



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.	:	F. No. VIII/48-03/Adj./ADC/MCH/2018-19
B. Order-in- Original No.	:	MCH/ADC/AS/38/2019-20
C. Passed by	:	Shri Amarjeet Singh Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order / Date of issue	:	26.07.2019/ 26.07.2019
E. SCN No. & Date	:	DRI/HQ-CI/50D/ENQ-26(INT-24)/2015-Pt-12 dated 04.06.2018
F. Noticee(s)/Party/ Importer	:	1. M/s Bansal Fine Foods Pvt. Ltd., 121 KM Stone GT Road, Opp. Agro Mall, Karnal, Haryana. 2. Shri Munish Bansal, Director of M/s Bansal Fine Foods Pvt. Ltd., 121 KM Stone GT Road, Opp. Agro Mall, Karnal, Haryana. 3. M/s V.Arjoon, 6, Hafizain Bldg. 3rd Floor, 129/131, Kazi Syed Street, Masjid (W), Mumbai - 400 003.

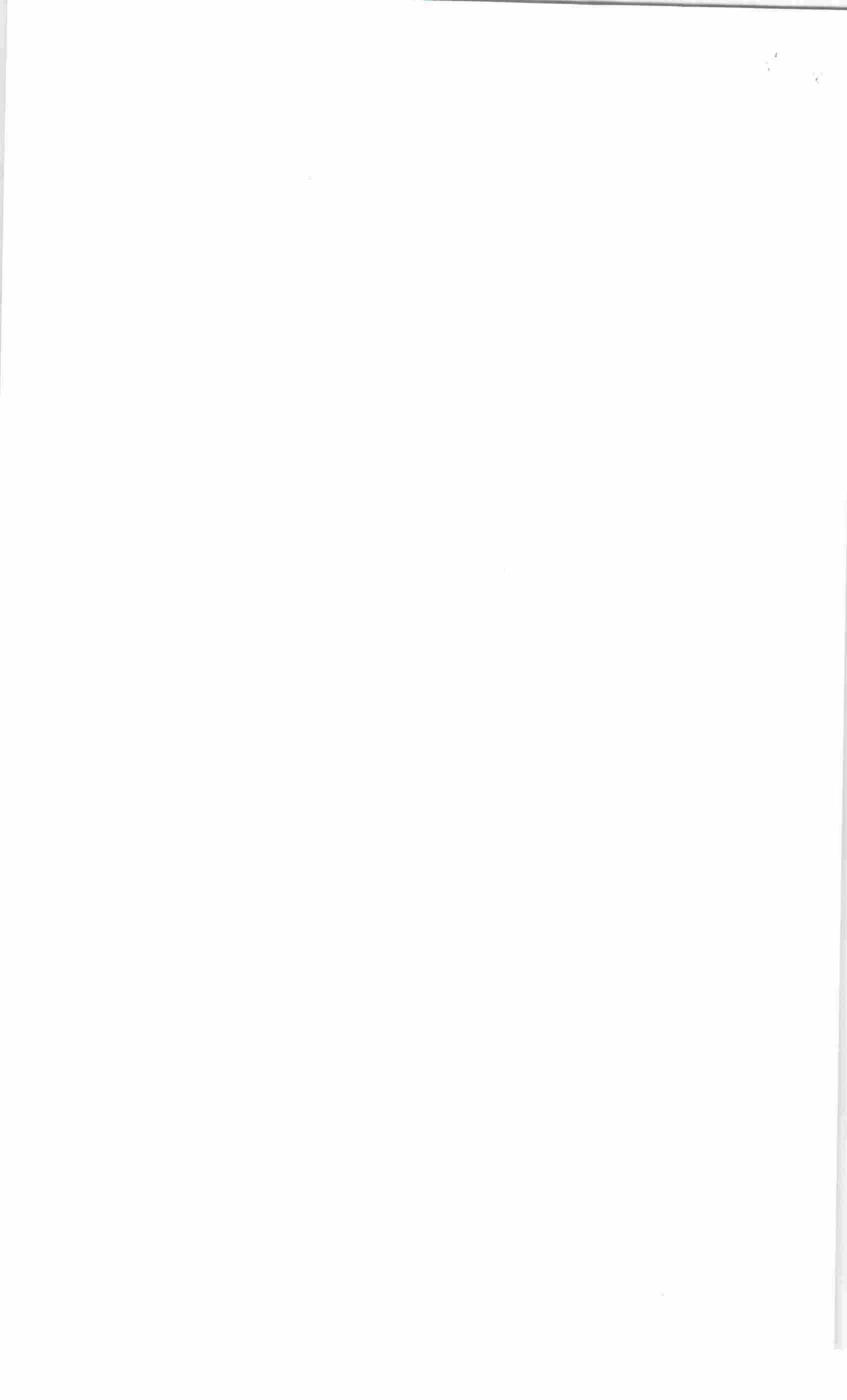
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29/07/19

1. यह अपील आदेश संबन्धित 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 रोड, 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.

Sub: SCN F. No: DRI/HQ-CI/50D/ENQ-26(INT-24)/2015-Pt-12 dated 04.06.2018 issued to M/s Bansal Fine Foods Pvt. Ltd., 121 KM Stone GT Road, Opp. Agro Mall, Karnal, Haryana & others.



Brief facts of the Case:

Based on information regarding violation of the provisions of the Customs Act, 1962, by M/s Bansal Fine Foods Pvt. Ltd., 121 KM Stone GT Road, Opp. Agro Mall, Karnal, Haryana, (IEC 3398002013) (hereinafter also referred to as 'noticee') investigation was initiated by the office of Directorate of Revenue Intelligence (Hqrs.), 7th Floor, "D" Block, I.P. Bhawan, LP. Estate, New Delhi (hereinafter referred to as DRI).

2. Statement of Shri Munish Bansal, Director of M/s Bansal Fine Foods Pvt. Ltd. was recorded on 10.02.2016 under Section 108 of the Customs Act, 196 (RUD-1 of the SCN) wherein he inter alia stated that he looks after all the activities related to export of rice; that they export rice to Saudi Arabia, Iran, Egypt, Turkey, Canada and Dubai; that they export rice through the indenters; that they pay 2% to 5% commission to their brokers for export of rice; that they did not interact directly with their buyers; that they interact with indenters (brokers) for export of rice; stated that they export rice to Iran from Mundra port, Kandla port, ICD Dadri, ICD Loni and ICD Sonipat; that their CHA for export of rice to Iran from Mundra Port and Kandla port were M/s. V. Arjoon and from all other ports were M/s. Seagull Maritime Pvt. Ltd.; that they used the services of shipping lines M/s Goodrich Maritime Pvt. Ltd., Balatic shipping, Maritime Shipping, Perma Shipping, Meditterian Shipping Company (MSC), United Arab Shipping Company etc. for export of rice to Iran; that he did not interact with the above shipping lines and only their CHAs interacted with the above Shipping Lines on their behalf; that the brokers sends them the purchase orders on behalf of buyers; that they received the remittances against rice exported to Iran through UCO Bank in INR; that in some cases, the payment had been received in advance; that in the case of export of rice to countries other than Iran ,they had received the remittances in their Current Account No. 10279741855 directly maintained at State Bank of India, Commercial Branch, Ambedkar Chowk, Karnal in freely convertible currency; that on being asked, he stated the remittances in Indian Rupees in respect of rice exported to Iran is allowed in INR 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 ; and admitted that the remittance received in INR against export to countries other than Iran was a violation of Foreign Trade Policy; that they had exported 48 consignments to Iran, 24 consignments in the year 2014-15 and 24 in the year 2015-16; that out of these 48 consignments, the following seven consignments had been diverted to and delivered at Jebel Ali port (Dubai) instead of Bandar Abbas port (Iran).

