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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 17.09.2026***
Judgment pronounced on: 04.11.2026
Judgment uploaded on: 04.11.2026

\# **CNR No. DLHC010429822025**

\+ CUSAA 92/2025, CM APPL. 40907/2025

THE COMMISSIONER OF CUSTOMS (EXPORT)
.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S. G.D. MANGLAM EXIM PVT. LTD. (NOW KNOWN AS M/S. WELLDONE EXIM PVT. LTD.) .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

\# **CNR No. DLHC010441552025**

\+ CUSAA 93/2025, CM APPL. 41065/2025

THE COMMISSIONER OF CUSTOMS (EXPORT)
.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S. YOGMAYA TRADERS PVT. LTD .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

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\# **CNR No. DLHC010445192025**

\+ CUSAA 94/2025, CM APPL. 41756/2025

THE COMISSIONER OF CUSTOMS (EXPORT) .....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S SIDH DESINER PVT. LTD. .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

\# **CNR No. DLHC010449862025**

\+ CUSAA 95/2025, CM APPL. 42066/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S KONARK EXIM PVT. LTD. .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

\# **CNR No. DLHC010460432025**

\+ CUSAA 96/2025, CM APPL. 42585/2025

THE COMMISSIONER OF CUSTOMS (EXPORT)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

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versus

M/S. SAHDEV GUPTA .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

CNR No. DLHC010466882025

\+ CUSAA 97/2025, CM APPL. 42764/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS) .....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S NITIN GUPTA .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

CNR No. DLHC010477272025

\+ CUSAA 98/2025, CM APPL. 43566/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS) .....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S SAHDEV GUPTA .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan

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Khaitan, Advs.

\# **CNR No. DLHC010494712025**

\+ CUSAA 99/2025, CM APPL. 44857/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S NITIN GUPTA .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

\# **CNR No. DLHC010499542025**

\+ CUSAA 100/2025, CM APPL. 45290/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S PAVAN KUMAR .....Respondent

Through: None.

\# **CNR No. DLHC010509862025**

\+ CUSAA 101/2025, CM APPL. 45974/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S. YOGESH MITTAL .....Respondent

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Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

CNR No. DLHC010509872025

\+ CUSAA 102/2025, CM APPL. 46028/2025, CM APPL. 43776/2026

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S SANJEEV JAIN .....Respondent

Through: Mr. Jasdeep Singh Dhillon, Mr. Aditya Bajaj, Mr. Rajpal Singh and Mr. Inder Singh Mahara, Advs.

CNR No. DLHC010556672025

\+ CUSAA 106/2025, CM APPL. 49003/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

GOPAL SHARMA .....Respondent

Through: Mr. Jasdeep Singh Dhillon, Mr. Aditya Bajaj, Mr. Rajpal Singh and Mr. Inder Singh Mahara, Advs.

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CNR No. DLHC010556682025

\+ CUSAA 107/2025, CM APPL. 49156/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S GAURAV BHARDWAJ .....Respondent

Through: None.

CNR No. DLHC010562952025

\+ CUSAA 109/2025, CM APPL. 49264/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S G D MANGLAM EXIM PVT. LTD. .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

CNR No. DLHC010561952025

\+ CUSAA 112/2025, CM APPL. 49278/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S PUNJAB NATIONAL BANK IBB .....Respondent

Through: Mr. Vibhor Sharma and Ms. Alisha Gaba, Advs.

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\# **CNR No. DLHC010562792025**

\+ CUSAA 113/2025, CM APPL. 49470/2025

THE COMMISSIONER OF CUSTOMS (EXPORT)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S YOGMAYA TRADERS PVT. LTD. .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malaika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

\# **CNR No. DLHC010570192025**

\+ CUSAA 115/2025, CM APPL. 49755/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S SIDH DESIGNER PVT. LTD. .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

\# **CNR No. DLHC010620282025**

\+ CUSAA 122/2025, CM APPL. 53826/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and

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Mr. Aditya Chaudhary, Advs.

versus

M/S DSM INTERNATIONAL .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

CNR No. DLHC010620292025

\+ CUSAA 123/2025, CM APPL. 53835/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S TARUN GUPTA .....Respondent

Through: None.

CNR No. DLHC010620542025

\+ CUSAA 124/2025, CM APPL. 53861/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S TARUN KUMAR KAVRA .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

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CNR No. DLHC010623502025

\+ CUSAA 125/2025, CM APPL. 54183/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S KONARK EXIM PVT. LTD. .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

CNR No. DLHC010623522025

\+ CUSAA 127/2025, CM APPL. 54362/2025

THE COMMISSIONER OF CUSTOMS (EXPORTS)

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

versus

M/S DSM INTERNATIONAL .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. along with Dr. G. K. Sarkar, Ms. Malabika Sarkar, Mr. Prashant Srivastav, Ms. Shruti Kulkarni and Mr. Karan Khaitan, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

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J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present batch of 22 Appeals under Section 130 of the Customs Act, 1962 [hereinafter referred to as "the Customs Act"] raises common questions arising from the Final Order Nos. 59488-59509/2024 dated 25.11.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi [hereinafter referred to as "CESTAT"]. The said order allows a batch of appeals arising from Order-in-Original No. 07/2023/VCG/PR.Commr/ ICD/Export/TKD dated 30.05.2023 passed by the Commissioner of Customs (Export), Inland Container Depot, Tughlakabad, New Delhi [hereinafter referred to as "the Adjudicating Authority"].

2. Since the Appeals arise from the same investigation, the same adjudication proceedings and the aforesaid common order of the CESTAT, they have been heard together and are being disposed of by this common judgment.

FACTUAL MATRIX:

3. In order to appreciate the controversy involved in the present batch of Appeals, the relevant facts are required to be noticed. For convenience, CUSAA 92/2025 is being treated as the lead Appeal for setting out the factual background, while the facts and issues pertaining to the other connected Appeals shall be noticed, to the extent necessary, at the appropriate stage.

4. The controversy has its genesis in the export of readymade garments by, *inter alia*, M/s G.D. Manglam Exim Pvt. Ltd. (now

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known as M/s Welldone Exim Pvt. Ltd.), M/s Yogmaya Traders Pvt. Ltd., M/s Konark Exim Pvt. Ltd., M/s Sidh Designer Pvt. Ltd. and M/s DSM International during the period commencing from 2008-09 and extending up to March, 2014.

5. The exporters sent 13,008 consignments of readymade garments to the United Arab Emirates [hereinafter referred to as "UAE"] under shipping bills on which they claimed drawback under Section 75 of the Act and benefits under the Focus Product Scheme/Focus Market Scheme [hereinafter referred to as "FPS/FMS"] under the Foreign Trade Policy then in force. The drawback was sanctioned through the Customs authorities at the port of export, whereas the duty credit scrips under the aforesaid schemes were issued by the Directorate General of Foreign Trade [hereinafter referred to as "DGFT"] on the basis of exports authenticated by the Customs authorities.

6. The investigation subsequently undertaken by the Directorate General of Revenue Intelligence [hereinafter referred to as "DRI"] revealed, according to the Revenue, that the values declared in the shipping bills were substantially higher than the actual values of the goods exported. It was alleged that such overvaluation was resorted to with a view to obtaining higher drawback and benefits under the FPS/FMS. The Revenue's case was that, in these circumstances, the third-party remittances received by the exporters could not necessarily be regarded as genuine payments made towards the goods covered by the relevant shipping bills.

7. According to the Revenue, the exporters were connected with a network of persons who allegedly facilitated procurement of the

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garments, movement of funds through various bank accounts and remittances from overseas entities, including persons described as diamond traders. It was alleged that such remittances were thereafter reflected as export proceeds against the relevant shipping bills, on the strength of Bank Realisation Certificates [hereinafter referred to as "BRCs"] issued by Punjab National Bank [hereinafter referred to as "PNB"]. The investigation, thus, sought to establish that the apparent realisation of export proceeds was part of a larger arrangement involving third-party remittances and alleged round-tripping of funds.

8. On the basis of the investigation, show cause notices came to be issued by the concerned Customs authorities proposing, *inter alia*, recovery of drawback under Rule 16/Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, recovery of the duty foregone in respect of imports made against the duty credit scrips under Section 28AAA of the Act, along with applicable interest and penalties. The proceedings were premised, *inter alia*, on the allegation that the exporters had not received the export proceeds from the consignees and that the goods covered by the shipping bills had been overvalued/incorrectly declared. For the purposes of adjudication of the notices, the Commissioner of Customs (Export), ICD Tughlakabad, was appointed as the common adjudicating authority.

9. The adjudication proceedings ultimately resulted in partial confirmation and partial dropping of the proposals contained in the show cause notices. Insofar as the present controversy is concerned, the Adjudicating Authority treated the cancellation of 1,650 BRCs issued by PNB as material for determining that the corresponding

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remittances could not be treated as realised export proceeds. On that basis, demands towards drawback and duty foregone were confirmed in respect of those consignments.

10. At the same time, the proposals for recovery in respect of the remaining consignments, for which the corresponding BRCs had not been cancelled, were dropped for want of sufficient material to substantiate the allegations in respect of those consignments.

11. Revenue, aggrieved by the dropping of the demands in respect of the consignments where the BRCs continued to remain uncancelled, preferred appeals before the CESTAT. The exporters, on the other hand, challenged the demands and penalties which had been confirmed against them. Certain individual noticees also preferred appeals against the penalties imposed upon them. Thus, the CESTAT was called upon to examine both the Revenue's challenge to the dropping of the demands and the corresponding challenges by the exporters and other noticees to the portions of the adjudication order which were adverse to them.

12. Insofar as M/s G.D. Manglam Exim Pvt. Ltd. is concerned, the present Appeal arises out of Customs Appeal No. C/50137/2024 filed before the CESTAT against the Order-in-Original dated 30.05.2023. The said appellant was issued Importer-Exporter Code [hereinafter referred to as "IEC"] No. 0503078786 and, during the relevant period, had undertaken exports of readymade garments. The period relevant to the present Appeal, as set out in the proceedings, commenced from 02.05.2013 and extended up to 26.10.2013.

13. During the aforesaid period, M/s G.D. Manglam Exim Pvt. Ltd.

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is stated to have filed 842 shipping bills through different ports. Of these, 157 shipping bills were filed at ICD Tughlakabad, in respect of which drawback amounting to Rs. 6,29,52,531/- and benefits under the Focus Product Scheme/Focus Market Scheme amounting to Rs. 3,91,89,195/- were claimed. At ICD Patparganj, 274 shipping bills were filed, involving drawback of Rs. 6,59,18,371/- and FPS/FMS benefits of Rs. 3,73,30,853/-. At the Air Cargo Complex, Export, IGI Airport, Delhi, 392 shipping bills were filed, involving drawback of Rs.14,26,96,040/- and FPS/FMS benefits of Rs.8,34,24,634/-. A further 19 shipping bills were filed at JNPT, Nhava Sheva, involving drawback of Rs. 11,20,000/- and FPS/FMS benefits of Rs.47,83,249/-.

14. The investigation conducted by the DRI was triggered, *inter alia*, by information concerning substantial movement of funds through the banking accounts of entities allegedly connected with the exporters. One such account referred to in the investigation was that of M/s Ganapati Trading Company, Jodhpur, maintained with Citibank, Punjabi Bagh, bearing Account No. 0036522-224. The investigation recorded that substantial amounts had been received in the said account through RTGS from entities including Noticee Nos.1-5 which, according to the Revenue, did not have any apparent connection with the business of the beneficiary. These amounts were thereafter transferred onwards from the account.

15. The investigation further noted that M/s Ganapati Trading Company had itself not undertaken any import or export activity, whereas the accounts of the five exporter entities, namely, M/s G.D. Manglam Exim Pvt. Ltd., M/s Yogmaya Traders Pvt. Ltd., M/s Sidh Designers Pvt. Ltd., M/s Konark Exim Pvt. Ltd. and M/s DSM

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International, were reflected to have transferred funds to the account of M/s Ganapati Trading Company. The DRI, on the basis of the material gathered during investigation, alleged that the movement of funds through these accounts formed part of a larger arrangement concerning the exports undertaken by the aforesaid entities.

16. According to the investigation, amounts exceeding US$ 76 million were received by the five exporter entities from third parties stated to be located in Hong Kong, the British Virgin Islands and the UAE through the International Banking Branch of PNB, notwithstanding that the goods were shown in the shipping documents as having been exported to buyers in Dubai. The investigation alleged that the persons through whom the remittances were received were not the overseas buyers named in the relevant export documents and that the accounts of certain such remitters were allegedly operated through or fronted by Indian residents who occasionally travelled to Hong Kong.

17. The DRI also relied upon inquiries conducted with the overseas buyers. According to the Revenue, certain overseas entities whose names appeared as consignees in the export documents denied having purchased the goods in question or stated that the amounts actually paid by them were substantially lower than the values declared in India. The investigation consequently proceeded on the allegation that the amounts reflected in the Indian banking records as export realisations did not represent genuine sale consideration received from the actual overseas buyers.

18. The investigation further alleged that the goods exported by the

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five entities had been substantially overvalued. According to the Revenue, the garments had been procured from domestic suppliers at considerably lower values and the values declared in the shipping bills were thereafter inflated, allegedly with the object of obtaining higher drawback and other export-related benefits.

19. In support of the allegation of overvaluation, the DRI sought information regarding the corresponding imports in the countries of destination. According to the material relied upon by the Revenue, details of 964 consignments were forwarded to the Consulate General of India at Dubai on a sample basis. The material received in response included 12 Bills of Entry covering 39 shipping bills in respect of 12 containers. According to the Revenue, comparison of the values declared in India with the values declared before the foreign customs authorities disclosed substantial differences, and the excess drawback attributable to the consignments covered by the material received from Dubai was stated to be Rs. 1,52,54,678/-.

20. The investigation also relied upon documents obtained from customs authorities in other countries. In one instance concerning M/s G.D. Manglam Exim Pvt. Ltd., the invoice bearing No. GDM/7285/2013-14 dated 23.04.2013 was compared with the corresponding import document, namely, DUA No. 13 ES 0281 3 251251 7, in Spain. The Revenue relied upon the difference between the value declared in the Indian export documents and the value reflected in the foreign import documentation as indicative of overvaluation.

21. Similarly, in respect of another consignment of M/s G.D.

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Manglam Exim Pvt. Ltd., invoice No. GMD/7221/2013-14 dated 25.06.2013 and Shipping Bill No. 6211945 dated 29.06.2013 were relied upon. The FOB value declared in India was Rs.3,50,248/-, whereas the value stated to have been declared before the customs authorities in Greece was US$55,000.

22. The investigation also referred to consignments covered by invoices bearing Nos. GMD/7982 and GMD/7981 dated 26.07.2013 and the corresponding shipping bills bearing Nos. 6641734, 6641964 and 6641649. In these cases, the Indian FOB value was stated to aggregate to Rs. 2,17,18,036/-, whereas the value reflected in the Netherlands import documentation was stated to be Rs. 26,69,161/-.

23. Similar comparisons were relied upon in respect of consignments exported to other destinations, including Georgia, Singapore, Australia, Belize, Poland and the Netherlands. The Revenue relied upon these documents to contend that the values declared in India were substantially higher than the values declared at the port of import and that the disparity, in certain cases, was several times the corresponding foreign import value.

24. In particular, in respect of certain consignments of M/s G.D. Manglam Exim Pvt. Ltd. covered by invoices GMD/7529 to GMD/7532 dated 05.03.2013 and Shipping Bills Nos. 5659625, 5659657, 5660850 and 5659656 dated 29.05.2013, the aggregate value declared in India was stated to be Rs.2,50,19,667/-, whereas the corresponding value reflected in the documentation from Belize was stated to be Rs.39,47,078/-. In another set of consignments covered by invoices GMD/7434, GMD/7535, GMD/7536 and GMD/7537 dated

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16.05.2013, the aggregate Indian value was stated to be Rs.2,55,61,184/-, as against Rs.24,14,343/- reflected in the Belize documentation. A further two consignments covered by invoices GMD/7947 and GMD/7948 dated 22.07.2013 were stated to have an aggregate Indian value of Rs.1,09,77,520/-, whereas the corresponding Belize value was stated to be Rs.20,99,194/-.

25. The Revenue also relied upon consignments of M/s Konark Exim Pvt. Ltd. exported to Georgia and other destinations. The investigation compared the values declared in the Indian shipping bills with the values appearing in the corresponding foreign customs documents and alleged substantial differences between the two. Likewise, in respect of a consignment covered by invoice No. KE/7059/2012-13 dated 22.03.2013 and Shipping Bill No. 4620585 dated 23.03.2013, the Indian declared value was stated to be Rs.63,12,492/-, whereas the value reflected in the corresponding documentation from Poland was stated to be Rs.4,81,788/-.

