explain these letters, he stated that the consignments covered by these letters have also been diverted to Jebel Ali Port (Dubai) at their request. He admitted that a total of fifty four (54) consignments have been diverted to Jebel Ali Port (Dubai) instead of the declared port of discharge (Bandar Abbas, Iran). On being asked, he stated that the payments for all these fifty four consignments have been received in Indian Rupees through UCO Bank in their Bank Account No. 02360210001775 of UCO Bank, Chandigarh and Bank CC Account No. 205926100205 of Canara Bank, Taraori Branch, Karnal, Haryana. He stated that they have not made any remittances in foreign exchange from these Accounts. He also stated that they have not intimated to their bank about change of destination of those fifty four consignments. **On being asked as to why the same was not intimated to the bank as the payment received in INR, he stated that they were not aware about that and undertook not to do so in future.** On being asked, **he stated that the fact of diversion of these consignments was in the knowledge of their CHA M/s V.Arjoon as they were communicating with shipping line through their CHA only.** On being asked, **he stated that he had not got the shipping bills amended from the Customs as their CHA did not advice for the same. He undertook not to repeat such mistake in future.** Furthermore Shri Satish Goel , during recording of his

statement dated 01.02.2018, was shown photocopies of some documents, which he had been told , were provided by their CHA M/s V. Arjoon . He had signed on each page of the said documents as a token of his having seen the same. He also stated that all the documents referred therein which had been produced by CHA M/s V. Arjoon issued from their office were true and were issued by them. He confirmed that total 55 consignments were diverted to Dubai. **He also stated that the fact of diversion of these consignments was in the knowledge of their CHA M/s V. Arjoon as they were communicating with shipping line through their CHA only.** He also stated that the payment in respect to all the consignments destined to Iran whether or not diverted have been received in Indian Rupee only.

During recording of his statement dated 07.09.2018, Shri Satish Goel was shown a copy of Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 issued by M/s Goodrich Maritime Pvt. Ltd to M/s Shree Jagdamba Agrico Exports Pvt Ltd . He saw the same and signed on them in token of having seen them . He stated that the Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 was earlier raised in the name of M/s Shree Jagdamba Agrico Exports Pvt Ltd . However , the same was later on not issued to them and even the container nos. mentioned in the Bill of Lading were not booked by them. That it had been inadvertently raised in their name. In respect of shipment covered by Shipping Bill No. 9194440 dated 24.04.2015 (which was mentioned in the Bill of Lading No. GMAEMUNJEA009164), a fresh Bill of Lading No. VASMUNJEA009171 dated 24.04.2015 was issued to them and the goods covered by this Shipping Bill were discharged at Jebel Ali. Further, on being asked about 'Request to do A Telex Release' dated 27.04.2015 in respect of the Bill of Lading No.GMAEMUNJEA009164, he stated that it was inadvertently issued by their employee based upon GMAEMUNJEA009164 dated 24.04.2015. That due to confusion at their end it was wrongly mentioned by him in his previous statement that the goods covered by Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 were discharged at Jebel Ali. That the said Bill of Lading was not issued to them and no goods were exported against the said Bill of Lading.

Shri Satish Goel during recording of his statement dated 15.01.2019, was shown printouts of emails dated 29.10.2018 and 30.10.2018 received from M/s Goodrich Maritime to DRI providing the details of shipments which were originally shipped for Iran but later on diverted to Jebel Ali. He put his signatures on the printouts of the emails in token of having seen the same. Further, **he had confirmed from his record and found that total 68 shipments, which were originally destined to Iran had been diverted to Dubai.**

During recording of his statement dated 19.03.2019, Shri Satish Goel was shown **letters dated 21.01.2019 and 01.02.2019 both received from Goodrich Maritime Pvt Ltd regarding submission of Landing Certificates. He had put his dated signatures on the body of the letters and landing certificates provided vide the said letters in token of having seen the same.** On being asked, **he stated that the details mentioned in the Landing Certificates provided by the Shipping line i.e. Goodrich Maritime Pvt Ltd were correct.** Further regarding

Bills of Lading No. VASMUNJEA009145 & VASMUNJEA009261 , the correct Bill of Lading Nos. are GMAEMUNJEA009145 & BALMUNJEA009261 respectively .

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): In his statement dated 22.12.2015 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 waters and had reached Jebel Ali & respective Exporter/Shipping lines had not requested for any amendment in the Shipping bills”**. Thus, the statement of Shri Tushar H. Anam is in agreement with statements of Shri Satish Goel (Director of the Noticee No. 1 and also a co noticee as notice No. 2), which corroborate his statement & therefore their request for cross examination of Shri Tushar H. Anam of M/s V. Arjoon by the Noticee No. 1 & 2 is not acceptable.

Furthermore, in his statement dated 09.01.2017, Shri Gordhan Bhawnani, Manager of M/s V. Arjoon (CHA), on being asked about the consignments of rice meant for export to Iran and declared in the Customs documents as being exported to Iran but diverted to Jebel Ali, Dubai, 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 Fine foods 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. .

From the above, It is clear that diversion of the goods cleared for Bandar Abbas , Iran to Jebel Ali Port Dubai as stated by Shri Gordhan Bhavnani is corroborated by the statements of Shri Satish Goel , Director (M/s Shri Jagdamba Agrico Exports Pvt Ltd). Thus, the statement of Shri Bhawnani is in agreement with that of Shri Satish Goel , Director of the Noticee Company (Noticee No. 1) and also a co-noticee himself in this case. Therefore, request for cross examination of Shri Gordhan Bhawnani by the Noticee No. 1 & 2 is not acceptable.

Vide their **letter dated 21.01.2017, M/s V. Arjoon, CHA submitted certain documents (Invoices, Shipping Bills, B/Ls , LOI etc.) including copies of letters addressed to the shipping lines, M/s Goodrich 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.**

Furthermore, Shri Gopal Mehrotra, Assistant Vice President (North Region) of M/s Goodrich Maritime Pvt. Ltd., In his statement recorded on 29.08.2018, has stated that Bill of lading No. GMAEMUNJEA009164 dated 24.04.2015 was earlier prepared in the name of M/s Shri Jagdamba Agrico Exports Pvt. Ltd. however; the same was cancelled before sailing of the goods and the B/L No. GMAEMUNJEA009164 was finally allotted to M/s Bharat Cereals Pvt. Ltd. on 27.04.2015. Thereafter, a fresh Bill of Lading No. VASMUNJEA009171 dated 24.14.2015 was issued to M/s Jagdamba Agrico Exports Pvt. Ltd. in respect of shipment covered by Shipping Bill No.9194440 dated 24.04.2015 (which was mentioned in the cancelled Bill of Lading). He further stated that the containers details mentioned in the above said cancelled Bill of Lading dated 24.04.2015.

Shri Satish Goel in his statement dated 19.03.2019 has accepted the same fact as stated by Shri Gopal Mehrotra in his statement dated 29.08.2018 and stated that the correct B/L Nos are GMAEMUNJEA009145 & BALMUNJEA009261 instead of VASMUNJEA009145 and VASMUNJEA009261 respectively.

Thus, the statement of Shri Gopal Mehrotra is in agreement with statement of Shri Satish Goel, Director of the Noticee Company (Noticee No. 1) and also a co-noticee himself in this case. Therefore, request for cross examination of Shri Gordhan Bhawnani by the Noticee No. 1 & 2 is not acceptable.

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 before the court as well as adjudicating authority 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.

4.5.3 I find that all the submissions of the Noticee No. 1 & 2 vide their letter dated 07.01.2020 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,

letters 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 by Shri Satish Goel, Director of M/s Shree Jagdamba Agrico Exports Pvt Ltd; in his statements, which are strong corroborative evidences establishing the fact and charges mentioned in the SCN.

4.5.4 From the above discussion, it is clear that the show cause notice is not only based on statements of the witnesses but also supported by documentary evidences viz. the exporters letter to the shipping lines, requesting for telex release of the goods at Jebel Ali, Landing certificates, Delivery Orders in respect of 14 consignments and confessional statements by the active director of the noticee exporter Shri Satish Goel 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.

4.5.6 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 24.02.2020.

4.5.7 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 persons namely Shri Tushar H. Anam and Shri Gordhan Bhawnani of M/s V. Arjoon and Shri Gopal Mehrotra of M/s Goodrich Maritime Pvt Ltd. 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 namely Shri Tushar H. Anam and Shri Gordhan Bhawnani of M/s V. Arjoon and Shri Gopal Mehrotra of M/s Goodrich Maritime Pvt Ltd. Two of the persons, whose cross examination has been sought, belong to a Co-Noticee in the instant case and their cross examination cannot be granted applying the ratio of the judgment 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.