Sr. no.	SB No.	SB Date	BL No.	Invoice No.	Invoice Value (INR)
1	9557201	14.05.2015	GMAEMUNJEA009438	BFF/1562/2015-16	2,57,60,000
2	1551474	02.07.2015	BALMUNJEA009889	BFF/1580/2015-16	1,67,32,500
3	1539455	01.07.2015	BALMUNJEA009982	BFF/1581/2015-16	1,67,32,500
4	3566765	15.10.2015	VASMUNBND010651	BFF/1624/2015-16	1,31,10,000
5	3595968	16.10.2015	VASMUNBND010679	BFF/1633/2015-16	1,31,10,000
6	3662941	20.10.2015	BALMUNBND010705	BFF/1634/2015-16	1,34,55,000
7	3712950	23.10.2015	BALMUNBND010740	BFF/1635/2015-16	1,34,55,000
TOTAL INVOICE VALUE (INR)					11,23,55,000

2.1 On being asked, he stated that above seven consignments had been diverted to Jebel Ali Port (Dubai) on his oral instructions to their CHA i.e. M/s V. Arjoon; that the CHA might have passed instructions in writing to their Shipping Lines i.e. M/s Goodrich Lines to deliver the consignments at Jebel All Port (Dubai) instead of declared port as Bandar Abbas (Iran); that they had not got carried out any amendment in the respective shipping bills for change of destination port. On being asked the reasons for the same, he was unable to answer the same. He further stated the payments (Sale proceeds) for all these consignments were received in Indian rupees through UCO Bank even though the goods were discharged at Jebel All Port; that the fact of discharge of these shipments at Jebel All port was never brought to the knowledge of UCO Bank.

3. Statement dated 22.12.2015 of Shri Tushar H. Anam of M/s V. Arjoon, 6, Hafizain Bldg. 3rd Floor, 129/131, Kazi Syed Street, Masjid (W), Mumbai - 400 003, CHA (RUD- 2 of the SCN) was recorded under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that M/s Bansal Fine food Ltd was one of their major clients who exported rice to Iran and various other countries; that the remittance can be received in INR against export made to Iran; that he understood that there was a treaty between India and Iran that the remittance can be received only in INR against the export made from India to Iran; that he also understood that the remittance can be received in freely convertible currency only against exports made to countries other than Iran; that he was not aware that the remittance received in INR against exports made to other than Iran is a violation of Foreign Trade Policy. On being asked, he stated that he was not aware of the provisions of the Foreign Trade Policy. He stated that he was not in a position to guide their clients to ensure compliance of the provisions of Foreign Trade Policy. On being asked, 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 Jai T. Anam, Shri Sagar A. Anam and himself were the three directors of this company who were engaged in arranging transportation, warehousing, container booking etc. for their clients. On being asked, he stated that Shri Gordhan Bhowani, H-card holder of M/s. V. Arjoon and himself interacted with all the shipping lines on behalf of their clients. On being asked, he stated that some shipments of rice, which were cleared for export to Iran were later on diverted at Jebel All port after customs clearance. On being asked, he stated 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 the 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. Shri Gordhan Bhawnani, Manager of M/s V. Arjoon, Plot No. 130, Lilashah Nagar, Gandhidham in his voluntary statement dated 09.01.2017 (RUD-3 of the SCN) recorded under section 108 of the Customs Act, 1962 inter alia stated that he was working as Manager in M/s. V. Arjoon and looking after documentation of all Customs related work of Exports side and other day to day client work; that he had been handling all the work relating to Customs clearance assigned to him by his Company in coordination with the clients; that he is well versed with all the legal provisions and procedures for Customs clearance. On being asked about the procedure they follow in the case of export of rice to various countries, he stated that first of all they receive the Shippers

(Exporters) documents i.e. Invoice, Packing List, APEDA Certificates and SDF (Self Declaration Form) for Banking purpose; that then on the basis of these documents, he used to file a checklist from his office on ICEGATE; that on the basis of declaration filed in the ICEGATE, they would take a printout of the checklist and check it and on finding it to be correctly entered and generated, they would submit it to ICEGATE for generating Shipping Bill; that then on receipt of the cargo from exporter, the goods were presented to Customs for examination and on clearance by Customs, the goods were stuffed in the containers.

4.1 On being asked as to how they get the containers from the Shipping lines, he stated that they place booking to the shipping line from the office email. Then they get a booking confirmation/Delivery Order from the Shipping line; that in the booking request, they have to intimate to the shipping line among other details about - shipper, exporter, consignee, port of discharge, no. of containers, size of container, commodity, port of stuffing; that they had handled customs clearance of M/s. Bansal Fine Foods and other exporters; that he dealt with Mr. Munish Bansal of M/s. Bansal Fine foods. On being specifically asked, he stated that on behalf of these exporters he dealt with the shipping lines and got their customs clearance work with the help of other employees of their company; that whatever handling of export consignments with shipping line, Customs custodians and exporters and other related person was done by them as employees of the CHA firm, was in the knowledge of owner of the CHA firm and was done for the CHA firm as per the practice being followed by them.

4.2 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 Jabel Ali(Dubai), he stated that he always acted on the directions of exporter; that he has never done it without directions of the exporter; that he admitted that it was known to him in advance i.e. before leaving of the consignment from Indian shore that the goods were actually going to Dubai in place of Iran as mentioned in the shipping bill but as CHA they had no choice but to act in accordance with the directions of the exporter; that even in some of the cases they came to know of the diversion of the goods to Dubai after loading of the goods in the vessel and leaving the vessel from Indian shore. On being told that certain exporters have stated that he was aware about the fact of diversion at the time of export of goods in as much as the goods were shown in the Shipping Bill to be destined at Iran but were actually going to Dubai he stated that he agreed that the fact of mentioning port of discharge as Bandar Abbas in place of Jabel 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 provisions of 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.

4.3 He was also shown Shipping Bill (Electronic Declaration) Regulations, 2011 issued vide 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".

4.4 Further some questions were asked to him during recording of his statement under section 108 of the Customs Act, 1962. 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 appeared that the factual position with regard to the actual consignee/port of discharge have been mis-stated in the Shipping Bill.

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

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

Ans.- We never felt it to be such a major issue and whatever was happening was being done on the directions of exporter only. All the requirements of law as per practice were being followed by us. I state that whatever omission has been done in filing of the shipping bills and non-compliance of the regulation 11(d) above was without any intention to violate any provisions of law. We just followed the practice of the trade."

4.5 Statement of Sh. Munish Bansal was recorded under section 108 of the Customs Act, 1962 on 10.03.2017 (RUD-4 of the SCN) wherein he inter alia stated that he was submitting copies of 40 landing certificates and that as per these landing certificates the goods have been delivered at Iran as declared in the shipping bills; that he has ascertained from his records and found that one more consignment, apart from the seven consignments reported by him in his previous statement dated 10.02.2016, has been diverted to Dubai; that these 8 consignments were cleared from Mundra Port; that he has earlier stated that seven consignments have been diverted to Jebel Ali Port (Dubai) on his oral instructions to their CHAs i.e. M/s V. Arjoon and that the CHAs might have passed instructions in writing to their Shipping Lines (M/s Goodrich Lines) to deliver the consignments at Jebel Ali Port (Dubai) instead of declared port as Bandar Abbas (Iran); that destination was changed in these cases after finalization of the shipping bills. He was shown statement dated 09.01.2017 of Shri Gordhan Bhawnani of V. Arjoon, on seeing the same he stated that they have never informed their CHA about change of destination before filing of the

documents, in fact they came to know of the directions of the buyers to change the destination after filing of the shipping bills; that he has been shown Section 50 of the Customs Act, 1962 and Shipping Bill (Electronic Declaration) Regulations, 2011 issued under Notification No. 80/2011-Cus. (N.T.), dated 25-11-2011; that on seeing the same he admitted that there has been a mistake on their part; that his attention was been drawn to para 2.52 of FTP which relates to Denomination of Export Contracts, as per the relevant part of the para, 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; that he has been told that the export proceeds in respect of their goods exported to UAE should have been received in freely convertible foreign currency whereas the export proceeds have been realised in Indian rupees as against statutory requirement of their realisation in freely convertible foreign currency and that it seems those relevant policy provision as mentioned above have been violated by them.