26. The investigation also referred to a consignment of M/s G.D. Manglam Exim Pvt. Ltd. covered by invoice No. GMD/7936 dated 23.04.2013 and Shipping Bill No. 6619321 dated 25.07.2013, where the Indian declared value was stated to be Rs.37,57,447/- as against Rs.12,18,098/- reflected in the Netherlands import documentation. In another case, the Indian FOB value was stated to be US$5,797.25, whereas the corresponding import value reflected in the foreign documentation was US$748.54.

27. On the basis of the aforesaid material, the Revenue alleged that the values declared in the shipping bills were inflated, in some cases

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by multiple times, and that the inflated values had the effect of enhancing the amount of drawback and other export incentives available to the exporters. The Revenue further alleged that the third-party remittances and the alleged overvaluation were not independent circumstances, but formed part of a common arrangement whereby funds were circulated and subsequently brought into the exporters' accounts as purported export proceeds.

28. Another significant aspect of the investigation concerned the BRCs issued by PNB. The relevant BRCs were issued by the PNB branch at DCM Building, Barakhamba Road, New Delhi, on various dates between 18.11.2013 and 26.11.2013, certifying realization of export proceeds in respect of the relevant exports.

29. Subsequently, in the year 2015, the DRI informed PNB that an investigation was being conducted concerning alleged misuse and irregularities in the availment of drawback and other export benefits. PNB thereafter cancelled the BRCs which had earlier been issued in respect of the exports.

30. M/s G.D. Manglam Exim Pvt. Ltd. challenged the cancellation of the BRCs by instituting proceedings before this Court in W.P.(C) No. 1230/2016. The said writ petition was disposed of on 14.03.2016 with a direction to PNB to consider and pass a reasoned order upon the representations submitted by the petitioner dated 21.01.2016 and 29.01.2016.

31. Pursuant to the aforesaid directions, PNB, by communication dated 01.04.2016, enclosed its reasons dated 30.03.2016 for cancellation of the BRCs. PNB took the view that the third-party

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realization of export proceeds did not conform to the requirements contained in RBI Circular No. 70 dated 08.11.2013 and Circular No. 100 dated 04.02.2014. The reasons referred, inter alia, to the absence of a firm irrevocable order backed by a tripartite agreement and the absence of the requisite declaration regarding receipt of payment from a third party in the export declaration.

32. M/s G.D. Manglam Exim Pvt. Ltd., which subsequently came to be known as M/s Welldone Exim Pvt. Ltd., instituted Civil Suit No. 1114/2018 before the competent Civil Court at Patiala House Courts on 18.08.2018, seeking, *inter alia*, a declaration that the cancellation of the BRCs by PNB was null and void and of no legal effect. The Customs Department was not impleaded as a defendant in the said proceedings, notwithstanding that an investigation by the Customs authorities into the transactions in question was pending.

33. The said civil suit culminated in a judgment and decree dated 13.03.2020 passed by the learned Additional Senior Civil Judge, New Delhi District, whereby the cancellation of the BRCs was declared null and void and without effect.

34. In the meantime, the Customs authorities proceeded with the adjudication of the show cause notices issued pursuant to the DRI investigation. In the case of M/s G.D. Manglam Exim Pvt. Ltd., four show cause notices had been issued proposing recovery of the benefits availed by the exporter, together with interest and penalties. The exporter participated in the adjudication proceedings and submitted its written submissions, including a written submission dated 08.05.2023.

35. The common adjudication proceedings culminated in Order-in-

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Original No. 07/2023/VCG/PR.Commr/ICD/Export/TKD dated 30.05.2023. The Adjudicating Authority, after examining the material on record, confirmed certain portions of the demands while dropping the remaining proposals.

36. In respect of M/s G.D. Manglam Exim Pvt. Ltd., the Adjudicating Authority confirmed demands towards drawback and duty foregone in respect of the consignments covered by the cancelled BRCs, besides ordering confiscation and imposing penalties, while dropping the remaining proposals.

37. The confirmation of the demands was also linked by the Adjudicating Authority to the cancellation of the BRCs in respect of 1,650 consignments. The Adjudicating Authority treated the cancellation of the BRCs as demonstrating that the corresponding export proceeds could not be treated as having been validly realised and consequently proceeded to confirm the consequential demands.

38. In respect of the remaining consignments, for which the BRCs had not been cancelled, the Adjudicating Authority did not accept the Revenue's proposals for recovery, holding that the material collected by the Revenue was insufficient to sustain the proposed demands. Accordingly, the proposals in respect of those consignments were dropped.

39. The Revenue, being aggrieved by the dropping of the demands, preferred appeals before the CESTAT. The exporters, being aggrieved by the confirmation of demands and the penalties imposed upon them, also preferred appeals. Appeals were likewise preferred by certain individual noticees against the penalties imposed upon them. All these

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appeals came to be heard together by the CESTAT.

40. The CESTAT, Principal Bench, New Delhi, by Final Order Nos. 59488-59509/2024 dated 25.11.2024, disposed of the batch of appeals by dismissing the appeals preferred by the Revenue and allowing those preferred by the exporters and the concerned individual noticees. The principal observations and conclusions recorded by the CESTAT, insofar as relevant to the present appeals, may be summarised as follows:

i. The foundational controversy was not whether the goods had been exported or whether remittances against the exports had been received, either wholly or in part. The principal controversy concerned the fact that the payments credited to the exporters' accounts had been made by persons other than the overseas buyers identified in the export documents, including persons described as diamond merchants.

ii. The allegations concerning a wider arrangement, including the alleged round-tripping of funds, the connections between various persons and entities, and irregularities in transactions involving diamond traders, could not, by themselves, dispense with the statutory requirements governing recovery under the Customs Act and the applicable Drawback Rules. The Tribunal proceeded on the basis that the Customs authorities were required to establish the statutory grounds for recovery and could not sustain a demand merely on the strength of allegations concerning the larger arrangement. The Revenue, however, contends that the case involved allegations of deliberate misdeclaration and incorrect declarations made to obtain excess or ineligible drawback and export incentives, which required

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examination of the material collected during the investigation.

iii. Insofar as drawback was concerned, the CESTAT considered the second proviso to Section 75 of the Act, which addresses the consequences where sale proceeds in respect of exported goods are not received in India within the period prescribed under the Foreign Exchange Management Act, 1999, and the rules and regulations made thereunder. It held that this provision could not, by itself, be construed as conferring upon the Customs authorities an independent jurisdiction to determine the validity of the source of a remittance merely because the payment had been received through banking channels.

iv. It referred to the decision of the Punjab and Haryana High Court in ***Aura Creations v. Reserve Bank of India***[1], in the context of third-party payments. It understood the applicable regulatory framework as not imposing an absolute prohibition on third-party remittances and observed that such transactions were required to be considered in accordance with the conditions governing them.

v. The mere fact that remittances had emanated from persons other than the overseas buyers could not, without more, lead to the conclusion that export proceeds had not been realised for the purposes of Section 75 of the Act. It further reasoned that the Customs authorities could not presume the remittances to be invalid in the absence of a determination or other lawful action under the applicable regulatory framework demonstrating that the payments could not be treated as legitimate export realisations. The Revenue's case, however, was not confined to the identity of the persons from whom the

[1] CWP No. 9685/2017, decided on 27.07.2017

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remittances originated. It also relied upon the alleged overvaluation of the exported goods, the circumstances surrounding the remittances, and the other material collected during the investigation.

vi. It noted that the goods had already been assessed by the Customs authorities and observed that any alteration of the declared value of the export goods was required to be undertaken in accordance with the statutory valuation mechanism prescribed under Section 14 of the Act read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [hereinafter referred to as "the 2007 Rules"].

vii. It further held that the material relied upon by the Revenue, including documents obtained from foreign Customs authorities, the values declared by importers in the countries of destination, domestic purchase prices and other material gathered during the investigation, could not substitute the statutory process for determining or redetermining the value of the export goods. It noted that no independent exercise of valuation in accordance with Section 14 of the Act read with the 2007 Rules had been undertaken in the adjudication proceedings. The Revenue's case, on the other hand, was that the material relating to the allegedly inflated values and the use of different or allegedly false invoices was relevant to establishing deliberate misdeclaration for the purpose of claiming higher drawback and benefits under the FPS and FMS, and was not confined to seeking a fresh determination of the assessable value of the goods.

viii. The CESTAT observed that the existence of allegations concerning a wider arrangement or alleged fraud could not dispense

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with the need to establish the specific statutory ingredients prescribed for action under Section 28AAA. It was further noted that the duty credit scrips issued under the relevant export promotion schemes had not been shown to have been invalidated in proceedings against the persons who had utilised them, and that the importers who had utilised the relevant scrips had not been proceeded against in the manner contemplated by the statutory scheme. It consequently held that the general allegations concerning the exporters' transactions could not, without satisfaction of the statutory requirements of Section 28AAA, sustain the recoveries proposed in the show cause notices.

ix. Another circumstance that weighed with the CESTAT was the judgment and decree dated 13.03.2020 passed in the civil proceedings instituted by M/s G.D. Manglam Exim Pvt. Ltd. against PNB. The CESTAT noted that the cancellation of the BRCs, which had formed the basis for confirming the demands relating to the 1,650 consignments, had been declared null and void by the competent Civil Court. Though, the Customs authorities had not been parties to the civil proceedings, but still the Adjudicating Authority ought not to have proceeded on the assumption that the decree was under challenge without first ascertaining its status. It further held that, once the cancellation of the BRCs had been declared null and void, the distinction drawn in the adjudication order between the consignments covered by the cancelled BRCs and the remaining consignments could no longer be sustained.

x. In the case of Shri Nitin Gupta, an individual noticee associated with M/s Oak Shipping Services Pvt. Ltd., the CESTAT additionally noted that the relevant notice and documents had not been furnished to

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him and that he had not been afforded an effective opportunity of hearing. It accordingly treated the alleged violation of the principles of natural justice as an independent ground for setting aside the penalty imposed upon him.

41. It is against the aforesaid common Final Order dated 25.11.2024 that the present batch of Appeals under Section 130 of the Act has been preferred by the Revenue.

CONTENTIONS OF THE PARTIES:

42. Contentions on behalf of the Appellant:

42.1. It was submitted that present Appeals raise substantial questions of law and are maintainable under Section 130 of the Act. The dispute is not one concerning determination of the rate of duty or valuation of goods for the purposes of assessment. Reliance was placed, *inter alia*, on ***Navin Chemicals Manufacturing and Trading Co. Ltd. v. Collector of Customs***[2], ***Commissioner of Customs v. Motorola India Ltd.***[3], ***M/s Asean Cableship Pvt. Ltd. v. Commissioner of Customs***[4], ***and Commissioner of Central Excise, Hyderabad v. Shriram Refrigeration Industries***[5]**,** to contend that an issue concerning eligibility to an exemption or export benefit, as distinct from determination of the rate of duty or value for assessment, falls within the jurisdiction of the High Court under Section 130

42.2. It was submitted that the investigation had revealed a coordinated arrangement involving the five exporter entities, fictitious

[2] (1993) 4 SCC 320
[3] 2019 (9) SCC 563
[4] SLP (C) No. 2208/2022
[5] CIVIL APPEAL NOS. 2589-2599 of 2011

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or non-existent domestic suppliers and several intermediaries, through which funds were routed between various bank accounts. The investigation further revealed receipt of more than USD 76 million from third-party entities based in Hong Kong, the British Virgin Islands and the UAE, although the goods were declared to have been exported to different overseas buyers. According to the Appellant, the declared buyers either denied the transactions or acknowledged payment of only substantially smaller amounts.

42.3. It was contended that the third-party remittances could not, merely because they physically entered the exporters' bank accounts, be treated as genuine realisation of sale proceeds for the purposes of Section 75 of the Act. Reliance was placed on the second proviso to Section 75(1) and RBI Circular No. 70 dated 08.11.2013, as amended by Circular No. 100 dated 04.02.2014, to submit that third-party remittances were subject to prescribed conditions, including the existence of a firm irrevocable order backed by a tripartite agreement and appropriate declaration of the third-party remittance

42.4. It was further submitted that the expression "sale proceeds in respect of such goods" occurring in the second proviso to Section 75(1) necessarily contemplates a genuine nexus between the amount realised and the goods in respect of which drawback has been claimed. Where the remittances were received from unrelated third parties, in circumstances indicating that they had no connection with the declared overseas buyers or the exported goods, such amounts could not constitute legitimate sale proceeds so as to sustain the drawback benefit.

42.5. On the issue of overvaluation, it was submitted that the

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investigation disclosed that the garments exported by the five exporters had been grossly overvalued, in some instances by two to twenty times, with the object of obtaining higher drawback and other export incentives. The Appellant relied upon the verification undertaken through overseas customs authorities, including the comparison of values declared before Indian Customs with the corresponding values declared before foreign customs authorities. It was submitted that the sample verification of consignments had itself disclosed substantial excess drawback.

42.6. It was submitted that the CESTAT erred in treating the matter as an ordinary valuation dispute requiring re-determination under Section 14 of the Act and the Rules, 2007. According to the Appellant, the case concerns fraudulent availment of export incentives through deliberately inflated declarations and fictitious procurement arrangements, and not a routine dispute regarding determination of the assessable value of genuine exports. It was therefore contended that the absence of a formal re-determination of value could not, by itself, defeat the findings emerging from the investigation.

42.7. It was further submitted that the CESTAT erred in holding that the Customs authorities had no jurisdiction to examine the nature of the remittances merely because regulation of foreign exchange falls within the domain of the Reserve Bank of India under FEMA. According to the Appellant, Customs was not seeking to enforce FEMA independently; rather, it was examining whether the statutory conditions for retention of drawback under Section 75 of the Act stood satisfied. The reference to the time permitted under FEMA in the second proviso to Section 75, according to the Appellant, forms part

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of the statutory mechanism governing eligibility to drawback.

42.8. As regards the 1,650 BRCs, it was submitted that the Adjudicating Authority had relied upon their cancellation by Punjab National Bank as evidence that the corresponding export proceeds had not been validly realised. The Appellant contended that the subsequent civil court order concerning the cancellation of the BRCs, passed in proceedings between the exporter and the bank, could not by itself extinguish the independent jurisdiction of the Customs authorities to examine whether the underlying export transactions were genuine and whether the drawback had been lawfully availed. The Revenue further relied upon the surrounding evidence concerning the third-party remittances, the declared buyers and the alleged overvaluation.

42.9. It was also submitted that the CESTAT failed to appreciate the cumulative effect of the financial trail, statements recorded during investigation, verification of domestic suppliers and overseas enquiries. According to the Appellant, the evidence disclosed a coordinated arrangement involving inflated export values and movement of funds through third-party entities, and the Tribunal erred in examining individual aspects of the transactions in isolation. Reliance was placed on the principle that fraud cannot be permitted to confer an entitlement to public revenue, with reference to decisions including ***Commissioner of Customs, Kandla v. Essar Oil Ltd.***[6], ***S.P. Chengalvaraya Naidu v. Jagannath***[7], ***K.I. Pavunny v. Assistant Commissioner***[8] and ***Commissioner of Customs v. Candid***

[6] 2004 INSC 587
[7] 1994 SCC (1) 1
[8] 1997 (90) E.L.T. 241 (SC)

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Enterprises[9].

42.10. Finally, it was submitted that once the findings regarding non-realisation of legitimate export proceeds and fraudulent overvaluation were established, the consequential recovery of drawback under Section 75, recovery of duty foregone under Section 28AAA, as well as confiscation and penalties under the Act, could not have been set aside merely on the grounds relied upon by the CESTAT. The Appellant therefore contended that the Impugned Final Order dated 25.11.2024 gives rise to substantial questions of law warranting interference by this Court.

43. Contentions on behalf of the Respondents:

43.1. *Per contra*, it was submitted that the present Appeals are not maintainable under Section 130 of the Act, as the controversy before this Court directly involves the valuation of the goods exported by the Respondent. It was submitted that Section 130 expressly excludes from the jurisdiction of the High Court an order relating, inter alia, to the determination of any question having a relation to the value of goods for the purposes of assessment, while Section 130E(b) provides for an appeal to the Supreme Court in such matters.

43.2. It was submitted that the Department's own pleadings demonstrate that the allegation of overvaluation constitutes a substantive basis of the present Appeals. Reliance was placed on Questions of Law (iii) and (iv), as well as Grounds A, B, M and N of the Appeal, wherein the Department alleges that the goods were overvalued by two to twenty times and that such overvaluation

[9] 1997 (93) ELT 363 (TRI-MUMBAI)

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resulted in excess availment of drawback. It was, therefore, contended that the Department could not characterise the dispute merely as one concerning fraudulent availment of drawback so as to bring it within the jurisdiction of this Court.