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

4.6.1 In the Show Cause Notice, it is alleged that M/s Shree Jagdamba Agrico Exports Pvt Ltd have smuggled the goods to UAE under the veil of export to Iran under rupee trade mechanism. They have exported the goods in violation of the prohibitions of Section 11(1) of the Foreign Trade (Development & Regulation Act, 1992, Rule 14(2) of Foreign Trade (Regulation) Rules, 1993, Section 8 of the Foreign Exchange Management Act, 1999 and RBI Circular No. RBI/2013-14/364. A.P. (DIR Series) Circular No. 70 dated November 8, 2013 and thereby rendered the subject goods liable for confiscation under provisions of Section 113(d) of the Customs Act, 1962. It is further alleged in the SCN that the Noticee (Exporter) 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 and renders the

that the consignments covered by these letters had also been diverted to Jebel Ali Port (Dubai) at their request; that the details of these fourteen consignments were as under:-

Sl No	SB No.	SB date	Invoice No.	Invoice date	Invoice Amount (Rs.)	Bill of Lading No.
1	6004653	12/11/2014	SJA/402/2014-15	07/11/2014	20014560	GMLUAEMUNJEA007610
2	8243649	09/03/2015	SJA/465/2014-15	07/03/2015	13020000	BALMUNJEA008859
3	8273455	10/03/2015	SJA/470/2014-15	10/03/2015	14374040	BALMUNJEA008875
4	8582289	25/03/2015	SJA/472/2014-15	13/03/2015	10739850	GMAEMUNJEA008991
5	8773357	01/04/2015	SJA/479/2015-16	01/04/2015	15120000	GMAEMUNJEA009047
6	8828784	06/04/2015	SJA/482/2015-16	04/04/2015	19840950	VASMUNJEA009054
7	8880181	08/04/2015	SJA/485/2015-16	07/04/2015	11845000	VASMUNJEA009096
8	8890358	08/04/2015	SJA/486/2015-16	08/04/2015	12474000	BALMUNJEA009076
9	8966049	13/04/2015	SJA/484/2015-16	07/04/2015	13481910	BALMUNJEA009092
10	8960478	13/04/2015	SJA/487/2015-16	09/04/2015	12455100	VASMUNJEA009094
11	9017772	15/04/2015	SJA/493/2015-16	14/04/2015	9955200	GMAEMUNJEA009112
12	9037031	16/04/2015	SJA/495/2015-16	16/04/2015	11364300	VASMUNJEA009128
13	9194440	24/04/2015	SJA/501/2015-16	21/04/2015	17160000	VASMUNJEA009171
14	9272771	28/04/2015	SJA/504/2015-16	28/04/2015	29040000	VASMUNJEA009212
Total=					21,08,84,910/-	

4.6.3.4 He admitted that a total of fifty four (54) consignments had been diverted to Jebel Ali Port (Dubai) instead of the declared port of discharge in Iran; that the payments for all these fifty four consignments had been received in Indian Rupees through UCO Bank in their Bank Account No. 02360210001776 UCO Bank, Sector 17B, Chandigarh and Bank CC Account No. 205926100205 of Canara Bank, Taraori Branch, Karnal (Haryana). He further stated that they had not received any remittances in foreign exchange from these Accounts.

4.6.3.5 He stated that they had not intimated to their bank about the change of destination of above fifty four consignments. On being asked as to why the same was not intimated to the bank as the payment in INR, he stated that they were not aware about that and he undertook not to do so in future.

4.6.3.6 He stated that the fact of diversion of these consignments was in the knowledge of their CHA M/s. V. Arjoon as they were communicating with shipping line through their CHA only; that they had not got the shipping bills amended from the Customs as their CHA did not advise for the same; that he undertook not to repeat such mistake in future.

4.6.3.7 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 stated that Shri Jagdamba Rice Mills was their major exporter clients; that his client exported rice to Iran and various other countries. He stated that the remittance can be received in INR against export made to Iran. He stated that he understood that there is a treaty between India and Iran that the remittance can be received only in INR against the export made from India to Iran. He stated that he understood that the remittance can be received in freely convertible currency against exports made

to countries other than Iran. He stated 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. He stated that he was not aware of the provisions of the Foreign Trade Policy and was not in the position to guide their clients to ensure compliance of the provisions of Foreign Trade Policy. He stated 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 Gordhan Bhawnani, H-card holder of M/s. V. Arjoon and himself interacted with all the shipping lines on behalf of their clients. **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. 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.**

4.6.3.8 M/s Shree Jagdamba Agrico Exports Private Limited vide their letter dated 29.03.2016 submitted a demand draft No. 865589 dated 21.03.2016 for Rs. 10,00,000/- (Rupees Ten lakhs only) in favour of Principal Commissioner of Customs, Mundra, towards probable adjudication levies.

4.6.3.9 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, has stated that they have handled customs clearance of M/s. Shree Jagdamba Agrico Export Pvt. Ltd. He undertook to submit a detailed list of the exporters/shipping lines/BLs/Date/Shipping Bill No/ Undertaking (Lol)/Release Order/booking request & confirmation etc. in respect of all the exports handled by them (/s V. Arjoon) to Iran by 13.01.2017. He stated that he had dealt with Shri Satish Goel of M/s. Shree Jagdamba Agrico Export Pvt. Ltd. He further stated that on behalf of this exporter he dealt with the shipping lines and got their customs clearance work; that whatever handling of export consignments with shipping line, Customs custodians and exporter 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. 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; 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. 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, who's 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 appears 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.”*

4.6.3.10 Further, vide his letter dated 21.01.2017 M/s V Arjoon, Customs Broker submitted copies of Request letters and other documents issued by M/s Shree Jagdamba Agrico Exports Private Limited to the shipping line for “doing a telex release” for diversion of containers in respect of 67 consignments (as mentioned in para-7 of the SCN) to their buyers in Dubai.

4.6.3.11 Statement dated 01.02.2018 of Sh. Satish Goel was recorded under section 108 of the Customs Act, 1962 wherein he stated that on that day he was shown photocopies of some documents, which he had been told, were provided by their CHA i.e. M/s V. Arjoon; that he had signed on each page of the said

documents as a token of his having seen the same; he stated that all the documents referred above which had been produced by CHA i.e. M/s V. Arjoon issued from their office were true and were issued by them. The details of the diverted consignments were as follows:

Annexure -A					
1	6004653	12-Nov-2014	GMLUAEMUNJEA007810	14/11/2014	DIVERTED
2	6005025	12-Nov-2014	BALMUNJEA007849	18/11/2014	DIVERTED
3	6162935	20-Nov-2014	GMLUAEMUNJEA007935	24/11/2014	DIVERTED
4	6449656	4-Dec-2014	GMLUAEMUNJEA008086	5/12/2014	DIVERTED
5	6652976	16-Dec-2014	BALMUNJEA008197	19/12/2014	DIVERTED
6	1060801	8-Jun-2015	VASMUNJEA009598	10/6/2015	DIVERTED
7	1061045	8-Jun-2015	VASMUNJEA009597	10/6/2015	DIVERTED
8	1063511	8-Jun-2015	GMAEMUNJEA009501	9/6/2015	DIVERTED
9	1160961	12-Jun-2015	GMAEMUNJEA009659	15/06/2015	DIVERTED
10	1402878	25-Jun-2015	GMAEMUNJEA009769	25/06/2015	DIVERTED
11	1417369	26-Jun-2015	VASMUNJEA009799	29/06/2015	DIVERTED
12	1538899	1-Jul-2015	VASMUNJEA009855	3/7/2015	DIVERTED
13	1558532	2-Jul-2015	VASMUNJEA009860	3/7/2015	DIVERTED
14	1787018	14-Jul-2015	GMAEMUNJEA010015	20/07/2015	DIVERTED
15	1794574	15-Jul-2015	GMAEMUNJEA009991	16/07/2015	DIVERTED
16	1875519	18-Jul-2015	VASMUNJEA009989	16/07/2015	DIVERTED
17	2002573	24-Jul-2015	VASMUNJEA010060	27/07/2015	DIVERTED
18	7137688	10-Jan-2015	GMLAEMUNJEA008432	13/01/2015	DIVERTED
19	8243649	9-Mar-2015	BALMUNJEA008859	11/3/2015	DIVERTED
20	8273455	10-Mar-2015	BALMUNJEA008875	13/03/2015	DIVERTED
21	8582289	25-Mar-2015	GMAEMUNJEA008981	26/03/2015	DIVERTED
22	8582363	25-Mar-2015	BALMUNJEA008977	26/03/2015	DIVERTED
23	8597837	25-Mar-2015	GMAEMUNJEA009000	31/03/2015	DIVERTED
24	8611901	26-Mar-2015	GMAEMUNJEA009006	30/03/2015	DIVERTED
25	8682432	30-Mar-2015	GMAEMUNJEA009019	31/03/2015	DIVERTED
26	8749124	1-Apr-2015	GMAEMUNJEA009042	2/4/2015	DIVERTED
27	8773357	1-Apr-2015	GMAEMUNJEA009047	8/4/2015	DIVERTED
28	8829585	6-Apr-2015	VASMUNJEA009055	7/4/2015	DIVERTED
29	8880181	8-Apr-2015	VASMUNJEA009096	14/04/2015	DIVERTED
30	8890358	8-Apr-2015	BALMUNJEA009076	10/4/2015	DIVERTED
31	8960478	13-Apr-2015	VASMUNJEA009094	13/04/2015	DIVERTED
32	8960479	13-Apr-2015	VASMUNJEA009095	13/04/2015	DIVERTED
33	8966049	13-Apr-2015	BALMUNJEA009092	13/04/2015	DIVERTED
34	8979071	13-Apr-2015	VASMUNJEA009102	15/04/2015	DIVERTED
35	9017772	15-Apr-2015	GMAEMUNJEA009112	18/04/2015	DIVERTED
36	9037031	16-Apr-2015	VASMUNJEA009128	20/04/2015	DIVERTED
37	9121279	21-Apr-2015	VASMUNJEA009145	22/04/2015	DIVERTED
38	9121630	21-Apr-2015	VASMUNJEA009144	22/04/2015	DIVERTED
39	9188627	24-Apr-2015	GMAEMUNJEA009184	28/04/2015	DIVERTED
40	9189181	24-Apr-2015	GMAEMUNJEA009192	29/04/2015	DIVERTED
41	9194440	24-Apr-2015	GMAEMUNJEA009164	24/04/2015	DIVERTED
42	9272771	28-Apr-2015	VASMUNJEA009212	4/5/2015	DIVERTED
43	9286315	29-Apr-2015	VASMUNJEA009246	4/5/2015	DIVERTED
44	9352534	2-May-2015	VASMUNJEA009261	5/5/2015	DIVERTED
45	9558501	14-May-2015	BALMUNJEA009391	15/05/2015	DIVERTED
46	9568715	14-May-2015	BALMUNJEA009396	16/05/2015	DIVERTED
47	9569012	14-May-2015	GMAEMUNJEA009401	18/05/2015	DIVERTED
48	9586921	15-May-2015	VASMUNJEA009398	18/05/2015	DIVERTED
49	9587335	15-May-2015	BALMUNJEA009411	18/05/2015	DIVERTED