5. Statement dated 01.02.2018 of Shri Munish Bansal, Director of M/s Bansal Fine Foods Pvt. Ltd. was recorded under Section 108 of the Customs Act, 1962 (RUD-5 of the SCN) wherein he inter alia stated that they have exported 48 consignments where the Bills of landing were issued for Iran destination, however, out of these 48 consignments only 8 consignments were diverted to Dubai; that apart from these 8 consignments no other consignments of Iran had ever been diverted to Dubai. On being shown the documents (18 pages), supplied by M/s V. Arjoon, their Clearing & forwarding agents, he confirmed those belonging to him. He further confirmed that the documents which were sent from their office are correct. He further stated that in all they have exported 48 consignments to Iran during the period 2014-15 & 2015-16; that in his previous statement dated 10.02.2016, he had stated that in total 7 consignments meant for Iran were diverted to Dubai, however, in his statement dated 10.03.2017, he had further stated that they had diverted total 8 consignments meant for Iran (to Dubai), instead of 7 consignments; that the payment in respect of all these 48 consignments have been received in Indian Rupees from Iran; that their CHA M/s V. Arjoon/Shri Goverdhan Bhavnani were fully aware about the diversion of rice to Dubai (Jebel Ali) in place of Iran before filing the Shipping Bills; that he had already submitted landing certificate of 40 consignments which were landed in Iran but could not submit the Landing Certificate of those 8 consignments which were diverted to Jebel Ali (Dubai).

6. Further vide his letter dated 05.01.2018 M/s Bansal Fine Foods Pvt. Ltd (RUD-6 of the SCN) submitted copies of landing certificated pertaining to the following shipping bills:

Sl. No.	Shipping Number & Date	Port of Discharge
1	9557201 dated 14.05.2015	Jabel Ali
2	1551474 dated 02.07.2015	Jabel Ali
3	1539455 dated 01.07.2015	Jabel Ali
4	3566765 dated 15.01.2015	Jabel Ali
5	3595968 dated 16.01.2015	Jabel Ali
6	3662941 dated 20.10.2015	Jabel Ali
7	3712950 dated 23.10.2015	Jabel Ali
8	9854809 dated 29.02.2015	Jabel Ali

6.1 Further statement of Shri Munish Bansal was recorded under section 108 of the customs Act, 1962 on 22.05.2018 (RUD-7 of the SCN) wherein he inter alia state that the goods covered by 9557201/14.05.2015, 15.10.2015, 3712950/23.10.2015, in respect of 8 consignments exported vide shipping bills number 1551474/02.07.2015, 1539455/01.07.2015, 3566765/3595968/ 16.10.2015, 3662941/20.10.205, 9854809/29.05.2015 and the country of discharge in the shipping bills was mentioned as Iran, however these goods were actually to go to UAE and have been discharged at Dubai. On being specifically asked he stated that their CHA M/s. V. Arjoon was aware about the actual port of discharge while they filed the shipping bills for Iran. Further on being asked, he also confirmed that he was aware when the remittance in respect of these 8 consignments (discharged at Duabi) was received in their company's bank account in UCO Bank, Chandigarh; that as per law the remittance in respect of goods discharged at Dubai ; the remittance should have come in convertible foreign currency.

6.2. From the documents/records of the case and investigation conducted in the matter it was revealed that the goods in the case of total 8 (eight) shipping bills ; though originally booked for Iran but were delivered to Jabel All on the directions of M/s Bansal Fine Foods Pvt. Ltd (RUD-8 of the SCN).

7. RELEVANT RBI PROVISIONS

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

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

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

7.3 Power to prohibit importation or exportation of goods by central government is 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.

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

8. It appeared that the liability of export goods, already exported, to confiscation under Section 113 of the Act *ibid* and subsequent imposition of penalty under Section 114 of the Act *ibid*, as in the present case, has already been settled in a catena of judgments. 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.

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

10. 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*.

10.1. 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.

11. 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.

12. *M/s Bansal Fine Foods Pvt. Ltd.* had not disclosed the fact of mis- statement in shipping bills on their own. The facts came to the knowledge of the Department only subsequent to initiation of investigation. 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.

13. The acts of *M/s Bansal Fine Foods Pvt. Ltd.* do 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.

14. Imposition of penalty:

As discussed above, the following prohibitions appeared to have been violated by M/s Bansal Fine Foods Pvt. Ltd. and its Director Shri Munish Bansal, attracting provision of section 113 (d) of the Customs Act, 1962:

Reference of the Relevant provisions	Provisions	How it is violated/not complied with by the noticees
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 Bansal Fine Foods Pvt. Ltd. and its Director Shri Munish Bansal 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 Rules, 1993 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	"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 of exports has to be received from the overseas buyer named in the Export Declaration from (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.	Payment for exports Proceeds have been realised from a third party and not have been received from the actual buyer of the goods. <i>(AD banks may allow payments for export goods / software to be received from a third party (a party other than the buyer) subject to certain conditions)</i>

14.1 M/s Bansal Fine Foods Pvt. Ltd and its Director Shri Munish Bansal and Customs Broker firm M/s V. Arjoon have made the following violations attracting action in terms of section 113 (i) of the Custom 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 Bansal Fine Foods Pvt. Ltd. and its Director Shri Munish Bansal 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 at the foot thereof make and subscribe to a declaration as to the truth of its contents.	M/s Bansal Fine Foods Pvt. Ltd. and its Director Shri Munish Bansal and Customs Broker firm M/s. V Arjoon had falsely certified/got certified the entries to the true whereas they have mis-stated the facts in the shipping.
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 Bansal Fine Foods Pvt. Ltd. and its Director Shri Munish Bansal 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.

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

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

17. Thus from the above, it clearly appeared that M/s Bansal Fine Foods Pvt. Ltd. and its Director Shri Munish Bansal, 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
<p>Section 114</p> <p>Penalty for attempt to export goods improperly, etc. :-</p> <p>Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty</p>	<p>M/s Bansal Fine Foods Pvt. Ltd. and its Director Shri Munish Bansal, Customs Broker firm M/s V Arjoon have mis-stated the facts in the export documents filed by them. The goods which were actually destined for UAE have been shown to be destined to Iran. They appear to have smuggled the goods to UAE under the veil of export to Iran under Rupee Trade Mechanism. They appear to have exported the goods in violation of the prohibition discussed above and rendered the goods liable to confiscation. Therefore, they appear to have rendered themselves liable to imposition of penalty under Section 114 and 114AA of the Customs Act, 1962.</p>
<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>	

18. In view of the above, M/s Bansal Fine Foods Pvt. Ltd. was issued a show cause under F. No. DRI/HQ-CI/50D/ENQ-26(INT-24)/2015-Pt-12 dated 04.06.2018 answerable to the Additional/Joint Commissioner of Customs, Mundra Port & SEZ, Mundra as to why:

- (i) The goods of the declared FOB value of Rs.13,51,84,716/- exported under 8 Shipping Bills, should not be held liable to confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules, 1993 and provisions of Section 50(2) of the Customs Act, 1962;
- (ii) The penalty under Section 114 of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules, 1993 and provisions of Section 50 of the Customs Act, 1962 should not be imposed upon them;
- (iii) The penalty under Section 114 AA of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14 (2) of the Foreign Trade (Regulation) Rules, 1993 and provisions of Section 50 of the Customs Act, 1962 should not be imposed upon them.
- (iv) An amount of Rs.10 lakhs deposited by them vide demand draft No. 074175 dated 16.03.2016 during the investigation of the case should not be appropriated towards statutory levies imposed during adjudication of the show cause notice.