43.3. It was further submitted that the CESTAT, in paragraph 21 of the Impugned Final Order, had specifically held that the demands and confiscation rested upon the charge of overvaluation and that there was neither any notice nor any finding re-determining the value of the exported goods under Section 14 of the Act read with the Rules, 2007. According to the Respondent, the question whether the declared value was liable to be rejected and substituted necessarily pertains to valuation for the purposes of assessment.

43.4. Reliance was placed upon the decisions of the Supreme Court in ***Navin Chemicals*** (supra) and ***Motorola India***. (supra), as also the decisions of this Court in ***Laxmi Enterprises v. Commissioner of Customs (Preventive) & Ors.***[10] and ***Commissioner of Service Tax, Delhi v. Konark Exim Pvt. Ltd***.[11], to contend that the exclusion under Section 130 is attracted where the order involves a question having a relation to valuation, even if valuation is not the only issue arising for consideration.

43.5. It was submitted that the same principle applies to a drawback-recovery proceeding founded upon alleged overvaluation. Reliance was placed upon ***Siddachalam Exports Pvt. Ltd. v. Commissioner of Central Excise, Delhi-III***[12]***, Additional Director General, DRI v.***

[10] W.P.(CRL) 2242/2024 (Delhi)
[11] SERTA 5/2024 (Delhi)
[12] (2011) 5 SCC 114

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Knowledge Infrastructure Systems Pvt. Ltd.[13], and ***Commissioner of Customs, Willingdon Island v. Kishin S. Loungani***[14], to contend that where recovery of drawback is founded upon misdeclaration of the value of exported goods, valuation is integral to the controversy and the bar contained in Section 130 is attracted.

43.6. It was submitted that the Department's reliance upon the distinction between "valuation" and "fraudulent availment of drawback" was misconceived, since the allegation of excess drawback itself arises from the assertion that the goods were declared at inflated values. According to the Respondent, determination of the correct value would necessarily precede any determination of the extent of excess drawback allegedly availed. It was also pointed out that, in ***Kishin S. Loungani*** (supra), the Kerala High Court had considered valuation integral to proceedings concerning confiscation and recovery of erroneous drawback.

43.7. Without prejudice to the objection as to maintainability, it was submitted that the questions framed by the Department do not give rise to any substantial question of law but essentially seek re-appreciation of the factual material already considered by the CESTAT. It was contended that the Tribunal had examined the overseas enquiry reports, Bank Realisation Certificates and the material relating to third-party remittances, and had returned findings against the Revenue. A mere possibility of taking a different view of the evidence, according to the Respondent, would not justify interference under Section 130.

[13] CUSTOMS APPEAL NO. 7/2019 (Bombay)
[14] CUS.APPEAL NO. 23/2022 (Kerala)

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43.8. As regards the third-party remittances, it was submitted that the CESTAT had considered the applicable RBI Circulars and had held that Circular No. 70 dated 08.11.2013 did not constitute an absolute embargo on third-party payments. The Tribunal had also relied upon the decision in ***Aura Creations*** (supra) and had found that the regulatory framework contemplated a mechanism for case-to-case approval. It was thus contended that the Department's challenge on this aspect also seeks reconsideration of the factual and legal conclusions already reached by the Tribunal.

43.9. Finally, it was submitted that the CESTAT had also taken note of the judgment dated 13.03.2020 passed by the learned Patiala House Court setting aside the cancellation of the BRCs and that the said BRCs had subsequently been restored by Punjab National Bank during execution proceedings. The Respondent accordingly submitted that the present Appeals, being barred by Section 130 insofar as they concern valuation and, in any event, not disclosing a substantial question of law warranting interference, deserve to be dismissed.

ISSUES FOR DETERMINATION:

44. In view of the rival submissions, the following issues arise for determination:

I. Whether the present Appeals under Section 130 of the Customs Act are maintainable, having regard to the allegation of overvaluation and third party remittance raised by the Revenue, particularly when the exported goods had already been assessed and there was no re-determination of their value under Section 14 of the Act read with the Customs Valuation (Determination of Value of Export Goods) Rules,

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2007?

II. Whether the Customs authorities have no jurisdiction/authority to examine the validity of third-party remittances for the purposes of determining the entitlement to retain drawback under Section 75 merely because the regulation of foreign exchange and realisation of export proceeds falls within the regulatory domain of the Reserve Bank of India?

III. Whether declaratory judgment and decree passed in a civil suit binds the parties to the suit or it also binds those who are not party to the civil suit?

IV. Whether the CESTAT correctly appreciated the scope and applicability of Section 28AAA of the Act in relation to the duty foregone on imports made against the duty credit scrips obtained on the basis of the disputed exports?

ANALYSIS & FINDINGS:

45. This Court has carefully considered the detailed submissions advanced on behalf of the parties and perused the material on record.

Maintainability of the Appeals under Section 130:

46. At the outset, it is necessary to deal with the preliminary objection raised by the Respondents regarding the maintainability of the present Appeals under Section 130 of the Act. The objection proceeds on the premise that since the Revenue has alleged that the export goods were overvalued, the Impugned Final Order is an order relating to determination of the value of goods for the purposes of

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assessment and, consequently, the jurisdiction of this Court stands excluded.

47. The submission, in the view of this Court, proceeds on an erroneous appreciation of the controversy which actually arose before the CESTAT. It is undoubtedly correct that Section 130 of the Act excludes from the appellate jurisdiction of the High Court an order relating, amongst other things, to determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment. However, the statutory exclusion is attracted only where the question concerning value bears the requisite relationship with the assessment of the goods.

48. The distinction is of considerable significance in the present case. The Revenue does not challenge, in the present proceedings, an assessment order determining the assessable value of the exported goods. Equally, the Revenue does not seek to have the assessable value determined under Section 14 of the Act in these proceedings. The very finding of the CESTAT, which constitutes the basis of the Respondents' objection, is that the export goods had already been assessed and that no re-determination of their value under Section 14 of the Act read with the Rules, 2007 had been undertaken.

49. The Supreme Court, while examining the corresponding exclusion contained in the Central Excise Act, 1944 in ***M/s Alupro Building Systems Pvt. Ltd. v. Commissioner of Central Excise, Bangalore-II***[15], has explained that the words "any" and "among other things" give the exclusion a wide ambit. At the same time, the

[15] 2026 INSC 582

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expression "for purposes of assessment" qualifies the reference to the rate of duty as well as the value of goods. Thus, every question which may incidentally touch upon value does not, merely for that reason, stand excluded from the jurisdiction of the High Court. The question must bear a direct and proximate relationship with the assessment.

50. The principle laid down in ***Alupro*** (supra), therefore, is not that the mere presence of an allegation concerning value is sufficient to oust the jurisdiction of the High Court. What is material is the nature of the question which the Court is called upon to decide. If the question concerns the assessable value of the goods and the determination of such value forms part of the assessment, the statutory exclusion would undoubtedly operate. However, where the value is referred to for an altogether different purpose, the exclusion cannot be invoked merely by labelling the controversy as one of "valuation".

51. In the present case, the allegation of overvaluation was made in the context of the alleged fraudulent availment of drawback and other export incentives. The Revenue's case was that the exporters had not only deliberately declared inflated values in the shipping bills and, by doing so, had claimed benefits in excess of what would otherwise have been available, but also the third party remittance reflected as payments for the exported goods were also not connected. The valuation material was consequently relied upon as evidence bearing upon the entitlement to retain the benefits already availed and upon the alleged manner in which such benefits had been obtained.

52. This distinction is borne out from the Impugned Final Order itself. In paragraph 21, the CESTAT recorded that the demands and the consequential action were founded, inter alia, upon the allegation

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of overvaluation. At the same time, the CESTAT specifically noted that the assessment under Section 17 had not been disturbed and that there had been no notice or finding re-determining the value under Section 14 read with the 2007 Rules.

53. In other words, the CESTAT itself recognised that there had been no adjudication determining the assessable value of the exported goods in accordance with the statutory valuation mechanism. The question before the CESTAT was whether the material gathered during investigation could nevertheless be relied upon for determining whether the exporters had fraudulently availed drawback and other export benefits.

54. It would, therefore, be somewhat anomalous to accept the Respondents' submission that the Appeals are barred under Section 130 because they involve determination of value for purposes of assessment when the very finding of the CESTAT is that no such determination of value for purposes of assessment had taken place.

55. The reliance placed by the Respondents upon ***Kishin S. Loungani*** (supra) does not advance their case. In that matter, the valuation of the goods was itself adjudicated upon and the valuation finding was found to be integral to the conclusions concerning confiscation and denial and recovery of drawback. The Kerala High Court consequently held that the order involved, amongst other things, the issue of valuation of goods for purposes of assessment and that the statutory appellate remedy lay before the Supreme Court.

56. The factual and procedural position in the present case is materially different. Here, the CESTAT has expressly proceeded on

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the basis that the declared value had not been re-determined under Section 14 read with the 2007 Rules. The Revenue's grievance is not that the assessable value determined by Customs was incorrectly fixed, but that the exporters allegedly manipulated the declared values for the purpose of obtaining drawback and other export incentives.

57. The distinction is also consistent with the principle underlying ***Navin Chemicals*** (supra). The expression "for purposes of assessment" is the controlling expression. The exclusion concerns questions relating to rate of duty or value in the context of assessment. It does not convert every question in which the value of goods may be relevant into a valuation dispute for purposes of Section 130.

58. The fact that the Revenue relies upon the difference between the values declared in India and those appearing in the foreign customs documents does not alter the nature of the proceedings. The Revenue relies upon those differences as evidence of alleged inflation and fraudulent availment of benefits. Whether such evidence is ultimately sufficient to establish the alleged fraudulent availment is a matter to be examined on the evidentiary record. It is distinct from determining the assessable value of the goods under Section 14.

59. This Court is, therefore, unable to accept the preliminary objection raised by the Respondents. The present Appeals are maintainable under Section 130 of the Act. The issue of alleged overvaluation, as it arises in the present proceedings, does not constitute a determination of the value of goods for purposes of assessment so as to attract the exclusion contained in Section 130.

<u>Third-party remittances and the scope of the Customs enquiry:</u>

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60. Having answered the question of maintainability, the principal controversy arising in these Appeals concerns the manner in which the CESTAT dealt with the third-party remittances and the material relied upon by the Revenue to question the entitlement of the exporters to retain the drawback.

61. Section 75 of the Act provides the statutory basis for grant of drawback on exported goods. The second proviso to Section 75(1), as relevant for the present controversy, contemplates the consequence where the sale proceeds in respect of the exported goods are not received by the exporter in India within the period prescribed under the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder.

62. The controversy before this Court is not whether a payment received from a third party can, in every conceivable circumstance, be treated as an invalid export realisation. Nor is it necessary for this Court to hold that every third-party remittance is prohibited. The question is narrower: whether the Customs authorities, while examining the entitlement of an exporter to drawback, were entitled to examine whether the amounts shown as export realisations actually represented sale proceeds in respect of the goods for which drawback had been claimed.

63. In the considered view of this Court, the answer has to be in the affirmative. The reference in Section 75 to "sale proceeds in respect of such goods" necessarily requires the Customs authorities, when the entitlement to drawback is put in issue, to examine whether the amounts relied upon as export realisations have the requisite nexus

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with the exports in question. The Customs authorities are not thereby exercising the regulatory jurisdiction of the Reserve Bank of India under FEMA. They are examining the statutory entitlement to retain a benefit granted under the Customs Act.

64. The CESTAT, however, appears to have treated the matter as though the Revenue was seeking to adjudicate upon the validity of the foreign exchange transaction as such. The Revenue's case, properly understood, was different. The Revenue relied upon the identity of the remitters, the identity of the declared overseas buyers, the statements and enquiries concerning those buyers, the movement of funds through various accounts and the surrounding circumstances to prove that the amounts shown as realisations could not be accepted as genuine sale proceeds of the exported goods.

65. The distinction assumes significance because the material relied upon by the Revenue was not confined to the fact that the remitter was a person other than the named buyer. As recorded in the Order-in-Original, the investigation extended to the entities from which the remittances originated, the nature of their business activities, the persons shown as their directors or partners, the relationship, if any, between such entities and the declared overseas buyers, and the circumstances in which the remittances were received by the Indian exporters.

66. The adjudicating authority also relied upon the material obtained during overseas enquiries and the documents concerning the corresponding imports. The findings recorded in the Order-in-Original refer to instances where the overseas buyers or consignees allegedly

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denied having undertaken the transactions attributed to them, as well as instances where the value reflected in the overseas import documentation was substantially different from the value declared before the Indian Customs authorities. The Order-in-Original further refers to the investigation concerning the third-party remitting entities and the banking records relating to the receipt of export proceeds.

67. In such circumstances, the Customs authorities could not have been precluded from examining the transactions merely because the amounts had physically entered the exporters' bank accounts. Receipt of money in a bank account is a fact; whether that receipt constitutes sale proceeds in respect of the exported goods is a matter which has to be determined from the surrounding circumstances and the evidence available on record.

68. The CESTAT was, therefore, not justified in proceeding on the basis that the Customs authorities could not examine the nature of the remittances unless the Reserve Bank of India or another authority exercising jurisdiction under the foreign exchange regulatory framework had first declared the remittances to be invalid. The Customs authorities were required to examine the remittances only to the extent necessary for deciding the statutory entitlement under the Customs Act.

Duty of the appellate authority to critically examine the Order-in-Original:

69. Before proceeding further, it is necessary to notice a fundamental aspect of appellate adjudication which assumes particular significance in the present case. When an appellate authority exercises jurisdiction over an adjudication order and proposes to reverse the

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conclusions recorded therein, it is required to critically analyse the findings recorded by the adjudicating authority and the material on which those findings are founded. The appellate authority must, by a process of reasoning, demonstrate why the conclusions recorded by the adjudicating authority are erroneous or unsustainable before substituting its own conclusion.

70. The requirement is not merely procedural. It is inherent in the exercise of appellate jurisdiction. An appellate authority is not required merely to state that it has taken a different view. Where the order under challenge is founded upon an investigation involving several pieces of evidence and a series of findings, the appellate authority is required to examine the material findings which constitute the foundation of the adjudication order and record reasons for disagreeing with them.

71. This aspect assumes particular significance in the present case since the Order-in-Original dated 30.05.2023 records findings based upon documentary material obtained during the investigation, apart from statements recorded under the Customs Act. The CESTAT was, therefore, required to examine the material considered by the adjudicating authority and determine whether the conclusions drawn therefrom were sustainable in law and on facts.

72. The question before this Court is consequently not whether this Court would itself have arrived at the same factual conclusions as the Commissioner of Customs (Exports). Nor is this Court required, in exercise of jurisdiction under Section 130, to undertake a wholesale re-appreciation of the evidentiary record. The relevant question is

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whether the CESTAT, while reversing the Order-in-Original, critically examined the findings and material which constituted the basis of the adjudication.