50	9621456	18-May-2015	BALMUNJEA009422	19/05/2015	DIVERTED
51	9650969	19-May-2015	VASMUNJEA009437	20/05/2015	DIVERTED
52	9801143	26/05/2015	BALMUNJEA009500	10/6/2015	DIVERTED
53	9194440	24-Apr-2015	VASMUNJEA009171	24/04/2015	DIVERTED
54	4641249	11/12/2015	BALMUNBND011063	12/12/2015	DIVERTED
55	4572372	12/08/2015	BALMUNBND011064	12/12/2015	DIVERTED

4.6.3.12 Further, he stated that the following consignments had not been diverted to Dubai and had been discharged at Iran:

Annexure -B					
S.No.	Shipping Bill No.	Shipping Bill Date	Bill of Lading No.	BILL OF LADING DATE	Diverted or Not
1	7693117	9-Feb-2015	GMAEMUNJEA008719	18/02/2015	NOT DIVERTED
2	7884893	18-Feb-2015	GMAEMUNJEA008751	23/02/2015	NOT DIVERTED
3	7921242	20-Feb-2015	GMAEMUNJEA008747	20/02/2015	NOT DIVERTED

4.6.3.13 He stated that the fact of diversion of those consignments was in the knowledge of their CHA, M/s. V. Arjoon as they were communicating with shipping line through their CHA only; that the payment with respect to all the consignments destined to Iran whether or not diverted had been received in Indian Rupees only.

4.6.3.14 Statement of Shri Gian Bhushan Goel, Director of Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnawas recorded on 06.07.2018 under section 108 of the Customs Act, 1962 wherein he stated that he is involved in the processing and export/sale of the paddy; that in this company, he and his brother, Shri Satish Kumar Goel were the Directors; he stated that he looked after only the work related to the purchase of paddy and that he did not look after the export related work such as contacting with the purchasers/CHA/Shipping Line; that all the works related to the sale and export in M/s. Shree Jagdamba Agrico Exports Private Limited are looked after by his brother Shri Satish Goel; that his brother can state all the facts related to export and sales.

4.6.3.15 Statement of Shri Gopal Mehrotra, Assistant Vice President (North Region), M/S Goodrich Maritime Pvt. Ltd. was recorded on 29.08.2018, under section 108 of the Customs Act, 1962 wherein he stated that he was handling the North Region in the company, that he was well aware about the procedures of Shipping Lines and the working of their company; that he was shown a copy of Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 issued by M/s. Goodrich Maritime Pvt. Ltd. to M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. having particulars as detailed below-

B/L NO./DATE	SHIPPING BILL NO./DATE	NO. OF CONTAINERS	ISSUED TO	CONSIGNEE NAME	NOTIFY PARTY	Port of Discharge
GMAEMUNJE A009164/ 24.04.2015	9194440 dtd. 24.04.2015	Thirteen	M/s. Shree Jagdamba Agrico Exports Pvt. Ltd.	To order	Rahavards ahraye Iranian co.	Bandar Abbas, Iran

Further, he was shown another Bill of lading with the same number as GMAEMUNJEA009164 but to have been issued on 27.04.2015; that he was asked to read both of these Bills of Lading having the same unique no. issued to two different parties with different description; he was asked to explain about it; on this, he stated that he clarified about the above mentioned facts from their Operational Office situated at Mundra and that the Bill of Lading GMAEMUNJEA009164 dated 24.04.2015 was earlier prepared in the name of M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. bearing the details as mentioned above, however, the same was cancelled before sailing of the goods; that sometimes the draft bill of lading was forwarded to the party for confirmation, but the final bill of lading, in original, was issued only after completion of their formalities; that with regard to this Bill of Lading GMAEMUNJEA009164 dated 24.04.2015, he stated that this might have been prepared but, later on, was cancelled and the BL No. GMAEMUNJEA009164 was finally allotted to M/s. Bharat Cereals Pvt. Ltd. on 27.04.2015; that the Original Bill of Lading in respect of this no. was later on issued in respect of Shipping Bill No.- 9163643 dated 23.04.2015 of M/s. Bharat Cereals Pvt. Ltd., thereafter, a fresh Bill of Lading No. VASMUNJEA009171 dated 24.04.2015, was issued to M/s. Shree Jagdamba Agrico Pvt. Ltd. in respect of shipment covered by Shipping Bill NO. 9194440 dated 24.04.2015 (which was mentioned in the cancelled Bill of Lading); that the containers' details mentioned in the above said cancelled Bill of Lading dated 24.04.2015, were accordingly correctly mentioned in the Bill of Lading No. GMAEMUNJEA009164, which was issued to M/s. Bharat Cereals Pvt. Ltd. on 27.04.2015; that the copy of "Request To Do A Telex Release" dated 27.04.2015 in respect of Bill of Lading No. GMAEMUNJEA09164 DT-24.04.2015 was shown to him, he had checked and discussed from their Operational Office and stated that this document was not available in their official records; further he clarified that the BL No.- GMAEMUNJEA009164 issued on 24.04.2015 to M/s. Shree Jagdamba Agrico Pvt. Ltd. stood cancelled and the BL No.- GMAEMUNJEA009164 was later on issued to M/s. Bharat Cereals Pvt. Ltd. on 27.04.2015.

4.6.3.16 Further statement of Shri Satish Goel, Director of Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal was recorded under Section 108 of the Customs Act, 1962 on 07.09.2018 wherein he stated that he was shown a copy of Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 issued by M/s. Goodrich Maritime Pvt. Ltd. to M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. having particulars as detailed below :-

B/L NO./DATE	SHIPPING BILL NO./DATE	NO. OF CONTAINERS	ISSUED TO	CONSIGNEE NAME	NOTIFY PARTY	Port of Discharge
GMAEMUNJEA009164/ 24.04.2015	9194440 dtd. 24.04.2015	Thirteen	M/s. Shree Jagdamba Agrico Exports Pvt. Ltd.	To order	Rahavar dsahraye Iranian co.	Bandar Abbas, Iran

He was asked to read the above Bill of Lading and related documents, having the same unique no. issued to two different parties with different description, he was asked to explain about it; on this, he replied that he had seen the above

mentioned documents and he had signed on them in token of having seen the same; that in this regard, he stated that the above said Bill of Lading GMAEMUNJEA009164 dated 24.04.2015 was earlier raised in the name of M/s. Shree Jagdamba Agrico Exports Pvt. Ltd., bearing the details as mentioned above, however, the same was later on not issued to them and even the containers nos. mentioned in this Bill of Lading were not booked by them; that it seemed to have been inadvertently raised in their name; that in respect of shipment covered by Shipping Bill NO. 9194440 dated 24.04.2015 (which was mentioned in the Bill of Lading No.- GMAEMUNJEA009164), a fresh Bill of Lading No. VASMUNJEA009171 dated 24.14.2015, was issued to them and the goods covered by this Shipping Bill were discharged at Jebel Ali; that on being asked about the "Request To Do A Telex Release" dated 27.04.2015 in respect of the Bill of Lading No. GMAEMUNJEA009164, he stated that it was inadvertently issued by their employee based upon GMAEMUNJEA009164 dated 24.04.2015; further, he clarified that due to confusion at their end, it was wrongly mentioned by him in his previous statement that the goods covered by Bill of Lading No. GMAEMUNJEA009164 were discharged at Jebel Ali, therefore, he clarified the factual position with respect to this bill of lading (i.e. No. GMAEMUNJEA009164) that the BL No.- GMAEMUNJEA009164 dated 24.04.2015 in respect of M/s. Shree Jagdamba Agrico Pvt. Ltd. was not issued and no goods was exported against this Bill of Lading and the position stated by him with regard to diversion of goods vide Bill of Lading GMAEMUNJEA009164 was due to confusion.