19. Also show cause under F. No. DRI/HQ-CI/50D/ENQ-26(INT-24)/2015-Pt-12 dated 04.06.2018 issued to Shri Munish Bansal Director of M/s Bansal Fine Foods Pvt. Ltd. and Customs Broker firm M/s V. Arjoon answerable to the Additional/Joint Commissioner of Customs, Mundra as to why:

- (i) The penalty under Section 114 of the Customs Act, 1962 read with Section 11 (1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14 (2) of the Foreign Trade (Regulation) Rules, 1993 and provisions of Section 50 of the Customs Act, 1962 should not be imposed upon them in view of the acts of omission and commission as discussed above;
- (ii) The penalty under Section 114 AA of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14 (2) of the Foreign Trade (Regulation) Rules, 1993 and provisions of Section 50 of the Customs Act, 1962 should not be imposed upon them in view of the acts of omission and commission as discussed above.

Personal Hearing:

20. Despite providing sufficient time, none of the noticees have replied to the charges mentioned against them in the SCN. Therefore, Personal hearing in the case was fixed on 30.10.2018, 28.11.2018 and 12.12.2018. Shri Tarun Govil and Shri Ajay Singh, Both Advocate appeared before the adjudicating authority on 12.12.2018 on behalf of M/s. Bansal Fine Foods Pvt. Ltd. and Shri Munish Bansal. During the personal hearing they reiterated the contents of their written submission dated 05.09.2018, 26.10.2018 and 26.11.2018 and furnished another written submission on 12.12.2018. They further requested for the verification of the documents from Dubai Customs evidencing the transshipment of the subject goods from Dubai to Iran. They further requested for cross-examination of Shri Gordhan Bhawnani (H-card holder of CHA M/s. V. Arjoon) and that of Shri Suresh Unni than, Assistant Manager of M/s. Goodrich Maritime Pvt. Ltd. who issued the landing certificates of the subject goods in all the 8 consignments. Also Shri Gordhan Bhawnani, H-card holder of CHA M/s. V. Arjoon appeared before the adjudicating authority on 12.12.2018 and reiterated the contents of their earlier written submission dated 26.11.2018 and requested for further submission after the requested verification by M/s. Bansal Fine Foods Pvt. Ltd. and Shri Munish Bansal.

Defence Reply:

21. M/s. Bansal Fine Foods Pvt. Ltd., vide their letter dated 05.09.2018 and 26.10.2018 have requested for the Cross examination of certain witnesses whose statements have been referred to and relied upon in the said notice to buttress the allegations and charges as leveled by the Notice.

21.1 Again M/s. Bansal Fine Foods Pvt. Ltd., made the following submission vide their letter dated 26.11.2018:

- Requested for Cross-examination of certain witnesses whose statements have been referred to and relied upon in the said notice;

➤ *"In the present case, it is a matter of record that Shipping Bills were filed by the Noticee Company showing the Iranian party as the Consignee and the Port of discharge was declared as Bandar Abbas (Iran). It is the case of the Notice that thereafter the changes were made in the Bill of Lading and the Port of discharge was changed. However the Notice failed to appreciate that such change has been made, as per the directions of the foreign buyer/consignee, as the consignee remains same and only the Port of discharge is changed. It is pertinent to point out here that "Bill of Lading" is negotiable document and the person / party in whose favor the Bill of Lading stands or is endorsed is free to deal with the goods and can freely assign to any other party or person as the case may be. In terms of the Indian Bills of Lading Act, 1856, once the Bill of Lading is executed the property in goods are transferred to the consignee, in this case the Iranian party. It is our humble submission that once the property in goods is transferred to the consignee, the goods are at their complete disposal and is at liberty to deal with the goods in any manner as deemed fit by them. In this scenario any changes effected in the Bill of Lading after the Bills of Lading were issued by the shipping company, the exporter cannot be held liable. The consignee / purchaser chooses to take delivery of the goods at some other Port, after the property in goods is transferred/vested in them, then the exporter / shipper cannot be held liable in any manner whatsoever as proposed by the Notice. It may kindly be appreciated that though the Notice records that the discharge Port was changed at the instance of CHA or the exporter but fails to take cognizance of the fact that it was at the behest of foreign buyer. In support of our above submissions we would like to reproduce the provisions of The Indian Bills of Lading Act, 1856 and especially the Section 1 thereof which reads as under:*

"1. Rights under bills of lading to vest in consignee of endorsee.—

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

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

➤ *"The Show Cause Notice fails to appreciate that Jabel Ali, a port in Dubai is a free port, which is hardly 100 nautical miles from the Iranian port of Bandar Abbas which is across the Persian gulf and the possibility of the goods further being dispatched to the Iran there from cannot be ruled out in the facts and circumstances of the present case and specially keeping in view the fact that the consignee remains same in the amended Bill of Lading, which is a Iranian party. It is relevant to note here that the rice exported under the Shipping Bills / Bills of Lading which are subject matter of the*

present Notice were packed in 10kg bags, bearing markings in Iranian language and the brands/trade names of the Iranian buyer. Coloured images of these bags and copies of some sample invoices under which these bags were purchased are collectively marked and annexed herewith as Exhibit - 'A' to the present letter in support of our above submissions. It is also relevant to point out here that as per the UAE laws, no goods such as rice can be sold into UAE, unless and until they are bearing the markings in Arabic language and also other relevant details, but for which the sale of goods is not permitted in UAE and therefore the allegation of the Notice that merely for the reason that 8 consignments were offloaded / discharged at Jabel All Port, the exported rice was destined for UAE and thus consumed in UAE is without any substance and at the most assumption and presumption, on basis of which no legal charges can be sustained."

- "The Iran rupee trade is akin to the Rupee Rouble trade with Russia in past, which was formulated to offset the balance of payment against supply of arms etc. by Russia. Similarly the Rupee Trade with Iran has been formulated to set off the balance of payment for oil being exported by Iran to India. It is our submission that in the Foreign Trade Policy there is no embargo of any kind as being proposed by the present Notice against us. There is no dispute in the case that the order was placed by the Iranian parties and the payments were received from them. In all 48 consignments of rice were exported by us to various parties in Iran and the allegations are in respect of only 8 consignments and thus it cannot be said that we had intentionally devised the acts as alleged by the Notice."
- "Changes in the Bill of Lading have been effected after the goods have sailed and the proceedings under the Customs Act, 1962 were over and therefore it is our submission that the provisions of Customs Act, 1962 have not been violated in any manner and more so it is our submission that each and every provision of the Customs Act invoked, is not at all applicable in the facts of the present case. Section 113 of the Customs Act incorporates the irregularities for which the goods can be held liable for confiscation under the Customs Act and the present Notice invokes Section 113 (d) & (i) of the Customs Act as detailed in Para 31A of the Notice. For the sake of convenience the provisions of the said subsections are re-produced hereinafter:

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

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

- "The provisions of sub section (d) above are not at all applicable in the case at hand as no prohibition has been imposed on export of rice, under Section 11 of the Customs Act or any other Rules/ regulation/Notification. The Show Cause Notice also invokes the

provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act 1992 and Rule 11 and 14 (2) of the Foreign Trade (Regulation) Rules 1993 read with provisions of Section 50 of the Customs act 1962. It appears that these provisions have been invoked without appreciating the provisions being quoted. Section 11 (1) of Foreign Trade (Development Regulation) lays down that no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import policy for the time being in force. Nowhere in the notice it has been alleged that the exports were made in violation of foreign trade policy and therefore the invocation of the above provisions are of no avail for sustaining the charges as proposed by the notice. Similarly the Rule 11 of the Foreign Trade (Regulation) Rules 1993 is regarding the value, quality and description of such as stated in export/import documents etc. in the case at hand there is no allegation that the details of goods, quantity or any other parameters was not declared/incorrectly declared or that the contents in the shipping bill were not correct. In absence of any such allegation the provisions as invoked are not at all applicable in the facts and circumstances of the case.”