Findings recorded by the adjudicating authority:

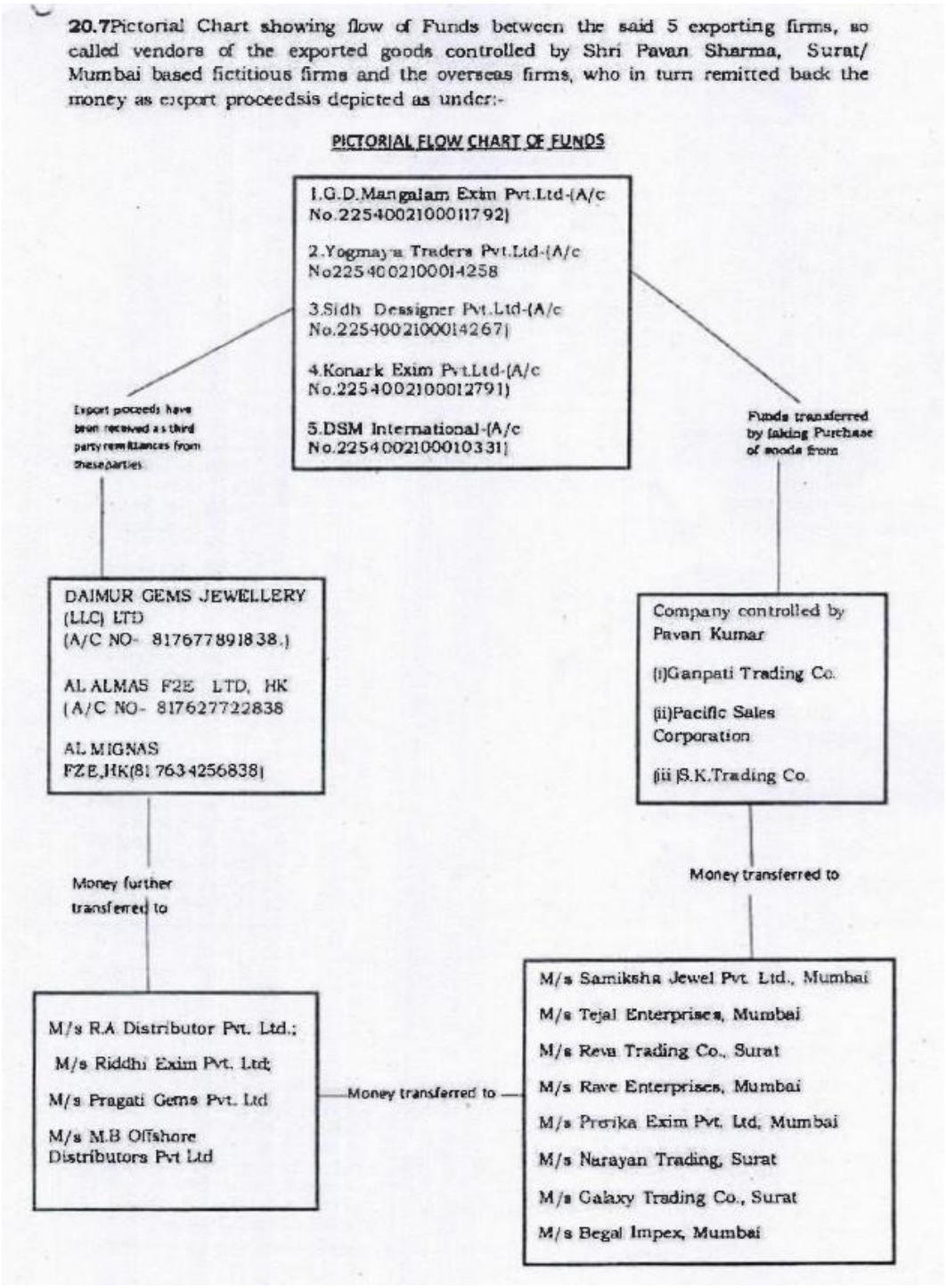
73. It is, therefore, necessary to notice the nature and extent of the findings recorded by the adjudicating authority. The Order-in-Original contains detailed findings concerning the source and movement of the remittances, the entities through which the funds were routed, the overseas buyers and consignees, the values declared before Indian Customs vis-à-vis those reflected in the overseas documents, the cancellation of e-BRCs by Punjab National Bank and the alleged availment of drawback and other export incentives.

74. In paragraph 43.1 of the Order-in-Original, the Adjudicating Authority recorded that the investigation conducted by the DRI had revealed that substantial amounts had been transferred from the bank accounts of Noticees Nos. 1 to 5 to the bank account of M/s Ganpati Trading Co. during the period from February 2012 to May 2012. The amounts were thereafter transferred by M/s Ganpati Trading Co. to various firms based in Surat and Mumbai. Thus, the investigation traced a sequence of transfers from the accounts of the said noticees to M/s Ganpati Trading Co., and thereafter to other firms.

75. The Show Cause Notice dated 17.02.2017, in paragraphs 20.7 to 20.10, contains pictorial charts depicting the alleged flow of funds between the five exporting firms, the vendors of the exported goods stated to be controlled by Shri Pavan Sharma, Shri Yogesh Mittal, Shri Gaurav Bhardwaj and Shri Gopal Sharma, the firms based in

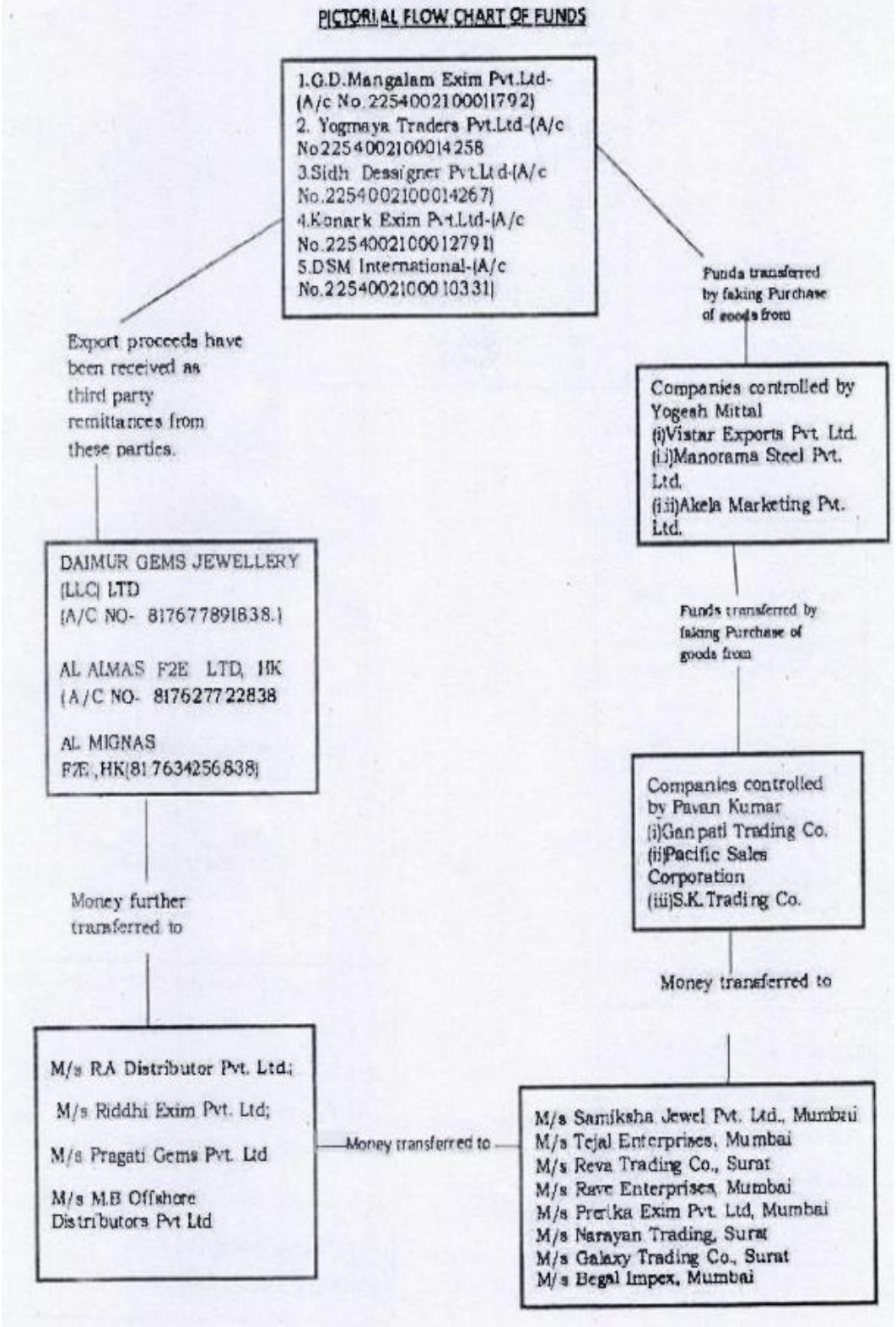
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Surat and Mumbai alleged to be fictitious, and the overseas firms which, according to the Revenue, remitted the funds back as export proceeds. The said charts, as set out in the Show Cause Notice, are reproduced below:



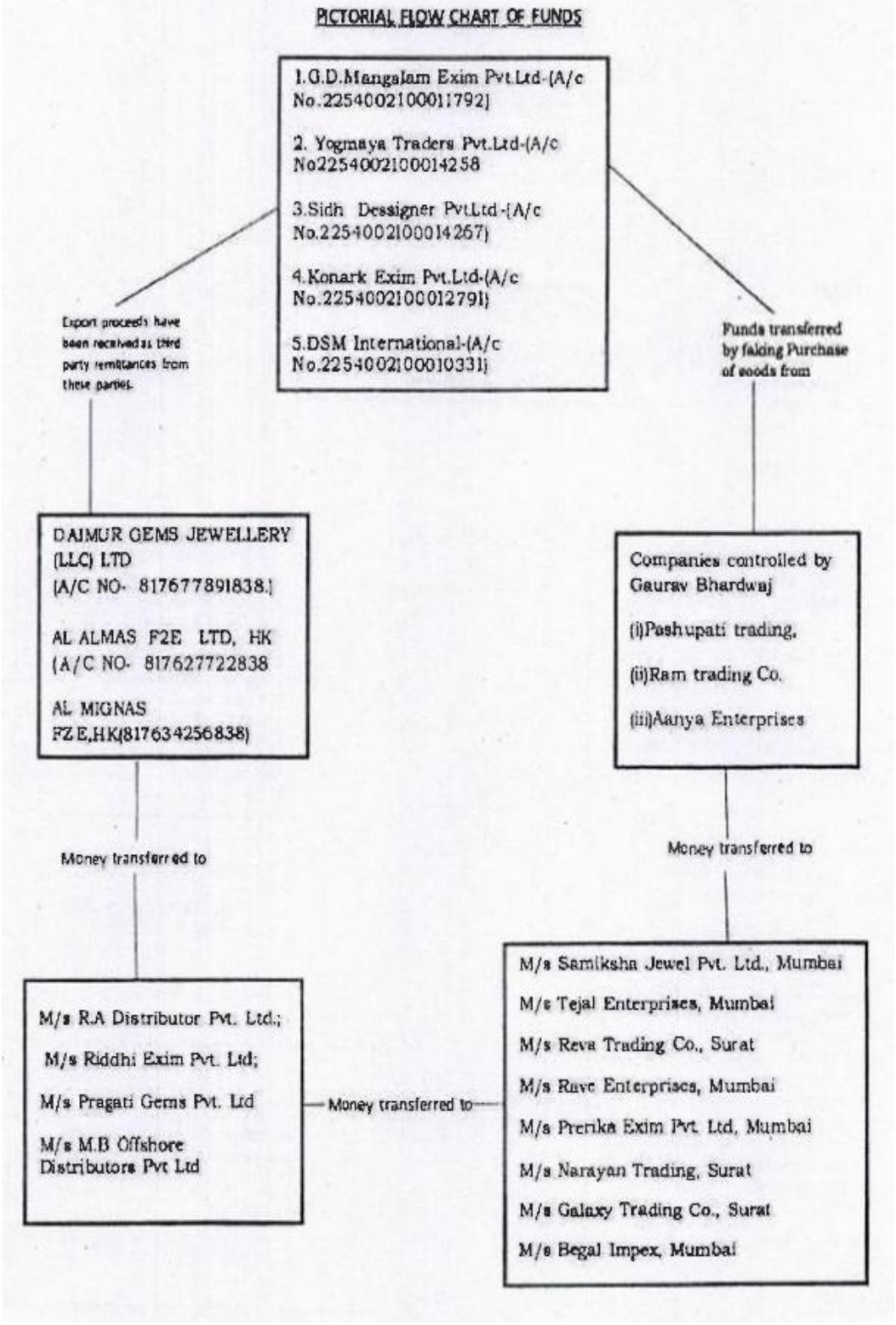
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20.8 Pictorial Chart showing flow of Funds between the said 5 exporting firms, so called vendors of the exported goods controlled by Shri Yogesh Mittal, Surat/ Mumbai based fictitious firms and the overseas firms, who in turn remitted back the money as export proceeds is depicted as under:-



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20.9 Pictorial Chart showing flow of Funds between the said 5 exporting firms, so called vendors of the exported goods controlled by Shri Gaurav Bhardwaj, Surat/ Mumbai based fictitious firms and the overseas firms, who in turn remitted back the money as export proceeds is depicted as under:-



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20.10 Pictorial Chart showing flow of Funds between the said 5 exporting firms, so called vendors of the exported goods controlled by Shri Gopal Sharma, Surat/ Mumbai based fictitious firms and the overseas firms, who in turn remitted back the money as export proceeds is depicted as under:-

PICTORIAL FLOW CHART OF FUNDS

1.G.D.Mangalam Exim Pvt.Ltd-(A/c No.22540021000l1792)

2. Yogmaya Traders Pvt.Ltd-(A/c No2254002100014258

3.Sidh Designer Pvt.Ltd-(A/c No.22540021000l4267)

4.Konark Exim Pvt.Ltd-(A/c No.22540021000l2791)

5.DSM International-(A/c No.2254002100010331)

Export proceeds have been received as third party remittances from these parties.

Funds transferred by faking Purchase of goods from

DAIMUR GEMS JEWELLERY (LLC) LTD (A/C NO- 8l7677891838.)

AL ALMAS F2E LTD, HK (A/C NO- 817627722838

AL MIGNAS FZE, HK(817634256838)

FIRMS CREATED BY GOPAL SHARMA

1.Archana Trader-(A/c No.3073010012940361
2. Senor Exports-(A/c No-307301010294214)
3.Brijet Star Traders-(A/c No.3073010102942101
4. R.K.Impex-(A/c No.307 3010102941991
5. Sakshat enterprises-(A/C No. 3073010102944211
6. Seema Enterprises-(A/c No.-3073010102942001

Remitted funds abroad to HK based firms using forged Bills of Entry

Funds transferred by faking Purchase of goods from

RIDDHI EXIM PVT LTD-(A/c No.0850055008291
RAMSHYAM EXPORTS -(A/c No.0950055008501
MB OFFSHORE DISTRIBUTORS-(A/c No.0850055008781
RA DISTRIBUTORS-(A/c No.626605501750)
MAA MUMBADEVI GEMS-A/c No.62 4605501808

Money transferred to

(I) JASH TRADERS-(A/c No.913020027818115)
(II) VAMDAMA & CO-A/c No.913020290076161

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76. In paragraph 43.2, the adjudicating authority recorded that no import or export had been made by M/s Ganpati Trading Co. and that the entities to whom the money was transferred suggested that their declared line of business was diamond trading. It was further recorded that many of the bank accounts had remained operational for only a short period of time while witnessing substantial monetary transactions.

77. In paragraph 43.3, the adjudicating authority recorded that the declared addresses of M/s Ganpati Trading Co. and other trading firms controlled by Shri Pavan Kumar, proprietor of M/s Ganpati Trading Co., were found vacant or occupied by other firms, despite invoices allegedly being raised from those addresses for sale of ready-made garments to the five exporting firms till August-September 2013. The purchases shown by Noticees Nos. 1 to 5 from the trading firms controlled by Shri Pavan Kumar were, therefore, recorded as appearing dubious since the vendors were not found at their declared addresses during search and verification.

78. Paragraph 43.4 records a similar finding in respect of the other supplier firms. The DRI investigation with the different supplier firms was recorded as having revealed that the purchases shown by the five exporters from the supplier firms and their trading firms appeared dubious, since the vendors had not been found at their declared addresses during search and verification.