4.6.3.17 Shipping Line M/s Goodrich Maritime Pvt. Ltd. vide their emails dated 29.10.2018 and 30.10.2018 to the DRI has provided the revised details of the shipments which were shipped by them i.e. the details of shipments which were loaded for Bandar Abbas Port via Jebel Ali and were discharged at Jebel Ali Port as well as the details of shipments which were not diverted i.e. shipments loaded for Bandar Abbas and discharged at Bandar Abbas for the year 2014, 2015 and 2016.

4.6.3.18 Statement of Shri Satish Goel, Director, Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal was recorded under Section 108 of the Customs Act, 1962 on 15.01.2019 wherein, in continuation of his previous statements dated 06.04.2016, 01.02.2018 and 07.09.2018, he inter alia stated that on the day, he was shown printouts of emails dated 29.10.2018 and 30.10.2018 received from M/s. Goodrich Maritime providing the details of shipments which were originally shipped for Iran but later on diverted to Jebel Ali; that he had put his dated signatures on the printouts of the emails in token of having seen the same; that further, **he confirmed from his record available in his office and found that the under mentioned shipments, which were originally destined to Iran had been diverted to Dubai**; that the data submitted by him in his previous statements were incomplete and inadvertently submitted by him, therefore, he requested to update the information provided by him in his previous statements in respect of shipments exported by M/s. Jagdamba Agrico Exports Pvt. Ltd. during the year 2014-15 and 2015-16; that the correct data in respect of the export of rice by M/s. Shree Jagdamba Agrico Exports Pvt. Ltd. was as under:-

S.No.	Shipping Bill No.	S.B. Date	Bill of Lading No.	B.L. Date	Status
1	6004653	12-11-2014	GMLUAEMUNJEA007810	14-11-2014	DIVERTED
2	6005025	12-11-2014	BALMUNJEA007849	18-11-2014	DIVERTED
3	6162935	20-11-2014	GMLUAEMUNJEA007935	24-11-2014	DIVERTED
4	6449656	04-12-2014	GMLUAEMUNJEA008086	05-12-2014	DIVERTED
5	6652976	16-12-2014	BALMUNJEA008197	19-12-2014	DIVERTED
6	1060801	08-06-2015	VASMUNJEA009598	10-06-2015	DIVERTED
7	1061045	08-06-2015	VASMUNJEA009597	10-06-2015	DIVERTED
8	1063511	08-06-2015	GMAEMUNJEA009501	09-06-2015	DIVERTED
9	1160961	12-06-2015	GMAEMUNJEA009659	15-06-2015	DIVERTED
10	1402878	25-06-2015	GMAEMUNJEA009769	25-06-2015	DIVERTED
11	1417369	26-06-2015	VASMUNJEA009799	29-06-2015	DIVERTED
12	1538899	01-07-2015	VASMUNJEA009855	03-07-2015	DIVERTED
13	1558532	02-07-2015	VASMUNJEA009860	03-07-2015	DIVERTED
14	1787018	14-07-2015	GMAEMUNJEA010015	20-07-2015	DIVERTED
15	1794574	15-07-2015	GMAEMUNJEA009991	16-07-2015	DIVERTED
16	1875519	18-07-2015	VASMUNJEA009989	16-07-2015	DIVERTED
17	2002573	24-07-2015	VASMUNJEA010060	27-07-2015	DIVERTED
18	7137688	10-01-2015	GMLAEMUNJEA008432	13-01-2015	DIVERTED
19	8243649	09-03-2015	BALMUNJEA008859	11-03-2015	DIVERTED
20	8273455	10-03-2015	BALMUNJEA008875	13-03-2015	DIVERTED
21	8582289	25-03-2015	GMAEMUNJEA008981	26-03-2015	DIVERTED
22	8582363	25-03-2015	BALMUNJEA008977	26-03-2015	DIVERTED
23	8597837	25-03-2015	GMAEMUNJEA009000	31-03-2015	DIVERTED
24	8611901	26-03-2015	GMAEMUNJEA009006	30-03-2015	DIVERTED
25	8682432	30-03-2015	GMAEMUNJEA009019	31-03-2015	DIVERTED
26	8749124	01-04-2015	GMAEMUNJEA009042	02-04-2015	DIVERTED
27	8773357	01-04-2015	GMAEMUNJEA009047	08-04-2015	DIVERTED
28	8829585	06-04-2015	VASMUNJEA009055	07-04-2015	DIVERTED
29	8880181	08-04-2015	VASMUNJEA009096	14-04-2015	DIVERTED
30	8890358	08-04-2015	BALMUNJEA009076	10-04-2015	DIVERTED
31	8960478	13-04-2015	VASMUNJEA009094	13-04-2015	DIVERTED
32	8960479	13-04-2015	VASMUNJEA009095	13-04-2015	DIVERTED
33	8966049	13-04-2015	BALMUNJEA009092	13-04-2015	DIVERTED
34	8979071	13-04-2015	VASMUNJEA009102	15-04-2015	DIVERTED
35	9017772	15-04-2015	GMAEMUNJEA009112	18-04-2015	DIVERTED
36	9037031	16-04-2015	VASMUNJEA009128	20-04-2015	DIVERTED
37	9121279	21-04-2015	VASMUNJEA009145	22-04-2015	DIVERTED
38	9121630	21-04-2015	VASMUNJEA009144	22-04-2015	DIVERTED
39	9188627	24-04-2015	GMAEMUNJEA009184	28-04-2015	DIVERTED
40	9189181	24-04-2015	GMAEMUNJEA009192	29-04-2015	DIVERTED
41	9272771	28-04-2015	VASMUNJEA009212	04-05-2015	DIVERTED
42	9286315	29-04-2015	VASMUNJEA009246	04-05-2015	DIVERTED
43	9352534	02-05-2015	VASMUNJEA009261	05-05-2015	DIVERTED
44	9558501	14-05-2015	BALM UNJEA009391	15-05-2015	DIVERTED
45	9568715	14-05-2015	BALMUNJEA009396	16-05-2015	DIVERTED
46	9569012	14-05-2015	GMAEMUNJEA009401	18-05-2015	DIVERTED
47	9586921	15-05-2015	VASMUNJEA009398	18-05-2015	DIVERTED
48	9587335	15-05-2015	BALMUNJEA009411	18-05-2015	DIVERTED
49	9621456	18-05-2015	BALMUNJEA009422	19-05-2015	DIVERTED
50	9650969	19-05-2015	VASMUNJEA009437	20-05-2015	DIVERTED
51	9801143	26-05-2015	BALMUNJEA009500	10-06-2015	DIVERTED
52	9194440	24-04-2015	VASMUNJEA009171	24-04-2015	DIVERTED
53	4641249	11-12-2015	BALMUNBND011063	12-12-2015	DIVERTED
54	4572372	12-08-2015	BALMUNBND011064	12-12-2015	DIVERTED

55	7884893	18.02.2015	GMAEMUNJEA008751	23-02-2015	DIVERTED
56	7693117	09.02.2015	GMAEMUNJEA008719	18-02-2015	DIVERTED
57	7921242	20.02.2015	GMAEMUNJEA008747	20-02-2015	DIVERTED
58	9650965	19.05.2015	GMAEMUNJEA009439	20-05-2015	DIVERTED
59	8828784	06.04.2015	VASMUNJEA009054	07-04-2015	DIVERTED
60	7403237	24.01.2015	VASMUNJEA008573	30-01-2015	DIVERTED
61	7649838	06.02.2015	VASMUNJEA008630	09-02-2015	DIVERTED
62	7650136	06.02.2015	VASMUNJEA008626	09-02-2015	DIVERTED
63	7970931	23.02.2015	GMAEMUNJEA008761	24.02.2015	DIVERTED
64	1536145	01.07.2015	GMAEMUNJEA009856	03-07-2015	DIVERTED
65	1609759	06.07.2015	GMAEMUNJEA009927	09-07-2015	DIVERTED
66	2025051	25.07.2015	GMAEMUNJEA010061	27-07-2015	DIVERTED
67	9380438	05.05.2015	GMAEMUNJEA009289	07-05-2015	DIVERTED
68	9381042	05.05.2015	GMAEMUNJEA009288	07-05-2015	DIVERTED

4.6.3.19 Vide their letter dated 21.01.2019 and 01.02.2019, M/s Goodrich Maritime Pvt. Ltd. forwarded the 68 landing Certificates pertaining to the shipments destined to Bandar Abbas but discharged at Jebel Ali during the year 2014 and 2015. The details of landing Certificates submitted by the Shipping Line are as under: -