- “Much emphasis is made, and reliance is placed by the Show Cause Notice on a RBI circular No. RBI/2013- 14364 A. P. (DIR Series) Circular No.70 dated November 8, 2013 addressed to All Category-I, Authorised Dealer Banks regarding third-party receipt of payments in case of import/exports transactions. It is our submission that the said circular is of no relevance in the facts and circumstances of the present case. Firstly the said circular is addressed to the AD Banks and guiding them regarding the appropriation of payments being received or made against exports/imports from 3rd parties, which is not the case at hand. It is not the allegation of the notice that the payment in the case has been received from 3rd parties and therefore it is our submission that the said circular of RBI is of no relevance in the instant case. Secondly the circular starts "normally" and therefore it does not lay down any law/Rule but is only of guiding nature and therefore no adverse inference can be drawn by interpreting the same guideline and applying to the case at hand. Thirdly the exports to Iran are treated by the Foreign Trade Policy at par with other exports being made in convertible foreign currency and is not treated like Rupee exports to Nepal, where no export benefits like MES or any other incentive is available. The rupee trade with Iran is traded at par with other exports being made in convertible foreign currency and therefore that is a special category of exports for which the normal regulations being laid down for regular exports will not be applicable.”

21.2 M/s. Bansal Fine Foods Pvt. Ltd., made the following submission vide their letter dated 12.12.2018 through their legal consultants:

- “The entire case as made out by the impugned Show Cause Notice, hinges on the evidence in the form of letters given by M/s Goodrich Maritime Pvt. Ltd, i.e. the shipping company, in the form of port landing certificates appearing from page no. 33

to 40 of the list of relied upon documents. On perusal of the certificates it is seen that an endorsement to the effect that "The above shipment was discharged at Jebel Ali as per request letter & LOI submitted by the shipper at Port of Loading. This certificate has been issued as per specific request by the customer". However no such letters have been brought forth during the investigation and therefore, contention of the certificate that the goods were discharged at Jebel Ali as per the request letter and LOI submitted by the shipper at port of loading is bereft of any merit. In view of the above anomaly as apparent on the face of record, either the said evidence should be discarded or the signatory of the said letter and the employee of Customs Broker and the Manager of Customs Broker, who gave oral evidence in the form of statements relied on in support of the charges be allowed to be cross-examined before the Hon'ble Adjudicating Authority to ascertain the veracity of evidence."

- "As already stated in our clients letter dated 21.11.2018, that the goods i.e. rice in the case, ultimately reached the destination country i.e. Iran and merely due to the fact that the containers were offloaded / discharged at Jabel Ali, as certified by M/s Goodrich Maritime Pvt. Ltd, does not establish that the goods did not reach the consignee in Iran. Our clients pursued the matter with the foreign buyer and after consistent efforts over a prolonged period of time have ultimately received the irrefutable documentary evidences to show that the goods offloaded/discharged at Jabel Ali were further shipped to Iran through the Coastal Cargo System as revealed from the documents received from the Dubai Customs. We would like to draw kind attention of the Hon'ble Adjudicating Authority to the amended B/L No. MUNJEA150000060 appearing at Page No. 81 to 83 of the list of relied upon documents wherein the Port of Discharge and Delivery is shown as Jabel Ali, UAE. In this B/L, the notify party is shown as M/s Royal Tooba Foodstuff Trading Co. LLC, along with the consignee M/s Firooz Tejarat, Iran. On basis of the above document, it is alleged that the goods were delivered to the party at UAE and then solely on basis of above assumption was drawn by the Notice, that the exported goods did not reach the consignee at Iran. In view of the above, inquiries were conducted with the foreign buyer, who informed that the rice unloaded at Jabel Ali was further shipped to Iran by Coastal Vessels by M/s Royal Tooba Foodstuff Trading Co. LLC. Foreign Buyers M/s. Mand Avand Nahan Khazar, Iran, Firooz Tejarat, Iran, Sherkat E Rahaavard, Iran, issued certificates to our clients that entire cargo of rice covered under 8 Bills of lading exported by M/s. Bansal Fine Foods were transshipped via Dubai in partial shipments by small boats from Dubai to Iranian Ports. Copies of these certificates serially numbered 1 to 8 are collectively marked and annexed herewith as Exhibit-"A". It is our submission that once foreign buyers have confirmed and certified the receipts of exported rice in Iran, then the entire allegations as leveled by the subject Notice are conclusively negated and the entire allegations and charges are liable to be dropped for this reason alone."
- "In the meantime inquiries were caused with Dubai Customs in UAE, in whose jurisdiction the exported rice was unloaded and on payment of applicable fees, Dubai Customs provided copies of "Sea Cargo Export Manifest" of Dubai Customs, under

which M/s Royal Tooba Foodstuff Trading Co. LLC further transshipped the goods to Iran as confirmed by the foreign buyers above. We are enclosing herewith copies of "Sea Cargo Export Manifest" of Dubai Customs evidencing the rice being transshipped to Iran from Jabel Ali by M/s Royal Tooba Foodstuff Trading Co. LLC. Copies of these "Sea Cargo Export Manifest" of Dubai Customs serially numbered 1 to 26 are collectively marked and annexed herewith as Exhibit-"B". These documents of Dubai Customs, conclusively established that the rice offloaded at Jabel Ali was in fact transshipped to Iran by smaller vessels and therefore the entire allegations and charges as leveled by Notice cannot be sustained."

- *"The quantity of rice in the above "Sea Cargo Export Manifest" of Dubai Customs is mentioned in the number of bags. In view of the above, a table showing the number of bags transshipped and the number of bags covered by the 8 Bills of Ladings under which the goods were exported, was prepared and annexed herewith as "Exhibit - C". On perusal of the above, it can be seen that against the quantity of 40,250 bags of rice exported under 4 Bills of Lading, a quantity of 39,768 bags have been transshipped to Iran. Similarly in the case of the other set of 4 Bills of Lading against the 34,500 bags of rice exported from India 29,890 bags have been transshipped to Iran. The other remaining bags were also transshipped as certified by the foreign buyer but since it would have been mixed with other consignments it is not possible to present direct correlation. Needless to say that the above documents, which correlate to the extent of 95% and issued & certified by Dubai Customs directly demonstrate that the exported goods ultimately reached Iran and therefore the charges and allegations as levied by the impugned Notice cannot be sustained."*

Discussion and Findings:

22. I have carefully gone through the records of the case and the Show Cause Notice dated 24.03.2017. Hence, I proceed to decide the case on the basis of available records.

23. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided:

- (i) Whether the goods exported by M/s Bansal Fine Foods Pvt. Ltd. having collective FOB value of Rs 13,51,84,716/- are liable for confiscation under Section 113(d) and (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.
- (ii) M/s Bansal Fine Foods Pvt. Ltd and its Director Shri Munish Bansal & Customs Broker firm M/s V Arjoon are liable to 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.

- (iii) Whether an amount of Rs.10 lakhs deposited by M/s. Bansal Fine Foods Pvt. Ltd., vide demand draft No. 074175 dated 16.03.2016 during the investigation of the case should be appropriated towards statutory levies.

24. After having framed the main issues to be decided, now I proceed to deal with each of the issues individually, herein below:

24.1. On going through the case records and the SCN, I find that the fact of the case is that Bansal Fine Foods Pvt. Ltd., had filed the Shipping Bills/Export documents for export of goods i.e Rice to Port Bandar Abbas (Iran); but the goods were delivered at UAE (Jabel Ali Port). The remittance was received in Indian Rupee from Iran instead of freely convertible foreign currency. Thus, there appeared to be mis-declaration on part of Bansal Fine Foods Pvt. Ltd.

25. I find that Shri Munish Bansal, Director of M/s Bansal Fine Foods Pvt. Ltd., in his statement dated 10.02.2016 has himself admitted that they had exported total 48 consignments of rice to Iran in the year 2014-15 and 2015-16. Out of these 48 consignments, 08 consignments (07 consignments admitted under statement dtd. 10.02.2016 but further 08 consignments admitted under statement dtd. 10.03.2017) had been diverted and delivered at Jabel Ali port (Dubai) instead of Bandar Abbas port (Iran) on his oral instructions to their CHA i.e. M/s V. Arjoon; that the CHA might have passed instructions in writing to their Shipping Lines i.e. M/s Goodrich Lines to deliver the consignments at Jebel All Port (Dubai) instead of declared port as Bandar Abbas (Iran). He had also admitted that they had not got carried out any amendment in the respective shipping bills for change of destination port. Further he admitted that the payments for all these consignments had been received in Indian rupees through UCO Bank even though the goods were discharged at Jabel Ali port (Dubai) instead of Bandar Abbas port (Iran) and the fact of discharge of these shipments at Jabel Ali port were never brought to the knowledge of UCO Bank.