79. Paragraph 43.5 records the findings arising from the overseas enquiries conducted by the DRI with various Consulate Generals of India in the importing countries and with the buyers and consignees in

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respect of the exports made by the five exporting firms. The relevant findings recorded by the adjudicating authority are reproduced below:

> *"43.5. The overseas enquiries of the DRI with various Consulate Generals of India based in the importing countries and with the buyers/consignees in respect of the impugned exports made by the firve exporting firms (Noticee No. 1 to 5) revealed :-*
>
> *(i) that the exported goods were overvalued before Indian Customs as the same has been cleared very lower price at overseas.*
>
> *(ii) that in some cases the name of exporter was changed.*
>
> *(iii) that in some cases the name of consignee was changed*
>
> *(iv) that the tune of over-valuation ranges from 2 to 20 times*
>
> *(v) that in the case exported goods cleared at overseas at very lower price, the remittances of the said exported goods were received from buyers yiz M/s A Khat Al Fizi General Trading, Dubai and M/s Al Wadi Al Saeed, Dubai*
>
> *(vi) that Shri Mohammed Zia Ul Haque, Partner of M/s Whitewood General Trading LLC, Dubai (WWGT) in his statement recorded under Section 108 of the Customs Act, 1962, inter alia, denied having imported any consignments in his firm WWGT in Dubai and denied having any knowledge of the buyer i.e., Al Khat Al Fizi Trading LLC, Dubai and the exporter M/s Konark Exim Pvt Ltd, 6/846, Main Bazar, Mehrauli, New Delhi. He also categorically denied having made any payments to the said Indian exporting firms.*
>
> *(vii) that Shri Juned Beg, Partner M/s Al Basit Trading LLC, Dubai, in his statement recorded under Section 108, inter alia, denied having ordered or purchased any goods purported to be exported by Indian exporting firm M/s Yogmaya Traders Pvt Ltd.*
>
> *(viii) that Shri Gopal Nanikram, Partner M/s Advancetech Tradiug LLC, Dubai in his statement recorded under Section 108, inter alia, denied having ordered or purchased any goods purported exported by Indian exporting firm M/s Konark Exim Pvt Ltd.*
>
> *Thus, the investigation concluded that the exports were made io fake buyers/consignees and the remittances received in foreign exchange were not in relation to the exported goods but were only for the purpose of fulfilment of the requirement of Bank Realization Certificate (BRC)."*

80. The adjudicating authority thereafter recorded findings

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concerning the investigation into the third-party transactions between the five exporting firms and firms based in Hong Kong. Paragraph 43.6 records as follows:

> *"43.6. The DRI conducted investigation of third party transaction, ie. the transaction between the five exporting firms (Noticee No. I to 5) and firms based in Hongkong. The investigation conducted with the Directors/Partners of the Hong Kong firms revealed that :-*
>
> *a) The so called Directors/partners in the Honkong based firms, from whom payments were received by the Indian exporting firms were only name sake owners of the overseas entities.*
>
> *b) These persons belonged to very low income group, and had fallen into the trap of scamsters for petty amounts in cash or reimbursement of travel and lodging expenses.*
>
> *c) These persons had no knowledge of any business dealings with the five Indian exporter firms.*
>
> *d) There persons had no knowledge of the Dubai based buyers namely (a) M/s Al Khat Al Fizi Trading LLC, UAE and (b) AL Wadi Saeed General Trading LLC UAE.*
>
> *e) Front companies had been opened in Hong Kong in the name of Indian National by group of persons for the purpose of trade based money laundering.*
>
> *f) The total amount of such illicit transfers from the overseas bank accounts of Able Bright International Trading Limited, Winful Trading Limited, Max Rise Trading, Star Grace Trading Limited, Star Corporation. Lad, Joy Glory Trading Lad, Daimur Gems Jewellery LLC Limited and Loyal Top International Limited to the 5 Indian exporting firms amounted to more than USD 76 million.*
>
> *g) Diamonds had been imported into India from Hong Kong based firms by way of overvaluation so as to remit foreign exchange outside India and part of such foreign exchange remittance was used to finance overvaluation of exported goods as third party remittance for availing undue exports incentives."*

81. Paragraph 43.7 records the allegation that the RBI Guidelines concerning third-party remittances, issued vide RBI Circular No. 70 dated 08.11.2013, RBI Circular No. 100 dated 04.02.2014 and the subsequent communications referred to therein, were not followed.

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82. Paragraph 43.8 records that the Enforcement Directorate, Surat had also investigated a case of money laundering concerning three Surat-based companies, namely M/s Harmony Diamonds Pvt. Ltd., M/s Agni Gems Pvt. Ltd. and M/s R.A. Distributors Pvt. Ltd., in relation to remittances of foreign exchange equivalent to more than Rs.4,000 crores against allegedly fake import documents of diamonds. The Order-in-Original records the allegation that a circuitous route had been adopted to circulate the money from one entity to another, which was ultimately remitted abroad through allegedly bogus transactions, and that such remittances were received back by the five Indian exporting firms as third-party payments for the export goods.

83. The findings recorded in paragraph 43.9 concern the investigation and enquiry with Shri Sahdev Gupta, Director/Controller of the five exporting firms. The adjudicating authority recorded, inter alia, the following: The said paragraph 43.9 is reproduced as under:

> *"43.9. that the investigation and enquiry with Shri Sahdev Gupta Director/Controller of the five exporter firms revealed that all these irregular payments were in violation of the contracts entered into by the exporting firms with the buyers as under :-*
>
> *(i) Shri Sahdev Gupta had been admittedly controlling all the operations related to the business activities of the five exporting firms*
>
> *(ii) these exporting firms have received payments from unrelated persons/ firms (who were neither buyers nor consignees) and have shown the said payments as export proceeds to avail drawback from Customs and also other export incentives from DGFT.*
>
> *(iii) the Hong Kong (HK) based entities which have sent foreign remittances to the Indian exporting firms on behalf of the UAE based buyers have been found to be incorporated by some Indian Nationals based in Hong Kong in the name of many other Indian Nationals living in India, having very low income. The Directors of the entities based in Hong Kong, from whom third party remittances have been received, admitted having no knowledge of any business dealings*

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with the five exporting firms based in India. Sh. Sahdev Gupta also admitted that he had no knowledge about these persons/entities.

(iv) that the remittances are not in relation to the exported goods but are only for the purpose of fulfilment of the requirement of Bank Realization Certificate (BRC).

(v) that the five exporting firs had two major buyers based in Dubai - Al Wadi Al Saeed General Trading LLC and Al Khat Al Fizi General Trading LLC; which placed the contract with Sahdev Gupta which also specified the name of the consignees and other contract terms as agreed upon.

(vi) That he admitted that he had not exported any consignments to the Hong Kong based companies and that he had exported Ready Made Garments/Fabrics to Dubai based buyers only and all the export documents were sent by him through PNB, IBB, New Delhi for onward submission through banking channel to the bank of the Dubai based buyer(s).

(viii) That he admitted that in some cases, the payments were received from third parties, whose names were not figuring in the export documents.

(ix) On asked to explain the reasons for receipt of payments from unrelated, which were neither the buyer nor the consignee as per the export documents, he admitted that these payments were sent to their firms from the third parties on the instructions of his buyers Al Khat or Al Wadi.

(x) On being asked to comment on the genuineness of the letters submitted by his firms to the bankers showing relationship between his buyers and the Hong Kong based remitting entities in the light of various denial statements voluntarily tendered by the so called directors of these Hong Kong based entities, admitted that he also did not know all these persons and had no business relationship with them and had never exported or consigned any goods to these persons/entities and that his buyers had sent those letters claiming their relationship with Hong Kong based companies.

(xi) Sh. Sahdev Gupte admitted having known Sh. Sahil Jain of Gandhi Nagar, Delhi, Shri Yogesh Mittal, Shri Pavan Kumar and Shri Gaurav Bharadwaj.

(xii) Sh. Sahdev Gupta also admitted that in terms of the contracts entered into with the buyers, the payment would be sent by Buyer and that in some cases, the payments were received from third party,

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whose names were not figuring in the export documents as buyer or consignee, on the instructions of his buyer Al Kha or Al Wadi

In view of the above, the SCN alleges that the remittances received by the said exporting firms from Hong Kong/ Dubai based firms were not in relation to the exported goods but were the difference of corresponded to the overall overvalued exported goods for the purpose of fulfilment of the requirement of Bank Realization Certificate and to avail undue export incentives, which is allegedly further corroborated by the fact that there was huge difference in the declared price before Indian Customs and at the Port of Destination."

84. The adjudicating authority thereafter recorded that, in view of the aforesaid material, the show cause notice alleged that the remittances received by the exporting firms from Hong Kong/UAE based firms were not in relation to the exported goods but represented the difference corresponding to the overall overvalued exported goods for fulfilment of the requirement of BRC and for availing undue export incentives. The Order-in-Original records that this allegation was further sought to be corroborated by the substantial difference between the prices declared before Indian Customs and the prices at the ports of destination.

85. Paragraph 43.10 concerns the enquiry conducted by the DRI with Punjab National Bank regarding the procedure prescribed and followed in respect of realisation of export proceeds. The adjudicating authority recorded, inter alia, that PNB officials admitted that the tripartite agreements contemplated under the relevant RBI circular were not available for the relevant period; that the procedure prescribed by the RBI had not been followed in the realisation of export proceeds; and that PNB had thereafter decided to cancel the e-BRCs in respect of shipping bills realised against such non-compliant third-party remittances.

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86. The adjudicating authority further recorded in paragraph 43.10 that PNB, vide letter dated 16.01.2016, had intimated that, in accordance with the observations of the investigating agencies and the findings of its internal audit, it had decided to cancel the e-BRCs in respect of the shipping bills realised against such non-compliant third-party remittances and had requested the DGFT to treat such e-BRCs as cancelled/null and void, with consequential impact upon the export incentives claimed or availed against those shipping bills. The adjudicating authority recorded that PNB had cancelled BRCs relating to 1,650 Shipping Bills pertaining to the five exporting firms, amounting to USD 12,77,16,228.59. The said paragraph 43.10 is reproduced as under:

> *"43.10. The enquiry by DRI with Punjab National Bank regarding procedures laid down and the procedures followed by them in respect of export proceeds realization by the five exporting firm, the investigation revealed as under:*
>
> *(i) On being asked to explain the compliance of RBI Circular No. 70/2013 dated 08.13.2013 which categorically inter-alia stipulated that AD Banks might ensure before allowing payments fir export of goods from third party that a firm irrevocable order backed by a tripartite agreement was in place; that the said requirement remained in place till 04.02.2014 and requested to produce the copies of such tripartite agreements produced by the impugned exporters for the period 08.11.2013 to 01.02.2014, Bank Officials admitted that no such tripartite agreements produced by the impugned exporters for the said period were available with them as the same were not obtained by the respective branch from M/s G.D. Mangalam Exim Pvt. Ltd and other group companies controlled by Shri Sahdev Gupte during the said period.*
>
> *(ii) Further PNB officials admitted that the procedure prescribed by RBI was not followed in case of realization of proceeds leading in issuance of e-BRCs and agreed to initiate necessary corrective steps for rectifying the procedural violations which occurred during the said period i.e. 08.11.2013 to 04.02.2014.*
>
> *(iii) PNB vide letter dated 16.01.2016 intimated that in accordance*

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with the observations of investigating agencies and finding of their bank's internal audit, it had been decided to cancel all the eBRCs in respect of shipping bills(detailed in SCN) which were realised against such non complying third party remittances. DGFT was also requested io treat all the eBRCs CANCELLED (Null & Void) with al consequential impacts on the application of the concerned exporter firms for availment of various export incentives, applied/ availed against these shipping bills.

(iv) Thus, PNB cancelled BRCs relating to 1650 Shipping Bills pertaining to said five exporting firms amounting to USD 12,77,16,22859/."

87. Paragraphs 43.11 and 43.12 further record the allegation that the overseas enquiries revealed substantial differences between the values declared before Indian Customs and those reflected abroad and that the remittances received by the exporting firms from Hong Kong and UAE based third parties were from entities which were neither buyers nor consignees according to the shipping/export documents. The said paragraphs 43.11 and 43.12 read as under:

"43.11. The SCN further alleges that the overseas enquiries revealed that the exports made by the said exporting firms were highly over-valued as there was huge difference in the declared price before Indian Customs and abroad. The investigation established that the remittances received by the said exporting firms from Hong Kong/ Dubai based firms were not in relation to the exported goods but were managed for the purpose of fulfilment of the requirement of Bank Realization Certificate and to avail undue export incentives.

43.12. It has been further alleged in the SCN that a large number of remittances from so called suppliers of exported goods were in the accounts of entities which were dealing in Diamonds. Further, it was also found that there were inward remittances in the accounts of five exporting firms controlled by Shri Sahdev Gupta from such companies based abroad. It revealed that remittances were received in the accounts of the exporting firms of Shri Sahdev Gupta from Hong Kung and, UAE based third parties, who were neither buyers nor consignee as per Shipping/ Export documents."

88. Paragraph 43.13 concerns the allegation regarding the diversion

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of consignments declared for FMS/SFMS countries. The adjudicating authority recorded that Shri Sahdev Gupta, owner/controller of M/s Konark Exim Pvt. Ltd., M/s DSM International and M/s Sidh Designers Pvt. Ltd., in connivance with Shri Nitin Gupta, Director of M/s OAK Shipping Services Pvt. Ltd., had exported goods under 11 Shipping Bills by showing exports to countries falling within the FMS/SFMS scheme for claiming the corresponding benefits, whereas the consignments were allegedly diverted to non-FMS/SFMS countries such as Turkey and Korea. The adjudicating authority further recorded the allegation that the country of destination had thereby been misdeclared and that fraudulent benefits had been availed by wilful misstatement, misrepresentation and suppression of facts.

89. The adjudicating authority further recorded that Shri Nitin Gupta had abetted Shri Sahdev Gupta in obtaining FMS authorisation from the DGFT by arranging/issuing allegedly fake or bogus landing certificates, which Shri Nitin Gupta had admitted in his statement. The said paragraph 43.13 reads as under:

> *"43.13. Further That Shri Sahdev Gupta, owner/controller of M/s Konark Exim Pvt. Ltd., M/s DSM International and M/s Sidh Designers Pvt. Ltd, in connivance with Shri Nitin Gupta Director of M/s OAK Shipping Servics Pvt. Ltd. had exported goods under 11 Shipping bills by showing exports to the countries listed in FMS/Special Focus Market Scheme for claiming undue benefits of FMS/SFMS but the same were diverted to non FMS/SFMS countries. Thus, by mis declaring the country of destination on export documents, they availed fraudulent benefits under FMS/SFMS by way of willful mis-statement, mis- representation and suppression of facts as regards the country of destination, presented the subject goods for export before the designated authority of Customs with intent to avail fraudulent benefit of FMS/SFMS. Whereas the goods were actually exported to non FMS/SFMS countries such as Turkey, Korea etc*

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That Shri Nitin Gupta, Director of M/s OAK Shipping Services Pvt. Ltd. have abetted Shri Sahdev Gupta to obtain FMS Authorisation from DGFT by arranging/ issuing fake/bogus Landing certificates, which Shri Nitin Gupta admitted in his statement."

90. The aforesaid findings demonstrate the breadth of the material considered by the adjudicating authority. The case was not founded upon a single statement, nor merely upon the fact that the remitters were third parties. The findings proceeded upon banking records, overseas enquiries, documents obtained from foreign customs authorities, statements of persons associated with the overseas entities, statements of the persons controlling the exporting firms, material concerning the declared and actual destinations of the consignments, and the action taken by PNB in respect of the e-BRCs.

91. The adjudicating authority thereafter recorded further findings in paragraph 46.5, which are relevant for appreciating the nature of the investigation. The said paragraph reads:

"46.5. I find that the DRI has carried out extensive investigation of the foreign exchange realized on account of the impugned exports made by the five exporting Noticee firms from the actual buyers of the exports as well as from the third party firms based in Hongkong & Dubai on behalf of the buyers, as claimed by the exporters. However, the DRI investigations/'enquiries have gone to prove that the third party firms from who a huge amount of money have been transferred into the accounts of the exports have no relation with the buying firms, nor have they any relation of the exports goods or the exporters/importers in any way. The DRI investigation has also revealed that the third party firms have different line of business from the export goods i.e. Readymade garments and in some cases, they have been found to be in no business. The investigation further revealed that the so called Directors/partners of these overseas firms were only name sake owners. These front companies had been opened in Hong Kong in the name of Indian National by group of persons for the purpose of trade based money laundering. One of the persons. It was also revealed in the investigation of the DRI that

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Diamonds had been imported into India from some of such Hong Kong based firms by way of overvaluation so as to remit foreign exchange outside India and part of such foreign exchange remittance was used to finance overvaluation of impugned exported goods as third party remittance for availing undue exports incentives by the five exporting firms. The total amount of such illicit transfers from the overseas firms amounted to more than USD 76 million."