S.No.	Shipping Bill No.	S.B. Date	Bill of Lading No.	B.L. Date	Status
1	6004653	12-11-2014	GMLUAEMUNJEA007810	14-11-2014	DIVERTED
2	6005025	12-11-2014	BALMUNJEA007849	18-11-2014	DIVERTED
3	6162935	20-11-2014	GMLUAEMUNJEA007935	24-11-2014	DIVERTED
4	6449656	04-12-2014	GMLUAEMUNJEA008086	05-12-2014	DIVERTED
5	6652976	16-12-2014	BALMUNJEA008197	19-12-2014	DIVERTED
6	1060801	08-06-2015	VASMUNJEA009598	10-06-2015	DIVERTED
7	1061045	08-06-2015	VASMUNJEA009597	10-06-2015	DIVERTED
8	1063511	08-06-2015	GMAEMUNJEA009501	09-06-2015	DIVERTED
9	1160961	12-06-2015	GMAEMUNJEA009659	15-06-2015	DIVERTED
10	1402878	25-06-2015	GMAEMUNJEA009769	25-06-2015	DIVERTED
11	1417369	26-06-2015	VASMUNJEA009799	29-06-2015	DIVERTED
12	1538899	01-07-2015	VASMUNJEA009855	03-07-2015	DIVERTED
13	1558532	02-07-2015	VASMUNJEA009860	03-07-2015	DIVERTED
14	1787018	14-07-2015	GMAEMUNJEA010015	20-07-2015	DIVERTED
15	1794574	15-07-2015	GMAEMUNJEA009991	16-07-2015	DIVERTED
16	1875519	18-07-2015	VASMUNJEA009989	16-07-2015	DIVERTED
17	2002573	24-07-2015	VASMUNJEA010060	27-07-2015	DIVERTED
18	7137688	10-01-2015	GMLAEMUNJEA008432	13-01-2015	DIVERTED
19	8243649	09-03-2015	BALMUNJEA008859	11-03-2015	DIVERTED
20	8273455	10-03-2015	BALMUNJEA008875	13-03-2015	DIVERTED
21	8582289	25-03-2015	GMAEMUNJEA008981	26-03-2015	DIVERTED
22	8582363	25-03-2015	BALMUNJEA008977	26-03-2015	DIVERTED
23	8597837	25-03-2015	GMAEMUNJEA009000	31-03-2015	DIVERTED
24	8611901	26-03-2015	GMAEMUNJEA009006	30-03-2015	DIVERTED
25	8682432	30-03-2015	GMAEMUNJEA009019	31-03-2015	DIVERTED
26	8749124	01-04-2015	GMAEMUNJEA009042	02-04-2015	DIVERTED
27	8773357	01-04-2015	GMAEMUNJEA009047	08-04-2015	DIVERTED
28	8829585	06-04-2015	VASMUNJEA009055	07-04-2015	DIVERTED
29	8880181	08-04-2015	VASMUNJEA009096	14-04-2015	DIVERTED
30	8890358	08-04-2015	BALMUNJEA009076	10-04-2015	DIVERTED
31	8960478	13-04-2015	VASMUNJEA009094	13-04-2015	DIVERTED
32	8960479	13-04-2015	VASMUNJEA009095	13-04-2015	DIVERTED
33	8966049	13-04-2015	BALMUNJEA009092	13-04-2015	DIVERTED
34	8979071	13-04-2015	VASMUNJEA009102	15-04-2015	DIVERTED
35	9017772	15-04-2015	GMAEMUNJEA009112	18-04-2015	DIVERTED

36	9037031	16-04-2015	VASMUNJEA009128	20-04-2015	DIVERTED
37	9121279	21-04-2015	VASMUNJEA009145	22-04-2015	DIVERTED
38	9121630	21-04-2015	VASMUNJEA009144	22-04-2015	DIVERTED
39	9188627	24-04-2015	GMAEMUNJEA009184	28-04-2015	DIVERTED
40	9189181	24-04-2015	GMAEMUNJEA009192	29-04-2015	DIVERTED
41	9272771	28-04-2015	VASMUNJEA009212	04-05-2015	DIVERTED
42	9286315	29-04-2015	VASMUNJEA009246	04-05-2015	DIVERTED
43	9352534	02-05-2015	VASMUNJEA009261	05-05-2015	DIVERTED
44	9558501	14-05-2015	BALM UNJEA009391	15-05-2015	DIVERTED
45	9568715	14-05-2015	BALMUNJEA009396	16-05-2015	DIVERTED
46	9569012	14-05-2015	GMAEMUNJEA009401	18-05-2015	DIVERTED
47	9586921	15-05-2015	VASMUNJEA009398	18-05-2015	DIVERTED
48	9587335	15-05-2015	BALMUNJEA009411	18-05-2015	DIVERTED
49	9621456	18-05-2015	BALMUNJEA009422	19-05-2015	DIVERTED
50	9650969	19-05-2015	VASMUNJEA009437	20-05-2015	DIVERTED
51	9801143	26-05-2015	BALMUNJEA009500	10-06-2015	DIVERTED
52	9194440	24-04-2015	VASMUNJEA009171	24-04-2015	DIVERTED
53	4641249	11-12-2015	BALMUNBND011063	12-12-2015	DIVERTED
54	4572372	12-08-2015	BALMUNBND011064	12-12-2015	DIVERTED
55	7884893	18.02.2015	GMAEMUNJEA008751	23-02-2015	DIVERTED
56	7693117	09.02.2015	GMAEMUNJEA008719	18-02-2015	DIVERTED
57	7921242	20.02.2015	GMAEMUNJEA008747	20-02-2015	DIVERTED
58	9650965	19.05.2015	GMAEMUNJEA009439	20-05-2015	DIVERTED
59	8828784	06.04.2015	VASMUNJEA009054	07-04-2015	DIVERTED
60	7403237	24.01.2015	VASMUNJEA008573	30-01-2015	DIVERTED
61	7649838	06.02.2015	VASMUNJEA008630	09-02-2015	DIVERTED
62	7650136	06.02.2015	VASMUNJEA008626	09-02-2015	DIVERTED
63	7970931	23.02.2015	GMAEMUNJEA008761	24.02.2015	DIVERTED
64	1536145	01.07.2015	GMAEMUNJEA009856	03-07-2015	DIVERTED
65	1609759	06.07.2015	GMAEMUNJEA009927	09-07-2015	DIVERTED
66	2025051	25.07.2015	GMAEMUNJEA010061	27-07-2015	DIVERTED
67	9380438	05.05.2015	GMAEMUNJEA009289	07-05-2015	DIVERTED
68	9381042	05.05.2015	GMAEMUNJEA009288	07-05-2015	DIVERTED

4.6.3.20 Statement of Shri Satish Goel, Director, Shree Jagdamba Agrico Exports Private Limited Arainpura Road, Gharaunda, Karnal, Haryana was recorded on 19.03.2019 under Section 108 of the Customs Act, wherein he stated that in continuation of his previous statements dated 06.04.2016,01.02.2018,07.09.2018 and 15.01.2019, he submitted the printouts of BRCs in respect of shipments exported by M/s Shree Jagdamba Agrico Exports Pvt. Ltd. during the year 2014-15 and 2015-16; that he put his dated signature on all the pages in token of submission made by him and their correctness; that he was shown letters dated 21.01.2019 and 01.02.2019 both received from Goodrich Maritime Pvt. Ltd. regarding submission of landing certificates; that he put his dated signature on all the pages in token of submission made by him and their correctness; that he was shown letters dated 21.01.2019 and 01.02.2019 both received from Goodrich Maritime Pvt. Ltd regarding submission of landing certificates; that he put his dated signature on the body of the letters and Landing certificates provided vide the said letters in token of having seen the same. He further stated that the details mentioned in the landing certificates provided by the Shipping line i.e. Goodrich Maritime Pvt. Ltd. are correct. Further, he was shown his earlier statement dated 15.01.2019, wherein he had submitted the details of shipments exported by M/s

Shree Jagdamba Agrico Pvt. Ltd. In this regard, he has mentioned the Bill of Lading No. at Sr. No. 37 & 43 in the table of his said statement as VASMUNJEA009145 and VASMUNJEA009261 respectively, however, on after checking the Landing Certificates and record available with his office, he found that the correct Bill of lading Nos. were GMAEMUNJEA009145 and BALMUNJEA009261 instead of VASMUNJEA009145 and VASMUNJEA009261 respectively.