26. I find that, Statement of Shri Tushar H. Anam of M/s V. Arjoon, Mumbai, CHA was recorded under Section 108 of the Customs Act, 1962 on 22.12.2015, wherein he inter-alia stated that M/s Bansal Fine food Ltd was one of their major clients who exported rice to Iran and various other countries; that he understood that there was a treaty between India and Iran that the remittance can be received only in INR against the export made from India to Iran; that he also understood that the remittance can be received in freely convertible currency against exports made to countries other than Iran; that he was not aware that the remittance received in INR against exports made to other than Iran is a violation of Foreign Trade Policy. He itself admitted that some shipments of rice, which were cleared for export to Iran were later on diverted at Jebel All port after customs clearance and the said diversion of exported goods 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.

27. I also find that, statement of Shri Gordhan Bhawnani, Manager of M/s V.Arjoon, Gandhidham was recorded under section 108 of the Customs Act, 1962 wherein *inter alia* stated that he was looking after documentation of all Customs related work of Exports side and other day to day client work and he is well versed with all the legal provisions and procedures for Customs clearance. Further he stated that he always acted on the directions of exporter; that he has never done it without directions of the exporter; that he admitted that it was known to him in advance i.e. before leaving of the consignment from Indian shore that the goods were actually going to Dubai in place of Iran as mentioned in the shipping bill but as CHA they had no choice but to he acted on behalf of his company and 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. Further he admitted that, he is well aware about the provisions of Section 50 of the Customs Act, 1962 as well as Shipping Bill (Electronic Declaration) Regulations, 2011 issued under Notification No. 80/2011-Cus (N.T.), dated 25 11-2011.

28. Further, I find that Shri Munish Bansal under his statement dated 10.03.2017 again admitted that aforesaid 08 consignment have been diverted to Jebel All Port (Dubai) on his oral instructions to their CHAs i.e. M/s. V. Arjoon and that the CHAs might have passed instructions in writing to their Shipping Lines M/s Goodrich Lines to deliver the consignments at Jebel All Port (Dubai) instead of declared port as Bandar Abbas (Iran); that destination was changed in these cases after finalisation of the shipping bills. They have never informed their CHA about change of destination before filing of the documents, in fact they came to know of the directions of the buyers to change the destination after filing of the shipping bills. Further he admitted that, he was well aware about the provisions of Section 50 of the Customs Act, 1962 as well as Shipping Bill (Electronic Declaration) Regulations, 2011 issued under Notification No. 80/2011-Cus (N.T.), dated 25 11-2011. He also admitted that there has been a mistake on their part; that the para 2.52 of FTP which relates to Denomination of Export Contracts, as per the relevant part of the para, 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; that he has been told that the export proceeds in respect of their goods exported to UAE should have been received in freely convertible foreign currency whereas the export proceeds have been realised in Indian rupees as against statutory requirement of their realisation in freely convertible foreign currency and that it seems those relevant policy provision as mentioned above have been violated by them.

28.1. I find that again Shri Munish Bansal under his statement dated 01.02.2018 admitted that, they have exported 48 consignments where the Bills of landing were issued for Iran destination, however, out of these 48 consignments only 8 consignments were diverted to Dubai. He further stated that the payment in respect of all these 48 consignments have been received in Indian Rupees from Iran; that their CHA Shri V. Arjoon/Shri Goverdhan Bhavnani were fully aware about the diversion of rice to Dubai (Jebel Ali) in place of Iran before filing the Shipping Bills; that he has already submitted landing certificate of 40 consignments which were landed in Iran but could not submit the Landing Certificate of those 8 consignments which were diverted to Jebel All (Dubai).

28.2. Further statement of Shri Munish Bansal vide his statement 22.05.2018 has stated that that the goods covered by 9557201/14.05.2015, 15.10.2015, 3712950/23.10.2015, in respect of 08 consignments exported vide shipping bills number 1551474/02.07.2015, 1539455/01.07.2015, 3566765/3595968/16.10.2015, 3662941/20.10.2015, 9854809/29.05.2015 the country of discharge in the shipping bills was mentioned as Iran, however these goods were actually shipped for UAE and have been discharged at Dubai. Again he admitted that, their CHA M/s. V.Arjoon was aware about the actual port of discharge while they filed the shipping bills for Iran. Further, he confirmed that the remittance in respect of these 08 consignments (discharged at Duabi) was received in INR in their company's bank account in UCO Bank, Chandigarh ;that as per law the remittance in respect of goods discharged at Dubai the remittance should have come in convertible foreign currency.

29. Cross-examination of certain witness whose statement have been referred and relied upon on the SCN ; has been rejected vide order dated 11.12.2018 on the ground that the said request for cross-examination is vague and without any ground. The whole case is not merely based on the statements of Sh. Tushar H. Anam, Partner of M/s. V. Arjoon and Shri Gordhan Bhavani, Manager of M/s. V. Arjoon but on other corroborative evidences specially filed Shipping Bills where actual destination was declared as Iran instead of UAE, landing certificate etc. In this regard , I rely upon the judgment passed by the High Court, New Delhi, in the case of Harmindar Singh Chadha v/s. Commr. of Customs (Preventive), New Delhi [2018 (362) E.L.T. 98 (Del.)]. Wherein Hon'ble has held that "*In these circumstances, the plaintiff's request for cross-examination and its rejection by the Revenue cannot be characterized as violation of principles of natural justice*". I also find that, various statements of person have been recorded under section 108 of the Customs Act, 1962 and all have admitted the diversion of exported goods covered under aforesaid 08 shipping bills under their statement. Hence, I find that, no contradiction has been noticed in all statements.

30. I find that , M/s Bansal Fine Foods vide their letter dated 12.12.2018 have submitted following documents issued by Dubai Customs

- (a) 8 Certificates issued by M/s Mahd Avnad Nahan Khazar (for receipt of consignment in Iran in small boats from Dubai to Iran in partial shipments from M/s Royal Tooba Foodstuffs Co. LLC, Dubai) .
- (b) Sea Cargo Export Manifests issued by Dubai Customs (26 pages)
- (c) Summery of Manifest No., date , Qty. , B/L No.

I have gone through the same and observed the following points regarding authenticity of the documents (issued by the Dubai Customs) submitted by the M/S. Bansal Fine Foods Pvt. Ltd. :

- (i) Though the Sea Cargo Export Manifests (SCEMs) shows export of some goods by M/s. Royal Tooba Foodstuff Trading Company LLC from Dubai to Iran, there is no mention of Bill of Lading Number/Import declaration regarding import of the said goods. Thus, there is nothing to ascertain that the goods thus exported from Dubai to Iran had been imported from India.
- (ii) It is also seen from the SCEMs that the goods have been exported from Dubai to Iran in bags and not in containers in which they would have been imported to Dubai

from India. Therefore, the integrity of the consignment appears to have been breached and it cannot be said that the goods exported from Dubai were one and the same as had been imported from India.

- (iii) Further, it is also seen that the number of bags covered under the bills of lading with respect to goods exported from India to Dubai are not matching with the number of bags mentioned in corresponding SCEMs submitted by the noticee.
- (iv) Also the names of recipients wherever mentioned in the SCEMs and the names of the buyers who have apparently certified the receipt of the goods in Iran do not match. The description of the goods mentioned in SCEMs is loosely translated as "Subsistance" and not "Race".

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

31. M/s. Bansal Fine Foods Pvt. Ltd. have contended in their defence that there is no violation of any provision of Customs Act, 1962 or any other law has been made in the present case. In this regard, I reproduce the provisions of Section 111(m) & 113 (d) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development & Regulation) Rules, 1992, Rule 11 and 14(2) of the Foreign Trade (Development & Regulation) Act, 1993 and provisions of Section 50(2) of the Customs Act, 1962 which provide for confiscation of improperly exported goods, for reference, as under:-

"Section 111 : (m) [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 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];"

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

Section 113 (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."