92. The adjudicating authority also specifically dealt with the action taken by PNB concerning the e-BRCs. Paragraph 46.14 records that Shri Dhruv Sinha, Assistant General Manager of Punjab National Bank, International Banking Branch, Barakhamba Road Branch, New Delhi, vide letter dated 16.01.2016 addressed to the Additional DGFT, New Delhi-01, with a copy marked to the DRI, intimated that, in accordance with the observations of the investigating agencies and the findings of the bank's internal audit, PNB had decided to cancel the e-BRCs in respect of the shipping bills realised against non-compliant third-party remittances. The gist of the Bills realised during the relevant period was recorded as follows:

Sr. No	***Name of Firm***	***IEC No.***	***No. of Shipping Bills***	***Shipping Bill amount in USD***
1	*M/s GD Mangalam Exports Pvt. Ltd.*	*0503078786*	*842*	*53955243,59*
2	*M/s Sidh Designers Pvt. Ltd.*	*0507010353*	*184*	*I 7552076. 15*
3	*M.s Yogmaya Traders Pvt Ltd.*	*0507010868*	*283*	*26808412.89*
4	*M/s Konark Exim Pvt Ltd*	*0505000440*	*227*	*19285074.98*
5	*M/s DSM International*	*0599058102*	*114*	*10115420.98*
GRAND TOTAL			*1650*	*12,77,16,228.59*

93. Paragraph 46.16 records that, although 13,008 Shipping Bills were involved in the show cause notices in which the sale proceeds were stated to have been received through third-party remittances, the

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Authorised Dealer, namely Punjab National Bank, had cancelled the e-BRCs only in respect of 1,650 Shipping Bills. The said paragraph 46.16 reads as under:

> *"46.16. In view of above findings, I find that though there are 13008no of shipping bills involved in the present notice, wherein sale proceeds remittance is related to third party, Authorised Dealer (Punjab National Bank) have cancelled e-BRC only in respect of 1650 slipping bills. PNB in their letter have categorically stated that in accordance with the observations of investigating agencies and finding of their bank's internal audit, they have cancelled all the eBRC's in respect of shipping bills which were realised against such non complying third party remittances. As per PNB letter, number of shipping bills were 1650 as against 13008 no of Shipping bills mentioned in show-cause notices.*
>
> *I further find that during investigation of remittance received from third party and issuance of e- BRC by PNB on the basis of remittance of third party in violation of RBI guidelines/ circulars, matter was intensively taken up by DRI with the officials of PNB and RBI. That RBI in its letter dated 07.04.2014 addressed to Additional Director informed that*
>
> > *"In this connection we advise that third party payments have not been enabled in Notification No. FEM4 14/2000-RB dated 3rd May 2000 (Manner of Receipt and payment). Prior to November 08, 2013; cases relating to exports where payments were received from a third party (other than the buyer), were examined by RBI on a case to case basis and specific approvals were granted depending on the contract sufficient documentation supporting the third party payments, being in palace"*
>
> *As per provisions of FEMA 1999, manner of realisation and repatriation of foreign exchange is to be specified by RBI and accordingly directions are issued by RBI to Authorised dealer for compliance. That in pursuance to DRI taking up matter with RBI and PNB for issuance of e-BRC in violation of RBI guidelines, it transpires that PNB had conducted internal audit and investigation and arrive on conclusion of cancellation of e-BRCs for 1650 S/B, already issued by them, where third party remittance was not in complying to RBI guidelines. This inter-alia means balance e-BRCs 11358 shipping bills [13008-1650] issued by PNB on the basis of third party remittance [received during period excluding 08.11.2013*

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t0 04.02.2014] were in conformity to RBI guidelines.

That there is nothing on record to suggest that DRI has further taken up matter with PNB and RBI for balance 11358 shipping bills as treating any remittance of an exporter as lawful or other-wise, proper authority is RBI as per Notification No. FEMA 14/2000-RB dated 3rd May 2000 (Manner of Receipt and payment). That even after lapse of more than 7 years of issuance of SCN, there is no additional evidences from investigating agency to refute the letter of PNB for non-cancellation of additional e-BRC other than that of 1650 shipping bills.

In view of above, other than 1650 shipping bills e-BRC, which had been cancelled by PNB, authorised dealer, there is no additional facts or reason before me to doubt about bona fide of e-BRC issued by PNB on balance 11358 shipping bills for Third Party remittance. Accordingly, drawback to the extent of 1650 S/Bs out of 13008 S/Bs specified in SCN shall be deemed never to have been allowed under Proviso 2 of the Section 75(1) of the Customs Act, 1962 as sale proceeds of other than such goods and the same shall be recovered from them under the provisions of Rule I6A of the Customs & Central Excise Duties Drawback Rules, 1995 along with interest under the provisions of Section 75A (2) of the Customs Act, 1962. Accordingly, the drawback amounting to Rs. 67,46,26,135 (Rupees Sixty Seven Crore Forty Sir Lakh Twenty Six Thousand One Hundred and Thirty Five only) is recoverable as detailed at Table -1 and Table -2 below under second Proviso of the Section 75(1) of the Customs Aet, 1962 shall be recoverable and rest demand doesn't hold good."

The adjudicating authority referred to the letter of PNB stating that the e-BRCs had been cancelled in respect of Shipping Bills realised against non-compliant third-party remittances.

94. The adjudicating authority further referred to the correspondence exchanged during the investigation between the DRI, PNB and RBI concerning the applicable requirements for receipt of third-party payments. The Order-in-Original records the RBI's communication dated 07.04.2014 stating, inter alia, that third-party payments had not been enabled in Notification No. FEMA 14/2000-

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RB dated 03.05.2000 and that, prior to 08.11.2013, cases involving receipt of export payments from third parties were examined by the RBI on a case-to-case basis and specific approvals were granted depending upon the contract and supporting documentation.

95. The adjudicating authority thereafter recorded its conclusion that, out of the 13,008 Shipping Bills, e-BRCs had been cancelled only in respect of 1,650 Shipping Bills and that, according to the material before it, the balance 11,358 e-BRCs had not been cancelled. On that basis, the adjudicating authority concluded that, apart from the 1,650 Shipping Bills, there was no additional material before it to doubt the bona fides of the e-BRCs relating to the balance 11,358 Shipping Bills.

96. The adjudicating authority consequently held that drawback relatable to the 1,650 Shipping Bills was liable to be treated as having never been allowed under the second proviso to Section 75(1) of the Customs Act and recovered under Rule 16A of the Customs and Central Excise Duties Drawback Rules, 1995, together with applicable interest. The amount so determined was Rs.67,46,26,135/-.

97. The adjudicating authority also separately considered the allegation of excess drawback under Rule 16. Paragraph 47.6 records that the demand of differential excess drawback under Rule 16 was confined to the Shipping Bills in respect of which remittances had been received from third parties and not to the other Shipping Bills forming part of the 13,008 Shipping Bills.

98. The adjudicating authority further recorded that overseas enquiries had been conducted in respect of 74 Shipping Bills, of which

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24 were already part of the 1,650 Shipping Bills considered for recovery under Rule 16A. Of the remaining 50 Shipping Bills, seven (07) were not part of the 13,008 Shipping Bills covered by the show cause notices for recovery under Rule 16/16A. The adjudicating authority consequently proceeded to consider 43 Shipping Bills for recovery under Rule 16, recording that the noticees had not produced evidence or supporting documents contrary to the findings emerging from the overseas enquiries. Paragraph 47.6 of the Order-in-Original reads as under:

> *"47.6. In view of above I find that demand of differential excess drawback under Rule 16 of the Customs & Central Excise Duties Drawback Rules, 1995 along with interest under the provisions of Section 75A (2) of the Customs Act, 1962 is only limited to shipping bills for which remittance received from third parties and not for other than 13008 shipping bills.*
>
> *I further find that overseas inquiry was conducted in 74 Shipping bills. 24 shipping bills out of 74 are already part of 1650 shipping bills discussed at para 46 above for recovery under Rule 16A, hence are not being separately discussed for recovery under Rule 16. For balance 50 shipping bills, 07 Nos. of shipping bills are not part of 13008 shipping bills for which demand has been raised in present show cause notices under adjudication for recovery under Rule 16/16A for Third party remittance. Therefore only rest 43 shipping bills are to be discussed for recovery of drawback under Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. In these 43 shipping bills, noticees have failed to give any evidences or supporting documents contrary to the overseas inquiry findings of DRI and hence excess drawback so sanctioned to notices are liable for recovery under Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules,1995. SCN and notices-wise break-up are as under-*

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S.No.	Destination country	SCN No & Date	Port	Name of the Party	S.B. No.	DBK Claimed (Rs. in Lakh	DBK Admissible(in lakh)	Excess DBK
1	Dubai	C. No. VIII/ICD/6/TKD/ SIIB-Exp/DRI-SCN/13/16 dated 30.03.2016	TKD	SDPL	8004454, 8004449, 8004450,	14.19	0.70	13.49
			TKD	KEPL	8472227, 8472217,75 09847,	12.6	0.62	11.98
			TKD	DSM	8657393, 8657396,86 58384	18.57	0.91	17.66
		C. No. VIII/6/ICD/PPG/ SIIB/GDM/27/2 016 dated 31.03.2016	PPG	GDM	8160908, 8160913, 8160904, 8160915	22.39	1.10	21.29
			PPG	YTPL	78586820	7.97	0.39	7.58
2	London	C. No. VIII/ICD/6/TKD/ SIIB-Exp/DRI-SCN/13/16 dated 30.03.2016	TKD	GDM	6619321	2.96	0.96	2
				KEPL	4620585	4.98	0.24	4.74
3	Moscow	C.No. VIII (HQ)10/ACE/AD J. /II /2016 dated 02.06.2017	IGI	KEPL	4433157, 4434656, 4576231, 4278244, 4298048, 4297141, 4638819, 4638815, 4298325	13.26	2.61	10.65
			IGI	DSM	4089417	0.78	0.38	0.4
4	New York	C. No. VIII/ICD/6/TKD/ SIIB-Exp/DRI-SCN/13/16 dated 30.03.2016	TKD	GDM	7011641, 7011633, 7011634, 7011630	19.04	3.32	15.72
		C. No. VIII/6/ICD/PPG/ SIIB/GDM/27/2 016 dated 31.03.2016	PPG	GDM	5659625, 5659657, 5659656, 5779238, 5479240, 5479271, 5479272, 6591139, 6591186	61.26	10.67	50.59
		C.No. VIII (HQ)10/ ACE/AD J. /II /2016 dated 02.06.2017	IGI	GDM	5125414	2.02	0.35	1.67
		C. No. VIII/ICD/6/TKD/ SIIB-Exp/DRI-SCN/13/16 dated 30.03.2016	TKD	YTPL	6624065, 6624186	10.68	1.86	8.82

The above excess drawback calculation has been arrived prorate/ actual amount on the basis of excess drawback amount reflected in overseas inquiry in SCN."

99. The adjudicating authority thereafter dealt with the duty credit scrips under Section 28AAA. Paragraph 48.2 records the following

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finding:

> *"48.2. I find that whole evidences outlining getting remittance from third party in violation of RBI instructions, e-BRC issued in collusion with Authorised dealer and getting Duty Credit Scrips under Focus Product/Market Scheme issued by DGFT shows the case squarely falls under Section 28AAA of Customs Act 1962. As already deliberated at length at para 46 supra regarding legal provision for acceptance of e- BRC for remittance received from Third Party, it is on record that in the present case, as the BRC's in respect of 1650 shipping bills discussed at Table I & 2 above have been cancelled by the AD Bunk, as they were not found to be in conformity with the RBI guidelines in vogue during the relevant period of time, as discussed supra, FMS/FPS duty Scrips amounting to Rs. 39,19,69,078/- (Rs. Thirty Nine Crore Nineteen Lakh Sixty Nine Thousand and Seventy Eight only) relatable to the abovementioned 1650 shipping bills is also recoverable under the provision of sub section (3) of section 28 AAA of the Customs Act, 1962 read with Section I1 of the Foreign Trade (Development & Regulation) Act, 1992, along with the interest under Section 28 AAA (2) of the Customs Act, 1962 frum the five noticee exporting firms."*

100. Paragraph 48.3 records the further allegation concerning the FMS/SFMS benefits obtained by M/s Konark Exim Pvt. Ltd., M/s DSM International and M/s Sidh Designers Pvt. Ltd. The adjudicating authority recorded that the export documents, including invoices and packing lists, showed the countries of destination as FMS/SFMS countries, whereas, after clearance from Customs, the consignments were allegedly diverted to non-FMS/SFMS countries. It was further recorded that M/s OAK Shipping Services Pvt. Ltd. had arranged the containers and booked the consignments with the shipping lines and that fake/bogus landing certificates and House Bills of Lading/Multi-modal Transport documents were allegedly issued as proof of delivery to the consignees in FMS/SFMS countries.

101. The adjudicating authority concluded in paragraph 48.3 that the

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aforesaid conduct resulted in obtaining duty credit scrips fraudulently from the DGFT by collusion, suppression of facts and wilful misstatement and held the case to be covered under Section 28AAA of the Customs Act. The adjudicating authority accordingly directed recovery of the FMS/FPS duty scrips relatable to the specified Shipping Bills, including the amounts attributed to M/s Konark Exim Pvt. Ltd., M/s DSM International and M/s Sidh Designers Pvt. Ltd. The said paragraph 48.3 reads as under:

> *"48.3. I further find that noticees adopted novel modus-operandi forging documents to claim higher FMS/SFMS incentives as under-*
>
> *- that M/s Konark Exim Pvt. Ltd,, M/s DSM International and M/s Sidh Designers Pvt. Ltd prepared the export documents viz. Invoices and packing list in the name of consignees, showing country of destination as FMS/SFMs Countries which were notified countries (as listed in Appendix 37C of HBP vol.1 of Foreign Trade Policy) for availment of export incentives under FMS/SFMS.*
>
> *- that after, the clearance of goods from Customs, the exporters booked the said consignments with respective shipping lines and the same were diverted to non-FMS/SFMS countries instead of declared destinations*
>
> *- that M/s OAK Shipping Services Pvt. Ltd., arranged the containers and booked the consignments to shipping lines, as per direction of Shri Sahdev Gupta gave fake/bogus landing certificates on their company's letter head and House BLs/Multi-modal transport documents, as proof regarding the delivery of the goods to the consignees based et FMS/SFMS Countries.*
>
> *- that the said landing certificates and House BLs/Multi-modal transport documents were submitted to the DGFT to claim FMS/SFMS benefits for CIS countries in their firms*
>
> *Thus noticees M/s Konark Exim Pvt. Ltd., M/s DSM International and M/s Sidh Designers Pvt. Ltd have obtained duty scrips fraudulently from DGFT by collusion, suppression of facts and wilful mis-statement and case is squarely covered under section 28AAA of Customs Act. Accordingly, FMSFPS duty Scrips amounting to Rs.*

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13,88,948/-, Rs 31,410/- and Rs. 15, 82,691/- relatable to 6, 1 and 4 shipping bills is also recoverable from M's Konark Exim Pvt. Ltd.,, M's DSM International and M/s Sidh Designers Pvt. Ltd respectively under the provision of sub section (3) of section 28 AAA of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 along with the interest under Section 28 AAA (2) of the Customs Act, 1962 from the five noticee exporting firms."

102. The aforesaid findings are noticed only to demonstrate the material which was before the CESTAT. This Court is not, at this stage, expressing any final opinion upon the correctness of these findings. What is significant is that the Order-in-Original proceeded on the basis of a cumulative body of documentary and other material, and not merely on one isolated circumstance.

Documentary material relied upon by the adjudicating authority:

103. The nature of the material considered by the adjudicating authority is further evident from paragraph 22.8 of the Order-in-Original. The adjudicating authority noticed that the Consul (Economic), Consulate General of India, Dubai, vide letter dated 10.07.2014, had forwarded details of 12 Bills of Entry received from Dubai Customs in response to the DRI's letter dated 06.03.2014 concerning the enquiry into alleged overvaluation of exports from India to Dubai by the five Delhi-based exporting firms. The said 12 Bills of Entry covered 38 Shipping Bills and 12 containers. The adjudicating authority recorded the comparative values declared before Indian Customs and those appearing in the corresponding documents before Dubai Customs.