4.6.3.21 From the investigation conducted in the matter it appeared that the goods in the case of below mentioned 68 shipping bills were though originally booked for Iran but were delivered to Jebel Ali on the directions of M/s Shree Jagdamba Agrico Exports Private Limited:

S. No.	Shipping Bill No.	S.B. Date	Bill of Lading No.	B.L. Date	Status	Fob Value (Rs.)
1	6004653	12-11-2014	GMLUAEMUNJEA007810	14-11-2014	DIVERTED	19717855.2
2	6005025	12-11-2014	BALMUNJEA007849	18-11-2014	DIVERTED	9671295.6
3	6162935	20-11-2014	GMLUAEMUNJEA007935	24-11-2014	DIVERTED	19688479.2
4	6449656	04-12-2014	GMLUAEMUNJEA008086	05-12-2014	DIVERTED	9886984
5	6652976	16-12-2014	BALMUNJEA008197	19-12-2014	DIVERTED	9875237.4
6	1060801	08-06-2015	VASMUNJEA009598	10-06-2015	DIVERTED	6410362
7	1061045	08-06-2015	VASMUNJEA009597	10-06-2015	DIVERTED	6410362
8	1063511	08-06-2015	GMAEMUNJEA009501	09-06-2015	DIVERTED	11698494
9	1160961	12-06-2015	GMAEMUNJEA009659	15-06-2015	DIVERTED	12400862
10	1402878	25-06-2015	GMAEMUNJEA009769	25-06-2015	DIVERTED	13574970
11	1417369	26-06-2015	VASMUNJEA009799	29-06-2015	DIVERTED	6308356
12	1538899	01-07-2015	VASMUNJEA009855	03-07-2015	DIVERTED	12820724
13	1558532	02-07-2015	VASMUNJEA009860	03-07-2015	DIVERTED	18766345
14	1787018	14-07-2015	GMAEMUNJEA010015	20-07-2015	DIVERTED	9941323
15	1794574	15-07-2015	GMAEMUNJEA009991	16-07-2015	DIVERTED	11418172
16	1875519	18-07-2015	VASMUNJEA009989	16-07-2015	DIVERTED	14809058
17	2002573	24-07-2015	VASMUNJEA010060	27-07-2015	DIVERTED	11871820
18	7137688	10-01-2015	GMLAEMUNJEA008432	13-01-2015	DIVERTED	5366112
19	8243649	09-03-2015	BALMUNJEA008859	11-03-2015	DIVERTED	12753024
20	8273455	10-03-2015	BALMUNJEA008875	13-03-2015	DIVERTED	14107064
21	8582289	25-03-2015	GMAEMUNJEA008981	26-03-2015	DIVERTED	10445226
22	8582363	25-03-2015	BALMUNJEA008977	26-03-2015	DIVERTED	12671958
23	8597837	25-03-2015	GMAEMUNJEA009000	31-03-2015	DIVERTED	13367376
24	8611901	26-03-2015	GMAEMUNJEA009006	30-03-2015	DIVERTED	24304320
25	8682432	30-03-2015	GMAEMUNJEA009019	31-03-2015	DIVERTED	11626380
26	8749124	01-04-2015	GMAEMUNJEA009042	02-04-2015	DIVERTED	15813240
27	8773357	01-04-2015	GMAEMUNJEA009047	08-04-2015	DIVERTED	14555490
28	8829585	06-04-2015	VASMUNJEA009055	07-04-2015	DIVERTED	11467446
29	8880181	08-04-2015	VASMUNJEA009096	14-04-2015	DIVERTED	11467446
30	8890358	08-04-2015	BALMUNJEA009076	10-04-2015	DIVERTED	12058690.6
31	8960478	13-04-2015	VASMUNJEA009094	13-04-2015	DIVERTED	12039790.6
32	8960479	13-04-2015	VASMUNJEA009095	13-04-2015	DIVERTED	12042446
33	8966049	13-04-2015	BALMUNJEA009092	13-04-2015	DIVERTED	13066600.6
34	8979071	13-04-2015	VASMUNJEA009102	15-04-2015	DIVERTED	13622935.2
35	9017772	15-04-2015	GMAEMUNJEA009112	18-04-2015	DIVERTED	9653156.8
36	9037031	16-04-2015	VASMUNJEA009128	20-04-2015	DIVERTED	11024501.4
37	9121279	21-04-2015	VASMUNJEA009145	22-04-2015	DIVERTED	19235945.25
38	9121630	21-04-2015	VASMUNJEA009144	22-04-2015	DIVERTED	6156531.75
39	9188627	24-04-2015	GMAEMUNJEA009184	28-04-2015	DIVERTED	12703963.5
40	9189181	24-04-2015	GMAEMUNJEA009192	29-04-2015	DIVERTED	12703963.5
41	9272771	28-04-2015	VASMUNJEA009212	04-05-2015	DIVERTED	28212719.7
42	9286315	29-04-2015	VASMUNJEA009246	04-05-2015	DIVERTED	12703963.5

43	9352534	02-05-2015	VASMUNJEA009261	05-05-2015	DIVERTED	15244756.2
44	9558501	14-05-2015	BALM UNJEA009391	15-05-2015	DIVERTED	25646948
45	9568715	14-05-2015	BALMUNJEA009396	16-05-2015	DIVERTED	25271538
46	9569012	14-05-2015	GMAEMUNJEA009401	18-05-2015	DIVERTED	10235769
47	9586921	15-05-2015	VASMUNJEA009398	18-05-2015	DIVERTED	18953653.5
48	9587335	15-05-2015	BALMUNJEA009411	18-05-2015	DIVERTED	18953653.5
49	9621456	18-05-2015	BALMUNJEA009422	19-05-2015	DIVERTED	19191028.5
50	9650969	19-05-2015	VASMUNJEA009437	20-05-2015	DIVERTED	12794019
51	9801143	26-05-2015	BALMUNJEA009500	10-06-2015	DIVERTED	18874803
52	9194440	24-04-2015	VASMUNJEA009171	24-04-2015	DIVERTED	16671152.55
53	4641249	11-12-2015	BALMUNBND011063	12-12-2015	DIVERTED	18916233
54	4572372	12-08-2015	BALMUNBND011064	12-12-2015	DIVERTED	12853393
55	7884893	18.02.2015	GMAEMUNJEA008751	23-02-2015	DIVERTED	3287707.2
56	7693117	09.02.2015	GMAEMUNJEA008719	18-02-2015	DIVERTED	4945571.4
57	7921242	20.02.2015	GMAEMUNJEA008747	20-02-2015	DIVERTED	15818589.6
58	9650965	19.05.2015	GMAEMUNJEA009439	20-05-2015	DIVERTED	8315215.2
59	8828784	06.04.2015	VASMUNJEA009054	07-04-2015	DIVERTED	19236863.6
60	7403237	24.01.2015	VASMUNJEA008573	30-01-2015	DIVERTED	24283495.6
61	7649838	06.02.2015	VASMUNJEA008630	09-02-2015	DIVERTED	11522866.6
62	7650136	06.02.2015	VASMUNJEA008626	09-02-2015	DIVERTED	9876742.8
63	7970931	23.02.2015	GMAEMUNJEA008761	24.02.2015	DIVERTED	18692731.2
64	1536145	01.07.2015	GMAEMUNIEA009856	03-07-2015	DIVERTED	11529645
65	1609759	06.07.2015	GMAEMUNJEA009927	09-07-2015	DIVERTED	13574970
66	2025051	25.07.2015	GMAEMUNJEA010061	27-07-2015	DIVERTED	12410862
67	9380438	05.05.2015	GMAEMUNJEA009289	07-05-2015	DIVERTED	18090748.9
68	9381042	05.05.2015	GMAEMUNJEA009288	07-05-2015	DIVERTED	16515152.55
						94,01,49,099

4.6.4 In addition to the statements of Shri Satish Goel, statements of various other persons (which are as under) have been relied upon in the SCN. They have given incriminating statements with regard to diversion of export consignments.

Shri Tushar H. Anam of M/s V. Arjoon in his statement dated 22.12.2015 has stated that Shri Gordhan Bhawnani, 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 Shree Jagdamba Agrico Exports Pvt. Ltd also.

4.6.4.1 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 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,

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 mentioned in para 15 of the Impugned SCN. 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 Shree Jagdamba Agrico Exports 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 contends 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*.

4.6.6 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 impossible 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".

4.6.7 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.

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

4.7.1 In the show cause notice, it is alleged that M/s Shri Jagdamba Agrico Exports Pvt Ltd (the Noticee) had mis-stated the facts in the export documents filed by them. The goods which were actually destined for Jebel Ali Port, UAE have been shown to be destined to Bandar Abbas, Iran. They appeared to have smuggled the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism. They appeared to have exported the goods in violation of the prohibitions discussed in details in the impugned SCN, and thus, rendered the goods liable to confiscation. Therefore, they appeared to have rendered themselves liable to penalty under section 114 and 114AA of the Customs Act, 1962.

In this regards, the noticee No.1 vide letter dated 07.01.2020 have denied all the charges and allegations levelled against them in the impugned Show Cause

Notice but have not rebutted the facts on basis of which the charges were levelled against them and not submitted their detailed written defence submission and hence therefore the charges framed against the Noticee are not refuted and therefore established.

4.7.2 In their written defence reply dated 07.01.2020, the exporter, M/s Shree Jagdamba Agrico Exports 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. They just denied the charges framed against them but have not submitted any grounds in support of their plea. Rather, they emphasized upon making request for cross examination of witnesses whose statements are relied upon in the impugned Show Cause Notice. However, even after having ample opportunities to submit their written defence submission, the Noticee have not submitted their written defence submission and therefore, the charges framed against the Noticee (exporter) are established.