Section 50(2): Entry of goods for exportation. - (1) *"The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system 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 such form and manner as maybe prescribed. Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.*

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

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

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."

Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 provides that *"Contravention of provisions of this Act, rules, orders and foreign trade policy.—" 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 foreign trade policy for the time being in force.”

Rule 11 of Foreign Trade (Regulation) Rules, 1993 : the Contravention of provisions of this Act, rules, orders and foreign trade policy.—(1) “No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”

Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 has provided that, “No persons shall employ any corrupt or fraudulent Rules, 1993 practice for the purposes of obtaining any license or importing or exporting any goods”.

31.1 The aforesaid provisions empower 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.*

31.2 Thus in view of the aforesaid provisions, I find that 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.

31.3 Power to prohibit importation or exportation of goods by Central Government is 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.

31.4 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, I find 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. Therefore , the contention of M/s Bansal fine foods , that there is no violations of any provision of the Customs Act, 1962 is incorrect.

31.5 I find 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 Section 12 (1) of the Foreign Exchange Regulation Act, 1947 will be deemed to be a violation leading to penalty under Section 114 of the Customs Act, 1962 with respect to goods already exported.

31.6 . M/s Bansal fine foods vide their letters dated 26.10.18, 26.11.18 & 12.12.18 have contended the penalties as proposed in the SCN ; on the grounds that there is no violation of any provisions of Act, Rules or Foreign Trade Policy . They also submitted some documents in support of their submission. The same are discussed herein below.

(a) **No violation of any policy ; as goods finally shipped for Iran :**

It is already discussed in paras supra that shipping Bills were filed for all the 8 consignments for Bunder Abbas; whereas from Jabel Ali , it was further shipped to Iran in Boats; which cannot accounted as export from India to Iran ; as export in general meaning is sale and transfer of goods from one country to another . In this case , the goods discharged at Jabel Ali . However , further sale shipped to another country can be accounted only as re-export from Dubai. Such goods cannot be counted as trans-shipment ; as the trans-shipment as a general meaning is “*Transshipment is the act of off-loading a container from one ship (generally at a hub port) and loading it on to another ship to be further carried to the final port of discharge.*” But in this case, the goods were mis-declared in their export documents as Iran and was discharged at Jabel Ali and actual export or transshipment to Iran could not be established.

(b) **Receipt of sale proceeds in Indian Rupees :**

M/s Bansal Foods have submitted that they have received export proceeds in Indian Rupees . But in this case , it is established that the goods was actually exported to Jabel Ali (Dubai) it has also been admitted in statements of the Noticees that the goods of consignments was diverted to Jabel Ali ; however , in such case , the export proceeds were to be received in fully convertible currency . Hence there is contravention of provisions of Foreign Trade Policy.

31.7 Further , I find that the documents submitted by M/s Bansal Foods (Dubai Creek Customs Sea Cargo Export Manifest & other documents) do not establish export to Iran as discussed in *para supra*. It is already established that the goods of eight consignments were diverted to Jabel Ali port (Dubai) without bringing it into knowledge of Customs Authorities , nor any amendment was requested by the exporter/CHA . The Exporter should have got their export documents amended for diversion of goods and the export proceeds should have been realized in freely convertible currency; failing which, the noticees have contravened provisions as discussed in paras supra and rendered themselves liable for penal action as proposed in the Show Cause Notice.

31.8 The CHA M/s V.Arjoon vide their written submission 25.03.2019 have denied the charged framed against them in the Show Cause Notice. They have submitted that they being a Customs Broker firm . It is already mentioned in Para 4.3 of the SCN that the Customs Broker while filing Shipping Bill , undertakes that “the particulars given in Checklist are true, correct and complete” . Further , Shri Gordhan Bhawnani , Manager of M/s V.Arjoon has admitted in his statement dated 09.01.2017 that the fact of diversion of cargo from Iran to Dubai was in their knowledge but they did not request for amendment in Customs documents as no directions were there in this regard from the exporter . They have filed the shipping bill on behalf of exporter hence violations of provisions of section 50 of the Customs Act, 1962 have been occurred and accepted by them.

31.9 I find that, receipt of remittances in respect of export to Iran is regulated through the provisions of FTDR/FEMA and other applicable provisions of law. In terms of para 2.40 of FTP 2009-14 and para 2.52 of FTP 2015-20 all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but in the instant case, the proceeds of impugned goods, exported to UAE have been realized in Indian Currency through Iran.

Further, I find that the exports proceeds for exports to Iran are regulated as per para 2.53 of FTP 2015-20 read as under:

Para 2.53: Export to Iran - Realizations 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.

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.

Thus on the basis of above para the export proceeds from Iran only can be realised in Indian Rupees and realization of export proceed in Indian Rupees from any other country other than Iran ; is not permitted and the same is in violation to Para 2.40 of the Foreign Trade Policy .

32. In views of the above legal provisions and facts/evidences of the case as discussed above, I find that M/s. Bansal Fine Foods Pvt. Ltd., has filed the export documents for export of goods to Iran (Bandar Abbas port) but the bill of ladings switched for Dubai (Jabel Ali port) without amendment to the respective Shipping Bills/EGMs filed by them. Thus I find that, mis-declaration was made in the export documents filed by M/s. Bansal Fine Foods Pvt. Ltd. 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 (Dubai) are mandatorily to be realized in freely convertible foreign currency but the proceeds of impugned goods, exported to UAE (Dubai) have been realized in Indian Rupees through Iran. Thus I find that, the prohibition specified by FTP and provisions contained in the RBI Circular have been violated by the Noticee.

33. Further, I find that the subject goods exported by M/s. Bansal Fine Foods Pvt Ltd., and their Director Shri Munish Bansal attract action under provisions of section 113 (d) and 113(i) of the Customs Act,1962 in view of below mentioned provisions :

- (i) Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 has provided that *“No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import*

policy for the time being in force". However, the Noticee and their Director Shri Munish Bansal had exported the goods and realised the proceeds in violation of para 2.40 and 2.52 of the FTP 2009-14 and FTP 2015-20 as discussed above."

- (ii) Rule 14(2) Foreign Trade (Regulation) Rules, 1993 has provided that, *"No persons shall employ any corrupt or fraudulent Rules, 1993 practice for the purposes of obtaining any license or importing or exporting any goods". I find that, the Noticee and their Director Shri Munish Bansal had exported the goods by making mis-declaration in the relevant documents. Foreign exchange which is mandatorily required to be received from the actual buyer of the goods has not been received".*
- (iii) Section 8 of the Foreign Exchange Management Act, 1999 has provided that *"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,". I find that, the goods had been exported to UAE but the payments had been received from Iranian entity. The noticee has not produced any document to prove that the payment has been received from the person whom the goods have actually been sold and also not produced Landing Certificate. Thus I find that the payment has been received from third party and such third party remittances have no connection whatsoever to the impugned export goods and have been managed with the sole purpose to fulfill the condition for realisation of sale proceeds."*
- (iv) 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. 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. In view of the above I find that, the payment has been realised from the third party instead of the actual buyer of the goods. Hence, 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 the Noticee and their Director Shri Munish Bansal.

33.1 As the above said condition have not been fulfilled by the Noticee, therefore I hold that the Exported goods i.e., rice are required to be treated as "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962. In this regard, I rely upon the case law of Om Prakash Bhatia vs. Commissioner of Customs, Delhi, reported at 2003 (155) ELT 423 (S.C.), wherein the Apex Court held that **"Restriction is one type of prohibition"** and therefore, in violation of any restriction fall within the ambit of **"prohibited goods"** as defined under Section 2(33) of the Customs Act, 1962".

Further, Section 2(33) of the Act defines "prohibited goods" which 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."

Thus I find that, in terms of definition as provided by this section any goods are considered prohibited goods if, the goods in respect of which conditions prescribed for import or export of goods are not complied with .