The comparative chart recorded in paragraph 22.8 of the Order-in-Original is reproduced below:

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"22.8. The Consul (Economic), Consulate General of India, Dubai vide letter NO.CE/IV/1/1/2014 dated 10.07.2014 had forwarded details of 12 Bills of Entry received from Dubai Customs, in response to DRI letter dated 06.03.2014 in respect of enquiry initiated by DRI in respect of overvaluation of exports from India to Dubai by five Delhi based exporting firms (12 Bills of Entry covering 38 Shipping Bills and 12 containers), As per the report received from Dubai Customs, the comparative chart of the value declared before Indian Customs vis-i-vis Dubai Customs is as under:

TABLE-R

Sl. no	Description of Goods	Container No.	B.L No./ date	S.B No./ Date	Invoice No.	Total No. of Package	Total Pcs.	Unit Price in USD	Total value in USD in Shipping Bill	Description of Goods Declared in Dubai	Total No. of Package declared before Dubai Customs	Total Value in USD declared before Dubai Customs	Name of Buyer	Name of Buyer As per Shipping Bill	Diff. of Value declared before Indian Custom & Dubai Custom	DBK Availed in Rs
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16 (10-13)	17
1	Polyester/Cotton Boys Jeans trousers	MSKU0717830	FDLM/OMA/32307	8004454 dt. 17.10.2013	SDPL/3920	330	12100	7.15	86565	Boyes Jeans Pant	690	14231.25	Muafiah ready made Garment trading	Alkhat AL Fizi		463510
				8004449 dt. 17.10.2013	SDPL/3921		12100	7.15	86565							483510
			31.10.2013	8004450 dt. 17.10.2013	SDPL/3922 ALL DATED 17.10.2013		12100	7.15	86515							483510
						330	**36300**		**259545**		**690**	**14231.25**			**245313.75**	**1430530**
2	Ladies Footwear	TCNU-7997923	OSSPL/DEL/13-14/5891 dated 26.11.2013	8472227 dt. 16.11.2013	KE/8045/2013-14 dated 15.11.2014	800	9600	11.45	110070	Footwear	1390	11467.5	Noor Alhuda Ready made Garments	Noor Alhuda Ready made Garments		479187
	Ladies Synthetic Footwear			8472217 dt. 16.11.2013	KE/8046/2013-14 dated 15.11.2014	590	7080	11.45	81216							353401
						1390	**16680**		**191286**		**1390**	**11467.5**			**179818.5**	**832588**

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3	Readymade Garments Blended Cotton & MMF	MRKU-2465382	DEL/351/DXB dated 02.11.2013	8151334 dt. 25.10.2013	KE/7988/2013-14 dated 25.10.2013	85	20400	4.45	90873	(i) RMG Mens (ii) RMG Ladies (iii) RMG HandKerchief	325	8053.2	Barcode International Trading	Rashid Obaid Said Alshamsi Trading LLC		504460
	Readymade Garments Blended Cotton & MMF			8151335 dt. 25.10.2013	KE/7989/2013-14 dated 25.10.2013	85	20400	4.45	90873							504460
	(1) Readymade Garments Blended Cotton & MMF (2) Hand Kerchief			8151338 dt. 25.10.2013	KE/7990/2013-14 dated 25.10.2013	82	19200	(1)4.45 (2)5.05	86971							492431
	(1) Hand Kerchief (2)Ladies Pant			8151346 dt. 25.10.2013	KE/7991/2013-14 dated 25.10.2013	73	11960	(1)5.05 (2)8.45	73941							442590
						325	**71960**		**251785**		**325**	**8053.2**			**243731.8**	**1943941**
4	Readymade Garments,MMF(SHAWLS)	MSKU-1188222	FDLM/OMA/32203 dated 11.10.2013	7856820 dt. 7.10.2013	YTPL/4040/13-14dated 05.10.2013	119	28560	4.45	127192	SHAWLS	595	17850	AL KHATAL FIZI TRADING EST	AL KHATAL FIZI TRADING EST		11977
				7856846dt. 07.10.2013	YTPL/4041/13-14dated 05.10.2013	119	28560	4.45	127192							11977
				7856845 dt. 07.10.2013	YTPL/4042/13-14 dated 05.10.2013	119	28560	4.45	127192							11977
						357	**85680**		**381576**		**595**	**17850**			**363726**	**35931**
5	Synthetic Footwear	APHU-6855226	OSSPL/DEL/13-145700 dated 15.10.2013	7819856 dt. 04.10.2013	KE/7948/2013-14 dated 04.10.2013	750	9000	10.45	94250	Footwear	1390	12162.5	Noor Alhuda Ready made Garments	Noor Alhuda Ready made Garments		346771
				7819851 dt. 04.10.2013	KE/7949/2013-14 dated 04.10.2013	640	7680	10.45	80356							406373
						1390	**16680**		**174606**		**1390**	**12162.5**			**162443.5**	**753144**
6	Readymade Garments	GESU-591199840	DEL/JEA/303094/2 dated 11.11.2013	7959300 dt. 14.10.2013	DSM/8851/13-14 dated14.10.2013	34	9760	5.95	58122	MMFR MGMMF Kniitted Girls Payami	34	3416	Twin Mountains General Trading LLC	Al Wadi Al Saeed General Trading LLC		371016

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						34	**976 0**		**581 22**		**34**	**341 6**			**54706**	**371016**
7	Synthetic Footwear	PONU-8160675	OSSPL/DEL/13-14/5631 dated 23.09.2013	7509854 dt. 17.09.2013	KE/7855 dated 16.09.2014	200	4800	10.75	51750	Means Footwear, Ladies Footwear	960	12050	Noor Alhuda Ready made Garments	Noor Alhuda Ready made Garments		260403
				7509847 dt. 17.09.2013	KE/7856 dated 16.09.2014	760	9120	9.75	89070							448743
						960	**13920**		**140820**		**960**	**12050**			**128770**	**709146**
8	Readymade Garments MMF	TCNU-9186592	OSSPL/13-14/5308 dated 29.10.2013	8160908 dt. 26.10.2013	GDM/9020/2013-14 dated25.10.2013	75	22500	4.45	100175	RMGTSH,RMGSHW,RMG Mens Vest	693	43931.1	Barcode International Trading	AL KHATAL FIZI TRADING EST		636050
				8160913 dt. 26.10.2013	GDM/9021/2013-14 dated 25.10.2013	125	20652	4.45	91951.4							563310
				8160904 dt. 26.10.2013	GDM/9022/2013-14 dated 25.10.2013	115	49680	2.25	111830							532225
				8160915 dt. 26.10.2013	GDM/9023/2013-14dated25.10.2013	120	34560	3.25	112370							534796
	(i) RMG Tshirt(ii)RMG Shawl(iii)RMG Mens Vest			8161348 dt. 26.10.2013	GDM/9024/2013-14 dated25.10.2013	113	25200	(1)3.25 (2)6.55	112838							548221
				8160821 dt. 26.10.2013	GDM/9025/2013-14 dated25.10.2014	125	15000	6.55	98300							485342
						673	**167592**		**627464.4**		**693**	**43931.1**			**583533.3**	**3299944**
9	Bangles	PMLU9017360	FDLM/OMA/32105 dated 30.09.2013	7543370 dt. 19.09.2013	YTPL/3963/13-14 DATED 18.09.2013	54	21600	4	86480	Bangles	200	5200	Amer Butt Trading LLC	Al khat AL Fizi		0
				7543450 dt. 19.09.2013	YTPL/3964/13-14 DATED 18.09.2013	53	21900	4	87679							0
				7544533 dt. 19.09.2013	YTPL/3965/13-14 DATED 18.09.2013	43	21500	4	86066							0
				7543535 dt. 19.09.2013	YTPL/3963/13-14 DATED 18.09.2013	50	22500	4	90075							0
J						**200**	**87500**		**350300**		**200**	**5200**			**345100**	**0**

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10	RMG(Knitted)	MSKU9095255	OSSPL/13-14/5397 dated 05.12.2013	**8658378 dt. 27.11.2013**	DSM/8895/13-14 dated27/11/2013	82	11652	8.4	97926.8	RMGTSH,RMGSHW,RMG Mens Vest	484	6974	DUPAK GENERAL TRADING	IRFAN ATTAUL HQ &MANZOOR TRADING		632944
				8657393 dt. 27.11.2013	DSM/8896/13-14 dated27/11/2013	80	11520	8.4	96768	RMGTSH,RMGSHW,RMG Mens Vest						625774
				8657396 dt. 27.11.2013	DSM/8897/13-14 dated27/11/2013	80	11520	8.4	96768	RMGTSH,RMGSHW,RMG Mens Vest						625774
				8658384 dt. 27.11.2013	DSM/8898/13-14 dated27/11/2013	82	11796	8.4	96768.4	RMGTSH,RMGSHW,RMG Mens Vest						640766
						324	**46488**		**388231.2**		**484**	**6974**			**381257.2**	**2525258**

11	(i) RMG Tshirt(ii)RMG Mens Jerans	MSKU0385401	fdlm/oma/32124 dated 28.09.2013	767613 dt. 26.09.2013	SDPL/3801/13-14 Dated 25.09.2013	206	11544	8.5010.35	116019.6	JEANS, JACKETS AND SHIRTS	421	18090	AL KHATAL FIZI TRADING EST	Al khat AL Fizi		673665
				767622 dt. 26.09.2013	SDPL/3801/13-15 Dated 25.09.2013											354398
				767602 dt. 26.09.2013	SDPL/3801/13-16 Dated 25.09.2013											659369
						206	**11544**		**116019.6**		**421**	**18090**			**97929.6**	**1687432**
12	(i) POLYSTER GENTS SHIRTS (II) POLYSTER BOYS 2 PCS SHIRTS	MSKU-1573255	FDLM/OMA/32171 dated 09.10.2013	759418 dt. 21.09.2013	SDPL/3790/13-14 DATED 21.09.2013	85	(i)12060 (ii)3240	(i)6.75 (ii)3.95	94253	DRESS, DRESS SHIRTS	695	21538	AL KHATAL FIZI TRADING EST	AL KHATAL FIZI TRADING EST		613587
				759417 dt. 21.09.2013	SDPL/3791/13-14 DATED 21.09.2013	90	16200	5.9	95630							622556
	(i) POLYSTER GENTS SHIRTS (II) POLYSTER BOYS 2 PCS SHIRTS			759418 dt. 21.09.2013	SDPL/3792/13-14 DATED 21.09.2013	85	(i)12060 (ii)3240	(i)6.75 (ii)3.95	94253							613587
	(i) POLYSTER GENTS SHIRTS (II) POLYSTER BOYS 2 PCS SHIRTS			759435 dt. 21.09.2013	SDPL/3793/13-14 DATED 21.09.2013	85	(i)1170 (ii)3600	(i)6.75 (ii)3.95	93245							607021
						345	**51570**		**609420.2**		**695**	**21538**			**587882.2**	**2456751**
						6177	**529994**		**3549175**	**0**	**7877**	**174964**	**0**	**0**	**3374211.85**	**16045681**

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104. The adjudicating authority further noticed that, in three Bills of Entry, the name of the exporter had changed at Dubai. Similar Bills of Entry were stated to have been received through the First Secretary (Trade), Embassy of India, Brussels/Netherlands, London and Moscow, including 11 Bills of Entry, and through the Consul (Trade, Education and Commerce), New York, including four Bills of Entry. According to the findings recorded in the Order-in-Original, comparison of these documents disclosed substantial differences between the values declared before the Indian Customs authorities and those appearing in the corresponding overseas documents. This material was relied upon by the adjudicating authority in support of the allegation that the invoices had been inflated for the purpose of obtaining higher drawback and benefits under the Focus Product Scheme/Focus Market Scheme.

105. The adjudicating authority also examined the material relating to the receipt of export proceeds. Paragraph 24.1 of the Order-in-Original records that, upon scrutiny of the SWIFT messages furnished by the bank, remittances had been received from entities based in Hong Kong, the British Virgin Islands and the UAE, which, according to the investigation, were neither the buyers nor the consignees mentioned in the export documents filed before the Indian Customs authorities. The adjudicating authority also recorded the investigation concerning the ownership and activities of certain overseas entities from which such remittances had been received.

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The relevant portion of paragraph 24.1, including the table referred to therein, is reproduced below:

> *24.1 A perusal of the export data and documents relating to these five exporting firms revealed that the major buyers of the goods are M/ s Al Khat Al Fizi Trading LLC, P.O. Box No. 181639, Dubai, UAE, (49% share controlled by Indian citizen Shri Tarun Kumar Kavara, s/ o Shri Sushil Chandra Kavara, Passport No. G3922605); Al Wadi Al Saeed General Trading LLC, P.O. Box No.39649, Dubai, UAE, (49% share controlled by Indian citizen Shri Tarun Kumar Gupta, s/ o Shri Devender Kumar Gupta, Passport No. H7750379) and Gum Sum Trading LLC, P.O.Box No.56442, Dubai, UAE. However, the scrutiny of SWIFT messages of exporting firms, provided by the Bank in soft form via email, has revealed that remittances have been received from Hong Kong, British Virgin Islands, UAE based third parties, who are neither buyers nor consignees as per export documents filed with the Indian Customs. Investigation revealed that some of the Hong Kong based firms also belonged to Indian nationals. The details of such firms, some of whom were investigated by DRI, on the basis of onwerhsip details, are as under:*

TABLE-W

S.No.	Name & Address of the company	Name of the Director	Amount in USD remitted to Five exporting firms
A	B	C	D
1.	Joy Glory Trading Ltd., 10/F, 48, Gilman Street, Central Hong Kong.	Shri Anurag Sen S/o Shri Lalchand Sen, Mitrya Nagar, Gali No. 4, Urati Dang, Ajmer.	3924744.96
2	Loyal Top International Enterprises Ltd., 10/F, 48, Gilman Street, Central Hong Kong.	Shri Anurag Sen S/o Shri Lalchand Sen, Mitrya Nagar, Gali No. 4, Urati Dang, Ajmer.	29883063.11

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3	Winful Trading Limited, National Court, 10/F Unit-A, 242, Nathan Road, Jordan, Hong Kong.	Durgesh Sharma, 275/3, Near Esi, Luna Agency, Kalabagh, Ajmer, Rajasthan.	9747982.04
4	Able Bright International Ltd., National Court, 10/F Unit-A, 242, Nathan Road, Jordan, Hong Kong.	Durgesh Sharma, 275/3, Near Esi, Luna Agency, Kalabagh, Ajmer, Rajasthan.	9346569.85
5	Star Grace Trading Limited, 10/F, Tack Building, 48, Gilman Street, Central Hong Kong.	Shri Prince Suhalka, H. No. 69, Ganesh Ghati Nagar, Udaipur, Rajasthan	16350536.85
6	Max Rise Trading Limited, 10/F, Tack Building, 48, Gilman Street, Central Hong Kong.	Shri Prince Suhalka, H. No. 69, Ganesh Ghati Nagar, Udaipur, Rajasthan	22131165.62
7	Star Corporation Limited, Flat B-8 6/F Hankow Centre 4A Ashley Road Tsimshatsui KLN, Hong Kong.	Shri Kapil Agarwal, B-70, RIICO Colony, Abu Road, Sirohi, Rajasthan	7733238.24
8	Daimur Gems Jewellery Limited, 3/F Unit B Chun Wah Comm Bldg, 30 Minden Avenue, Tsimshatsui KLN, Hong Kong.	Md. Shakil, 53/4A, Tiljala Road, P.S.-Topsia, 60, Gobinda Khatick, Kolkata- 700046	12144007.71
9	Al Almas FZS Limited, A2 4th Floor, Tsim Sha Mansion, 83-97, Nathan Road, T.S.T. Kowloon, Hong Kong.	Nawab Ahmed, S/o Late Maqbool Ahmed Ansari, Resident of 71/H/5, Dr Sudhir Basu Road, Kolkata – 700023	36929535.25
10	Moral Colour Limited, 10/F, Unit-A, Tack Building, 48 Gilman Street, Central Hong Kong.	Aman Badhwar, Guru Jambeshwar Nagar, Queens Road, Ajmer Road, Jaipur, Rajasthan.	5919136.38
11	Creation Aim Limited, 10/F, Unit-A, Tack Building, 48 Gilman Street, Central Hong Kong.	Ankit Badhwar, Guru Jambeshwar Nagar, Queens Road, Ajmer Road, Jaipur, Rajasthan.	6370736.27
12	Glory Rich(Asia)Limited, 2/F, Western Commercial Building, 31, Des Vouex Road, West Hong Kong.	Not Known	4855860.62
13	Silver Jubilee Trading Limited, Unit A 5th Floor, Cheong Commercial Building, 19-25, Jervois Street Hong Kong.	Rohit Jain	1394936.71
14	Al Johara Fze Limited, Unit B, 3rd Floor, Chun Wah	Not Known	93056068.43

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	Commercial Building No. 30 Minden Avenue T.S.T. Kowloon, Hong Kong.		
15	Al Mignas FZE Limited, Unit B, 3rd Floor, Chun Wah Commercial Building No. 30 Minden Avenue T.S.T. Kowloon, Hong Kong.	Not Known	37683501.73
16	Newtone (Asia) Limited, B-8 6/F Hankow Centre 4A Ashley Road TST Kowloon Hong Kong.	Shri Kapil Agarwal, B-70, RIICO Colony, Abu Road, Sirohi, Rajasthan	1116385.16
17	Western Alliance International ltd, Unit 1001-04, 10/F, China Merchants Steam Navigation Bldg, 152-155, Connaught Rd, Central, Hong Kong.	Not Known	3732565.56
18	Euro Eagle General Trading Fzc, Unit 1001-04, 10/F, China Merchants Steam Navigation Bldg, 152-155, Connaught Rd, Central, Hong Kong.	Not Known	319092.73
19	Gold Pacific, 1/F 266 Temple St Jordan, Kowloon, Hong Kong.	Not Known	1587794.1
20	Cell Pacific Limited, Flt 1805 Royal Commercial Centre, 56 Parkes Street Jordan, Kowloon, Hong Kong.	Not Known	214916.61
21	Oracle General Trading, RMB-3 14/F BLK Bhankow Centre 4A, Ashley Rd Tsimshatsui Kln., Hong Kong.	Not Known	
22	Preet Diamond, Flat 9A Pacific Building 65-67 Kimberley Road Tsimshatsui KLN, Hong Kong.	Not Known	763453.71
23	Pooja Diam (HK), RM 1701 Star Mansion 3-5 Minden Row, Tsimshatsui KLN, Hong Kong.	Not Known	544358.2
24	Sharp Diamonds, RM 1008 Prosperity Millennia Plaza, 663 Kings Road, Quarry Bay , HK, Hong Kong.	Not Known	197311.79
25	Rajh Gems (HK), FLAT 1 7/F 1 Hanoi Rd Tsimshatsui, KLN, Hong Kong.	Not Known	99961.29