4.7.3 Further, I find that Shri Satish Goel, Director of M/s Shree Jagdamba Agrico Exports Pvt Ltd, in his statement 19.01.2016, had admitted that all the export related documents were forwarded to the CHAs through email id export@shreejagdamba.in to M/s V. Arjoon on gordhan@varjoon.com by their employee Shri Praveen Kumar. That he did not interact directly with the shipping lines, their CHA named above (M/s V. Arjoon) interacted with the shipping lines on their behalf. He further stated that he interacted directly with their foreign buyers. On being asked, **he stated that negotiations with foreign buyers were carried out in the currency in which payment is received by them i.e. where payment is to be received in US Dollars**, the rates shall be quoted in US Dollars and where payments are to be received in Indian Rupees, the rates shall be quoted in Indian Rupees. On being asked, he stated that the remittances of export consignments come in INR from Iran, US\$ from Dubai, Saudi Arab and Yemen. Further on being asked about the procedure for receiving remittances in INR from Iran, he stated that they receive payment through UCO Bank, Chandigarh Branch. On being asked, he stated that the remittances in Indian Rupees in respect of rice exported to Iran is allowed as per the agreement between India and Iran and in respect of export of rice to all other countries, payment was to be received in freely convertible currency in terms of Foreign Trade Policy. On being specifically asked, he stated that he was aware that payment in respect of rice exported to other country i.e. Saudi Arab, Iraq, U.A.E. etc. cannot be received in Indian Rupees.

Further, in his **statement dated 06.04.2016, he submitted a list of 40 consignments of rice exported to Iran and have been diverted to the port of Jebel Ali in Dubai. He has admitted that he was shown copies of Delivery Orders in respect of 14 B/Ls and copies of the letters of M/s Shree Jagdamba Agrico Exports Pvt Ltd addressed to M/s Goodrich Maritime Pvt Ltd., Gandhidham for request to do a telex release, he put his dated signatures on**

all the documents in the token of having seen the same .On being asked to explain these letters, he stated that the consignments covered by these letters have also been diverted to Jebel Ali Port (Dubai) at their request. He admitted that a total of fifty four (54) consignments have been diverted to Jebel Ali Port (Dubai) instead of the declared port of discharge in Iran. On being asked, he stated that the payments for all these fifty four consignments have been received in Indian Rupees through UCO Bank in their Bank Account No. 02360210001775 of UCO Bank, Chandigarh and Bank CC Account No. 205926100205 of Canara Bank, Taraori Branch, Karnal, Haryana. He stated that they have not made any remittances in foreign exchange from these Accounts. He also stated that they have not intimated to their bank about change of destination of those fifty four consignments. **On being asked as to why the same was not intimated to the bank as the payment in INR, he stated that they were not aware about that and undertook not to do so in future.** On being asked, **he stated that the fact of diversion of these consignments was in the knowledge of their CHA M/s V.Arjoon as they were communicating with shipping line through their CHA only.** On being asked, **he stated that he had not got the shipping bills amended from the Customs as their CHA did not advice for the same. He undertook not to repeat such mistake in future.** Furthermore, Shri Satish Goel, during recording of his statement dated 01.02.2018, was shown photocopies of some documents, which he had been told , were provided by their CHA M/s V. Arjoon . He had signed on each page of the said documents as a token of his having seen the same. He also stated that all the documents referred therein which had been produced by CHA M/s V. Arjoon issued from their office were true and were issued by them. He confirmed that total 55 consignments were diverted to Dubai. **He also stated that the fact of diversion of these consignments was in the knowledge of their CHA M/s V. Arjoon as they were communicating with shipping line through their CHA only.** He also stated that the payment in respect to all the consignments destined to Iran whether or not diverted have been received in Indian Rupee only.

During recording of his statement dated 07.09.2018, Shri Satish Goel was shown a copy of Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 issued by M/s Goodrich Maritime Pvt. Ltd to M/s Shree Jagdamba Agrico Exports Pvt Ltd. He saw the same and signed on them in token of having seen them. He stated that the Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 was earlier raised in the name of M/s Shree Jagdamba Agrico Exports Pvt Ltd. However , the same was later on not issued to them and even the container nos. mentioned in this Bill of Lading were not booked by them. That it had been inadvertently raised in their name. In respect of shipment covered by Shipping Bill No.9194440 dated 24.04.2015 (which was mentioned in the Bill of Lading No. GMAEMUNJEA009164), a fresh Bill of Lading No. VASMUNJEA009171 dated 24.04.2015 was issued to them and the goods covered by this Shipping Bill were discharged at Jebel Ali. Further, on being asked about 'Request to do A Telex Release' dated 27.04.2015 in respect of the Bill of Lading GMAEMUNJEA009164, he stated that it was inadvertently issued by their employee based upon GMAEMUNJEA009164 dated 24.04.2015. That due to

confusion at their end, it was wrongly mentioned by him in his previous statement that the goods covered by Bill of Lading No. GMAEMUNJEA009164 dated 24.04.2015 were discharged at Jebel Ali. That the said Bill of Lading was not issued to them and no goods were exported against the said Bill of Lading and the position stated by him with regard to diversion of goods vide Bill of Lading GMAEMUNJEA009164 was due to confusion.

Shri Satish Goel during recording of his **statement dated 15.01.2019, was shown printouts of emails dated 29.10.2018 and 30.10.2018 received from M/s Goodrich Maritime to DRI providing the details of shipments which were originally shipped for Iran but later on diverted to Jebel Ali. He put his signatures on the printouts of the emails in token of having seen the same. Further, he had confirmed from his record and found that total 68 shipments, which were originally destined to Iran had been diverted to Dubai.**

During recording of his statement dated 19.03.2019, Shri Satish Goel was shown letters dated 21.01.2019 and 01.02.2019 both received from Goodrich Maritime Pvt Ltd regarding submission of landing certificates. He had put his dated signatures on the body of the letters and landing certificates provided vide the said letters in token of having seen the same. On being asked, **he stated that the details mentioned in the landing certificates provided by the Shipping line i.e. Goodrich Maritime Pvt Ltd are correct.** Further regarding Bill of Lading Nos as provided in his earlier statement dated 15.01.2019, B/L No. VASMUNJEA009145 & VASMUNJEA009261, the correct Bills of Lading Nos. are GMAEMUNJEA009145 & BALMUNJEA009261 respectively.

Further , I find that Shri Tushar H. Anam of M/s V. Arjoon in his statement dated 22.12.2015 has stated that Shri Gordhan Bhawnani, 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.

Further, I find that Shri Gordhan Bhawnani, Manager of M/s V. Arjoon (CHA) in his statement dated 09.01.2017, has admitted that 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, 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 that 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. **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.

Thus, the statement of Shri Tushar H. Anam and Shri Gordhan Bhawnani is in agreement with that of Shri Satish Goel, Director of the Noticee Company (Noticee No. 1) ; and also a co noticee in this case .

In additional to above, below mentioned documents establish the charges framed against the Noticee in the impugned SCN against the Noticees.

(a) During recording of his statement dated 19.01.2016, Shri Satish Goel, Director of the Noticee Company accepted that 40 consignments of rice exported to Iran have been diverted to the port of Jebel Ali in Dubai.

(b) During recording of his statement dated 06.04.2016, Shri Satish Goel, Director of the Noticee Company provided a list of 40 consignments of rice exported to Iran have been diverted to the port of Jebel Ali in Dubai.

(c) During recording of his statement dated 06.04.2016, Shri Satish Goel was shown copies of Delivery Orders in respect of total 14 Bills of Lading and the copies of **letters of M/s Shree Jagdamba Agrico Exports Pvt Ltd, addressed to M/s Goodrich Maritime Pvt. Ltd, Gandhidham for request to do a telex release** and he stated that the consignments covered by these letters had also been diverted to Jebel Ali Port (Dubai) **at their (the Noticees) request**. He stated that total 54 consignments have been diverted to Jebel Ali Port (Dubai) instead of the declared port of discharge in Iran.

(d) Vide their letter dated 21.01.2017, M/s V. Arjoon, Customs Broker submitted copies of Request letters (**Telex Release Requests from the Noticee to the shipping Line**) and other documents i.e. Invoices, Shipping Bills, Bills of Lading , LoI for Iran.

(e) During recording of his statement dated 01.02.2018 , Shri Satish Goel was shown some documents submitted by M/s V. Arjoon (Customs Broker) he saw the same and signed on each page of the same as a token of having seen the same. He further stated that all these documents have been issued from their office were true and were issued by them. Thus he accepted that total 55 consignments were diverted from Iran to Jebel Ali , Dubai and also provided their details.

(f) During recording of his statement dated 15.01.2019, Shri Satish Goel was shown printouts of emails dated 29.10.2018 and 30.10.2018 received from M/s Goodrich Maritime Pvt Ltd providing the details of shipments which were originally shipped for Iran but later on diverted to Jebel Ali, he put his signatures on printouts of emails in token of having seen the same and confirmed from his records that total 68 shipments , which were originally destined to Iran had been diverted to Dubai.

(g) M/s Goodrich Maritime Pvt Ltd vide their letters dated 21.01.2019 and 01.02.2019, forwarded the 68 Landing Certificates pertaining to the shipments destined to Bandar Abbas but discharged at Jebel Ali during the year 2014 and 2015 and the same was accepted to be correct by Shri Satish Goel during recording of his statement dated 19.03.2019.