From the above , it is clear that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods.

33.2 In view of the above facts, I find that the 08 consignments of the Noticee (as discussed in para-6.2 of the SCN) which as per their respective shipping bills were destined for Iran (Bandar Abbas) but the same had been diverted to UAE (Jabel Ali). Therefore, I find that impugned exported goods i.e, rice having FOB value of Rs. 13,51,84,716/-are liable for confiscation under Section 113(d) and (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.

34. M/s. Bansal Fine Foods Pvt. Ltd., has contended in their defence that penalty is not imposable in terms of Section 114 and 114AA of the Customs Act, 1962 on them. In this regard, before deciding whether penalty can be imposed on all noticee under Section 114 and Section 114AA of the Customs Act, 1962, it is necessary to read through the relevant provisions of Section 114 and Section 114AA of the Customs Act, 1962:

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,-

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 1[2[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;

Section 114AA in the Customs Act, 1962: 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.

34.1 In the instant case, the goods have been shown in the export documents to be consigned to Iran but in fact the goods have been delivered at UAE ; as discussed in the foregoing paras. Thus, mis-declaration/ mis-statement was made in the export documents filed by M/s. Bansal Fine Foods Pvt. Ltd. Further, I find that M/s. Bansal Fine Foods Pvt. Ltd. have exported the goods in violence of the prohibition as discussed above and rendered the goods liable for confiscation. Therefore, I find that, M/s. Bansal Fine Foods Pvt. Ltd. is liable for penalty under section 114 of the Customs Act, 1962 and under section 114 AA of the Customs Act, 1962.

35. Further, I find that Shri Munish Bansal, Director of M/s. Bansal Fine Foods Pvt. Ltd. has admitted under his statements dated 10.02.2016, 10.03.2017, 01.02.2018 and 22.05.2018 that they had exported 48 consignment of rice to Iran in the year 2014-15 and 2015-16. Whereas out of these 08 consignments had been diverted and delivered at Jabel Ali port (Dubai) instead of Bandar Abbas (Iran) on their instructions passed to their CHA. His involvement in committing the violations as discussed above is clearly brought out by the facts and circumstances as discussed above. I also find that, Munish Bansal has confirmed under his statement dated 10.02.2016 that he was well aware that the remittances in Indian Rupees in respect of rice exported to Iran is allowed as per agreement between India and Iran and 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. The fact of the discharge of 08 shipments as mentioned above at Jabel Ali port were never brought to the knowledge of UCO Bank. Therefore, I find that Shri Munish Bansal, Director of M/s. Bansal Fine Foods Pvt. Ltd., have knowingly and intentionally made, signed and caused to be made, signed declaration in the export documents which are false and incorrect. Therefore, I find that, Shri Munish Bansal, Director of Ms. Bansal Fine Foods Pvt. Ltd., have rendered themselves liable for penalty under section 114 of the Customs Act, 1962 and under section 114 AA of the Customs Act, 1962.

36. Before deciding whether penalty can be imposed on CHA M/s. V. Arjoon penalty Section under Section 114 and Section 114AA of the Customs Act, 1962, it is necessary to read Section 50 of the Customs Act, 1962 and Shipping Bill (Electronic Declaration) Regulations, 2011:

50(1) of the Customs Act, 1962:

“The exporter of 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”.

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 content”.

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.

Customs Brokers Licensing Regulations, 2013

11. Obligations of Customs Broker. – *“A Customs Broker shall -(d) advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter*

to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

36.1 In view of the legal provisions and facts of the case, I find that, M/s. V. Arjoon has made/got made false entries in the shipping bills with regard to actual destination of the export consignments and also mis-stated the facts in the export documents filed by them. The goods which were actually destined for UAE have been shown to be destined to Iran. 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. In the instant case the M/s. V. Arjoon had well known in advance about the diversion of exported goods before filling of the shipping bills but they never disclosed the same before the Customs Authorities. Their involvement in committing the violations as discussed above is clearly brought out by the facts and circumstances as discussed above. Therefore, M/s. V. Arjoon appear to have rendered themselves liable to imposition of penalty under Section 114 and 114AA of the Customs Act, 1962 in addition to necessary action under Customs Brokers Licensing Regulations, 2013 (As amended).

37. 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.*

37.1 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. First of all, I find that it is well settled legal position that when goods are not available for confiscation, redemption fine cannot be imposed. 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.

37.2 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 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.

37.3 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 were neither physically available nor bond for provisional release under Section 110A *ibid* covering recovery of redemption fine is available. Therefore, I find that redemption fine cannot be imposed in this case.

38. In view of the forgoing discussions and findings, I pass the following order:-

ORDER

- (i) I hold the goods exported under 08 Shipping Bills by M/s. Bansal Fine Foods Pvt. Ltd, valued at Rs. 13,51,84,716/- (Rupees Thirteen Crores, Fifty One Lakhs Seven Hundred & Sixteen Only) liable for confiscation under provisions of Section 113(d) and (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. However, I refrain from imposing redemption fine in lieu of confiscation; as the goods are physically neither available for confiscation nor released under any bond or legal instruments.
- (ii) I impose penalty of Rs.50,00,000/-(Rupees Fifty Lakh Only) on M/s. Bansal Fine Foods Pvt. Ltd., under Section 114 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.
- (iii) I impose penalty of Rs. 50,00,000/-(Rupees Fifty Lakh Only) on M/s. Bansal Fine Foods Pvt. Ltd., under Section 114AA 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.
- (iv) I impose a penalty of Rs. 30,00,000/-(Rupees Fifty Lakh Only) on Shri Munish Bansal, Director of M/s. Bansal Fine Foods Pvt. Ltd., under Section 114 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.

- (v) I impose a penalty of Rs. 30,00,000/- (Rupees Thirty Lakh Only) on Shri Munish Bansal, Director of M/s. Bansal Fine Foods Pvt. Ltd., under Section 114 AA 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.
- (vi) I impose a penalty of Rs. 20,00,000/- (Rupees Twenty lakh Only) on CHA M/s. V. Arjoon, under Section 114 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.
- (vii) I impose a penalty of Rs. 20,00,000/- (Rupees Twenty lakh Only) on CHA M/s. V. Arjoon, under Section 114AA 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.
- (viii) I hereby order to appropriate an amount of Rs. 10,00,000/- (Rupees Ten Lakhs) deposited by M/s. Bansal Fine Foods Pvt. Ltd., vide demand draft No.074175 dated 16.03.2016 during the investigation towards penalty imposed on M/s. Bansal Fine Foods Pvt. Ltd.


(Amarjeet Singh)
Additional Commissioner
Customs House Mundra

F. No. VIII/48-03/Adj/ADC/MCH/18-19

Date: 26 .07.2019

BY Speed Post A.D

To,

1. M/s Bansal Fine Foods Pvt. Ltd., 121 KM Stone GT Road, Opp. Agro Mall, Karnal, Haryana.
2. Shri Munish Bansal, Director of M/s Bansal Fine Foods Pvt. Ltd., 121 KM Stone GT Road, Opp. Agro Mall, Karnal, Haryana.
3. M/s V.Arjoon, 6, Hafizain Bldg. 3rd Floor, 129/131, Kazi Syed Street, Masjid (W), Mumbai - 400 003.

Copy To:

- 1) The Joint Director, Directorate of Revenue Intelligence, Directorate of Revenue Intelligence, 7th Floor, D Block, I.P. Bhawan, I.P. Estate, New Delhi – 110002
- 2) The Deputy/Assistant Commissioner (RRA) Customs House, Mundra.
- 3) The Deputy/Assistant Commissioner (Recovery Cell) Customs House, Mundra.
- 4) The Deputy/Assistant Commissioner (Export), Custom House, Mundra.

- 5) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
- 6) The Commissioner (General), New Custom House , Wilson Road, Ballard Estate ,Fort , Mumbai -400001 ; for information and necessary action in respect of para 36.1 of the OIO.
- 7) Guard File.