In view of discussion hereinbefore, allegations against the Noticee regarding diversion of the export goods (originally declared for export to Bandar Abbas Iran) to Jebel Ali , Dubai stands established.

4.7.4 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 2009-2014 / 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. By this, the fact of diversion of export cargo destined to Iran to Jebel Ali Port is established. 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.

4.6.5 As discussed hereinbefore, the exporter M/s Shree Jagdamba Agrico Exports 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*.

4.6.6 I find that M/s Shree Jagdamba Agrico Exports 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 Shree Jagdamba Agrico Exports 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.94,01,49,099/- (Rupees Ninety Four Crore One Lakhs Forty Nine Thousand & Ninety Nine only) at Sr. No. 1 to 68 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.

4.7 Penalty on Shri Satish Goel, Director of M/s Shree Jagdamba Agrico Exports Pvt. Ltd. under Section 114 & 114AA of the Customs Act, 1962.

4.7.1 In the impugned SCN, it is alleged that Shri Satish Goel, Director of M/s Shree Jagdamba Agrico Exports Pvt Ltd had mis stated the facts in the export documents filed by them. The goods which were actually destined for Jebel Ali Port,UAE have been shown to be destined to Bandar Abbas, Iran. He appeared to have smuggled the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism. He appeared to have exported the goods in violation of the prohibitions discussed in details in the impugned SCN, and thus, rendered the goods liable to confiscation. Therefore, he has rendered himself liable to imposition of penalty under section 114 and 114AA of the Customs Act, 1962.

In his written defence reply dated 07.01.2020, Shri Satish Goel, Director of the exporter, M/s Shree Jagdamba Agrico Exports Pvt Ltd has not contended the fact that the impugned goods which was declared for export to Iran was offloaded/ discharged at Jebel Ali Port (UAE). He has not contended that the export proceeds were realised in Indian Rupees from Iranian buyers even though the goods were

offloaded at Jebel Ali, Dubai. He just denied the charges framed against them but has not submitted any grounds in support of his plea. Rather, he emphasized upon making request for cross examination of witnesses whose statements are relied upon in the impugned Show Cause Notice. However, even after having ample opportunities to submit his written defence submission, the Noticee has not submitted his written defence submission and therefore, the charges framed against the Noticee (Shri Satish Goel) are established.

I find that in his statement dated 19.01.2016, Shri Satish Goel has stated that he participated in his family business in the name of M/s Shree Jagdamba Agrico Exports Pvt. Ltd. which is engaged in processing and export of Rice. Presently he is one of the directors in the company. He further stated that he deals with the foreign buyers and all negotiations with them are done by him and all the work relating to export of rice is looked after by him. 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 Satish Goel has already accepted the diversion of goods from Iran to Jebel Ali. Further, vide his statement dated 06.04.2016, he has admitted that consignments have been diverted to Jebel Ali Port in Dubai. He further accepted that the consignments covered by the letters of M/s Shree Jagdamba Agrico Exports Pvt Ltd **have also been diverted to Jebel Ali Port (Dubai) at their request.** He admitted that a total of fifty four consignments have been diverted to Jebel Ali (Dubai) instead of the declared port of discharge in Iran. He also stated that payments for all these fifty four consignments have been received in Indian Rupees through UCO Bank in their Bank Account at Chandigarh and Bank CC Account of Canara Bank, Karnal. He also stated that they had not made any remittances in foreign exchange from those Accounts. He also stated that the fact of diversion of those consignments was in knowledge of their CHA M/s V. Arjoon as they were communicating with shipping line through CHA only. He also stated that they had not got the shipping bills amended from the Customs as their CHA did not advise for the same. Vide his statement dated 01.02.2018, he stated that all the documents, which were produced by CHA M/s V. Arjoon issued from their office are true and were issued by them. He accepted that the fact of diversion of those consignments was in the knowledge of their CHA M/s V. Arjoon as they were communicating with shipping line thorough their CHA only. He also accepted that the payment with respect to all the consignments destined to Iran whether or not diverted have been received in Indian Rupees only. Further, in his statement dated 15.01.2019, he confirmed from his record available in his office and found that total 68 shipments which were originally destined to Iran had been diverted to Dubai. Furthermore, vide during his statement dated 19.03.2019, he has seen and endorsed the letters dated 21.01.2019 and 01.02.2019 of M/s Goodrich Maritime Pvt Ltd regarding submission of landing certificates in respect of 68 consignments.

Thus it is clear that Shri Satish Goel 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 2.40 and 2.53 of the FTP (2009-14 /2015-20). In view of the acts of omissions and commissions on his part, Shri Satish Goel, Director of Shree Jagdamba Agrico Exports Pvt Ltd is liable for penalty under Section 114 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.

4.8 Penalty on Customs Brokers M/s V.Arjoon Penalty under Section 114 & 114AA of the Customs Act, 1962:

4.8.1 It is alleged in the SCN that M/s V Arjoon had mis stated the facts in the export documents filed by them. The goods which were actually destined to Jebel Ali Port, UAE have been shown to be destined to Bandar Abbas, Iran. They appeared to have smuggled the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism. They appeared to have exported the goods in violation of the prohibitions discussed in details in the impugned SCN; and therefore, rendered the goods liable to confiscation. Therefore, they have rendered himself liable to imposition of penalty under section 114 and 114AA of the Customs Act, 1962.

4.8.2 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 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.

4.8.3 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 14 of their reply, and also recorded in the statement of Sh. Gordhan Bhawnani, 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 06.04.2016, Shri Satish Goel (Director of M/s Shree Jagdamba Agrico Exports Pvt Ltd, the noticee exporter) stated that the fact of diversion of these consignments was in the knowledge of their CHA M/s V. Arjoon as they were communicating with shipping line through their CHA only. Further, in his statement dated 09.01.2017, Shri Gordhan Bhawnani has also accepted that it was known to him in advance i.e. before leaving of the consignment from Indian shore that the goods are actually going to Dubai in place of Iran as mentioned in the shipping bill.** 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 Bhawnani before the goods left from India. Therefore, the contention of the noticee is not sustainable.

4.8.4 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.

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

ORDER

1. I hold the goods exported under 68 Shipping Bills by M/s Shree Jagdamba Agrico Exports Private Limited, Arainpura Road, Gharaunda-132114 (Karnal), Haryana valued at Rs.94,01,49,099/- (Rupees Ninety Four Crore One Lakh Forty Nine Thousand & Ninety Nine only), as detailed in para 14 of 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 physically neither available for confiscation nor released provisionally on bond under Section 110A of the Customs Act, 1962.
2. I impose a Penalty of Rs. 3,36,00,000/- (Rupees Three Crore Thirty Six Lakh Only) on M/s Shree Jagdamba Agrico Exports Pvt. Ltd. under Section 114 of the Customs Act, 1962 .
3. I impose a Penalty of Rs.3,36,00,000/- (Rupees Three Crore Thirty Six Lakh Only) on M/s Shree Jagdamba Agrico Exports Pvt. Ltd. under Section 114AA of the Customs Act, 1962.
4. I appropriate an amount of Rs.10 lakhs deposited by M/s Shree Jagdamba Agrico Exports Pvt. Ltd., Arainpura Road, Gharaunda-132114 (Karnal), Haryana vide demand draft No.865589 dated 21.03.2016 during the investigation of the case towards the penalties imposed at Sr. No. 2 & 3 above.
5. I impose a Penalty of Rs.2,02,00,000/- (Rupees Two Crore and Two lakh Only) on Sh. Satish Goel ,Director of M/s Shree Jagdamba Agrico Exports Pvt Ltd under Section 114 of the Customs Act, 1962.
6. I impose a Penalty of Rs.2,02,00,000/- (Rupees Two Crore and Two lakh Only) on Sh. Satish Goel Director of M/s Shree Jagdamba Agrico Exports Pvt Ltd under Section 114AA of the Customs Act, 1962.
7. I impose a Penalty of Rs.1,88,00,000/- (Rupees One Crore and Eighty Eight Lakh Only) on Custom Broker firm M/s V. Arjoon under Section 114 of the Customs Act, 1962 .
8. I impose a Penalty of Rs.1,88,00,000/- (Rupees One Crore and Eighty Eight Lakh Only) on Custom Broker firm M/s V. Arjoon under Section 114AA of the Customs Act, 1962 .

29/5/2020
(Sushant Kumar)

**Additional Commissioner
Custom House Mundra**

F.No. VIII/48-14/Adj/ADC/MCH/19-20

Date : 29.05.2020

BY SPEED POST TO:

1. M/s Shree Jagdamba Agrico Exports Private Limited, Arainpura Road, Gharaunda-132114 (Karnal), Haryana.

2. Shri Satish Goel, Director of M/s Shree Jagdamba Agrico Exports Private Limited, Arainpura Road, Gharaunda-132114 (Karnal), Haryana.
3. M/s V. Arjoon, 6, Hafizain Bldg. 3rd Floor, 129/131, Kazi Syed Street, Masjid (W), Mumbai - 400003.

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