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26	Ramallah Jewellery, RM No 505 Wing 138 Luhu Building Lu Road Guangzhou China Postal Code 510090	Not Known	
27	S.K. Gems, 7/F, NO 1 Hanoi Rd Tsimshatsui, KLN, Hong Kong.	Not Known	199839.15
28	Worldwide Forex Limited, NO.91A G F Chung King Mansion No.36-44 Nathan Road Tsim shatsui KLN Hong Kong.	Not Known	5146723.59
29	Leo Fortune Limited, RM 905 Fortune Comm Bldg, 362 Sha shui Rd, Tsuen wan.	Not Known	191034.15
30	Acme Diamond Jewellery General Trading, Flat A2, 4/F 36-50 Lock Road TSIM Shatsui KLN, Hong Kong.	Not Known	199949.18
31	Shiva Exports (H.K.), FLAT/RM 706 Blk 06 7/Floor, Houston Centre, 63 Mody Road, Tst, KLN, Hong Kong.	Not Known	38420.5
32	Ocean Star (China) Limited, ROOM 807 8 F Star Mansion 3-5 Minden Row, Tsimshatsui KLN, Hong Kong.	Not Known	799701.71
33	Micon General Trading Fze, E-48G-16, Hamariya Free Zone Sharjah-UAE	Not Known	38061893.84
34	Superior General Trading FZE, UNIT 1001-04,10/F, China Merchants Steam Navigation Bldg, 152-155, Connaught Rd, Central, Hong Kong.	Jayesh Desai, Director and Kapil Agarwal, Authorised signatory	37454261.81
35	Glow Laks Enterprises Limited, Suite 1111 Houston Centre,63 Mody Road, Tst, KLN, Hong Kong.	Not Known	704869
36	Unique Star Enterprises, Suite 503C Levertech Centre, 69-71 King Yip St, Kwun Tong KLN, Hong Kong.	Not Known	9856358.45
37	Sky Enterprises, Suite 503C Levertech Centre, 69-71 King Yip St, Kwun Tong KLN, Hong Kong.	Not Known	19470930.14

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38	Mega Fame Enterprise Limited, Unit M 1/F Mau Lam Comm Bldg 16-18, Mau Lam St Jordan Kowloon, Hong Kong.	Jai Prakash Jain	5419094.53
39	Alton General Trading FZC, Unit 1001-04, 10/F, China Merchants Steam Navigation Bldg, 152-155, Connaught Rd, Central, Hong Kong.	Not Known	1937909.44
40	Most Grace Trading Limited, Rm A, 10/F Tack Building 48 Gilman Street Central Hong Kong.	Heera Lal Meena, 11, Shivpath, Suraj Nagar(W), Civil Lines, Jaipur, Rajasthan	3320855.66
41	Power Elite International Limited, Rm A, 10/F Tack Builiding 48 Gilman Street Central Hong Kong.	Kailash Chand, 44, Dhobiyon Ka Mohalla, Hasanpura-C, Kamla Nehru Nagar, Jaipur, Rajasthan	2159104.27
42	Trillion Way (HK) Limited, Unit A, 3/F., Cheong Sun Tower,116-118 Wing Lok Street, Sheung Wan, Hong Kong.	Not Known	2212808.18
43	RKM General Trading FZE, Unit 1001-04, 10/F, China Merchants Steam Navigation Bldg, 152-155, Connaught Rd, Central, Hong Kong	Kapil Agarwal, authorised signatory	35556524.64
44	Express Money Transfer Limited, Unit A, 6F, Tst, Konwloon, Hong Kong.	Not Known	5156335.6
45	Honey Linning, RM 3/F Chun Wah Comml Bldg, no 30 Mindin Avenue, Hong Kong.	Not Known	8366297.85
46	Grand Like Limited , Flat B 3/F Chun Wah Comml Bldg, no 30, Nubdeb Avenue, Hong Kong.	Not Known	14880691.20
47	Preferred Limited, Flat B 3/F Chun Wah Comml Bldg, no 30, Nubdeb Avenue, Hong Kong.	Not Known	19278961.01
48	Florence Trading Co, 3/F Unit B Chun Wah Comm Bldg, 30 Minden Ave, TST, Hong Kong.	Not Known	4182882.91
49	Kind Rainbow Ltd., 10/F, Tack Building, 48, Gilman Street, Central Hong	Mahendra Singh Solanki, 36, Shastri Colony, Bijainagar, Ajmer,	
	Kong.	Rajasthan.	
50	Daimur Gems Jewellery LLC Ltd.	Shri Ankit Mansukhlal Sanghvi and Shri Mansukhlal G Sanghvi, 1502, Chaitya Tower, 15th Floor, Shivdas Chapsi Marg, Mazgoan, Mumbai	6246343

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106. The aforesaid material demonstrates why the controversy could not have been disposed of merely by observing that the remittances had been credited into the bank accounts of the exporters or that the export goods had not been re-valued under Section 14 of the Act. The Revenue's case involved an interconnected body of material concerning the identity of the buyers, the identity and nature of third-party remitters, overseas import documents, comparative values, banking records, e-BRCs and the alleged availment of export incentives.

Principles of natural justice and cross-examination:

107. One of the submissions advanced on behalf of the Respondents is that the proceedings stand vitiated on account of violation of the principles of natural justice since an opportunity to cross-examine the witnesses whose statements were relied upon by the Revenue was not afforded. This contention requires examination from different perspectives.

108. First, as noticed above, the material forming the basis of the adjudication was not confined to statements recorded during investigation. The Order-in-Original refers, inter alia, to Bills of Entry and other documents obtained from overseas customs authorities, comparative details of the values declared before Indian Customs and those reflected in the corresponding overseas import documents, SWIFT messages and banking records, as well as enquiries concerning the overseas buyers, consignees and third-party remitting entities. The statements recorded during investigation constitute part of the evidentiary record, but the adjudication cannot, on a reading of

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the Order-in-Original, be characterised as resting exclusively upon oral statements.

109. This aspect assumes significance because the necessity and effect of cross-examination cannot be considered in isolation from the nature of the evidence relied upon by the adjudicating authority. Where the findings are founded substantially upon documentary material independently available on record, the question whether every person whose statement has been recorded was required to be offered for cross-examination cannot be answered in the abstract. The precise role played by the statement in the adjudication, the nature of the documentary material corroborating or contradicting it, and the prejudice, if any, caused by denial of cross-examination would necessarily require consideration.

110. Second, sub-section (2) of Section 138B of the Customs Act provides for an opportunity of cross-examination "so far as may be permitted by the Adjudicating Authority". The statutory scheme, therefore, does not make cross-examination an inflexible or automatic requirement in every adjudication in which a statement recorded during investigation is relied upon.

111. Reliance in this regard has been placed upon the judgment of the Supreme Court in ***Kanungo & Company v. Collector of Customs and Others***[16]. In the facts of that case, the Supreme Court considered a contention based upon the denial of an opportunity to cross-examine persons whose statements had been relied upon and held that the principles of natural justice did not require that the persons concerned

[16] (1973) 2 SCC 438

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be examined and offered for cross-examination.

112. The aforesaid decision, however, has to be understood in the context of the nature of the evidence and the circumstances of that case. It cannot be understood as laying down an absolute proposition that cross-examination can never be necessary in customs adjudication. The requirement has to be considered having regard to the statutory scheme, the nature of the evidence relied upon, the role played by the statements in the findings ultimately recorded and the prejudice, if any, caused to the noticees.

113. The appropriate enquiry, therefore, was whether the findings against the Respondents rested materially and exclusively upon statements whose makers were not made available for cross-examination, or whether the statements constituted only one component of a larger body of documentary and other evidence independently available to the adjudicating authority. The CESTAT was required to undertake this examination before concluding that the adjudication stood vitiated on account of denial of cross-examination.

114. There is yet another perspective from which the contention requires consideration. The Revenue placed before the adjudicating authority the material collected during investigation, including the statements recorded during investigation, the Bills of Entry and other documents obtained from overseas sources, the banking and remittance records and the material concerning the overseas buyers, consignees and third-party remitting entities. The adjudicating authority thereafter recorded findings on the basis of the material so placed before it.

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115. Once such material was brought on record and relied upon in support of the allegations contained in the show cause notices, the Respondents were required to meet the case so set up by the Revenue by placing appropriate material in rebuttal. The question of burden cannot be approached on the footing that the Revenue was required to establish the allegations with the degree of proof applicable to a criminal prosecution. The proceedings in question are adjudicatory proceedings concerning the statutory consequences flowing from the alleged availment of drawback and other export incentives.

116. This does not, however, mean that the Revenue stands absolved of the obligation to establish the statutory ingredients of the provisions invoked by it. The material relied upon by the Revenue must be examined in accordance with law and the Respondents must be afforded a fair opportunity to meet that material. The point is only that, once the Revenue placed substantive documentary and other material on record, the Respondents were required to rebut the case on the merits. The absence of cross-examination, by itself, could not render the remaining documentary material irrelevant or incapable of consideration.

117. The CESTAT was consequently required to examine the nature of the evidence relied upon by the adjudicating authority, the role played by the statements in the ultimate findings, the documentary material independently available on record and the defence, if any, offered by the Respondents. A conclusion on violation of natural justice without undertaking this exercise would not adequately address the controversy.

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Alleged overvaluation and Section 14:

118. The next aspect concerns the allegation of overvaluation. As noticed hereinabove, the Revenue relied upon material obtained from foreign customs authorities, corresponding import documentation and other investigation material to contend that the values declared in the shipping bills were substantially inflated.

119. The CESTAT rejected this aspect principally on the ground that the value of the export goods had not been re-determined in accordance with Section 14 of the Act read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. In doing so, however, the CESTAT proceeded on a premise which does not adequately distinguish between determination of assessable value and examination of an allegation that an exporter deliberately misdeclared the value for the purpose of obtaining an export benefit.

120. Section 14 read with the 2007 Rules undoubtedly governs determination of the value of goods where such determination is required for assessment. That statutory mechanism cannot be bypassed where Customs seeks to substitute or re-determine the assessable value of the goods. The present controversy, however, does not require this Court to determine a different assessable value of the exported goods.

121. The relevant question is whether the material relied upon by the Revenue could legally be considered while examining the allegation that the exporters had deliberately inflated the values declared in the shipping bills with the object of obtaining drawback and other export incentives. The absence of a fresh determination of assessable value

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under Section 14 cannot, by itself, render such evidence incapable of consideration for an altogether different statutory enquiry.

122. The distinction is important. Determination of assessable value under Section 14 is one enquiry. Examination of whether a declaration made by an exporter was deliberately false or inflated for the purpose of obtaining a statutory benefit is another. The latter enquiry may, in an appropriate case, involve consideration of comparative values, including values reflected in corresponding overseas import documentation. Such consideration does not, by itself, amount to undertaking a fresh assessment of the goods.

123. The CESTAT erred in failing to examine whether the material relied upon by the Revenue was legally capable of supporting the allegation of deliberate misdeclaration and, thereafter, whether the findings recorded by the adjudicating authority on the basis of that material could be sustained. The absence of a formal re-determination under Section 14 and the 2007 Rules could not, by itself, be treated as dispositive of the entire allegation.

124. The same consideration bears upon the consequential action for recovery of drawback, confiscation and penalties. If the allegation of deliberate misdeclaration is otherwise established in accordance with law, the fact that the original assessment was not reopened cannot, by itself, constitute an absolute bar to examining the statutory consequences of such misdeclaration in proceedings specifically initiated in respect of the export benefits allegedly obtained on that basis.

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Effect of the civil judgment and decree concerning the BRCs:

125. The CESTAT has also relied upon the judgment and decree dated 13.03.2020 passed in the civil proceedings between M/s G.D. Manglam Exim Pvt. Ltd. and Punjab National Bank, whereby the cancellation of the BRCs by PNB was declared to be null and void. The effect of the said decree, therefore, requires to be examined in its proper legal perspective.

126. A declaratory judgment and decree passed by a Civil Court in a civil suit operates, in the ordinary course, in *personam* and not in *rem*. Its binding effect is upon the parties to the proceedings and those claiming through or under them, subject to the principles governing the binding effect of judgments. A declaration granted in proceedings between two parties cannot, merely by virtue of its existence, operate as an adjudication of the rights and liabilities of a person who was neither a party to the proceedings nor afforded an opportunity of contesting the issues which arose therein.

127. It is undisputed that the Customs Department was not impleaded as a defendant in Civil Suit No. 1114/2018, instituted by M/s G.D. Manglam Exim Pvt. Ltd. on 18.08.2018, in which a declaration was sought, *inter alia*, that the cancellation of the BRCs by PNB was null and void and of no legal effect. The said proceedings were instituted against PNB and concerned the validity of PNB's action in cancelling the BRCs.

128. The Customs proceedings, on the other hand, concerned an independent statutory question, namely, whether the exporters were entitled to retain drawback and other export benefits under the

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Customs Act. The Customs authorities were not parties to the civil proceedings and the statutory questions arising under the Customs Act were not the subject matter of adjudication in the said suit.

129. The CESTAT was, therefore, required to examine the civil decree in its proper legal context and determine the extent to which it could affect the independent proceedings initiated by the Customs authorities under the Act. A declaratory decree does not ordinarily operate as a judgment *in rem* binding upon the world at large. The Supreme Court, in ***Razia Begum v. Sahebzadi Anwar Begum***[17], explained that a declaration granted in a civil suit operates *in personam*, binding the parties and, where the law so provides, persons claiming through them. This principle was reiterated in ***Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties Pvt. Ltd.***[18], with reference to Sections 34 and 35 of the Specific Relief Act, 1963. In the present case, the Customs Department was not a party to the civil proceedings and was not shown to be claiming through either of the parties thereto. Consequently, the decree declaring the cancellation of the BRCs to be null and void could not, merely by its existence, be treated as conclusively determining the Customs Department's independent statutory rights or foreclosing examination of the material relied upon in the adjudication proceedings. The CESTAT erred in failing to consider the decree alongside that material and determine its legal effect on the demands in question, rather than treating it as having, by itself, extinguished the foundation of the Revenue's case.

[17] AIR 1958 SC 886
[18] (2021) 4 SCC 786

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Section 28AAA:

130. The next question concerns Section 28AAA of the Act. The CESTAT correctly observed that the provision contains specific statutory requirements and that a mere allegation of fraud, without satisfaction of those requirements, would not be sufficient. However, the CESTAT appears to have proceeded on the basis that because the scrips had not been independently invalidated and the subsequent users of the scrips had not been proceeded against, the proceedings against the exporters could not be sustained.

131. The scope of Section 28AAA required examination in the light of the specific allegations in the show cause notices and the material relied upon by the Revenue. If the duty credit instruments had been obtained by means of collusion, wilful misstatement or suppression of facts, as alleged, the statutory consequences under Section 28AAA could not be rejected merely by observing that the subsequent users of the instruments had not been proceeded against.

132. The essential question was whether the ingredients of Section 28AAA stood established against the concerned noticees on the basis of the material on record. The liability under the provision could not be made dependent upon a separate proceeding against every subsequent user of the instruments unless the statute itself made such proceeding a condition precedent.

133. The CESTAT was, therefore, required to examine the statutory ingredients of Section 28AAA in the context of the findings and evidence available on record, rather than treating the absence of proceedings against the subsequent users as determinative of the

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proceedings against the exporters.

134. The questions considered herein consequently constitute substantial questions of law arising from the Impugned Final Order and warrant interference under Section 130 of the Act. The appropriate course, having regard to the nature of the errors identified, is to set aside the impugned order passed by the CESTAT.

Penalty imposed upon Shri Nitin Gupta: Compliance with Principles of Natural Justice:

135. A separate consideration arises in respect of the penalty imposed upon Shri Nitin Gupta, Director of M/s Oak Shipping Services Pvt. Ltd. As noticed hereinabove, paragraph 43.13 of the Order-in-Original records the allegation that he had assisted Shri Sahdev Gupta in obtaining benefits under the FMS/SFMS by arranging or issuing allegedly false landing certificates. However, the merits of this allegation must be considered separately from the question whether the statutory requirements governing the imposition of a penalty upon Shri Nitin Gupta were complied with.

136. In paragraph 24 of the impugned Final Order, the CESTAT specifically recorded that the penalty imposed upon Shri Nitin Gupta had been proceeded with without notice, without service of the relevant documents and without affording him an opportunity of being heard. This finding raises a distinct question of compliance with Section 124 of the Act, which prescribes the procedural safeguards that must be observed before a penalty can be imposed under Chapter XIV of the Act.

137. Section 124 of the Act mandates that no order imposing a

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penalty upon a person under the said Chapter shall be made unless the person concerned is given notice in writing of the grounds on which the penalty is proposed, an opportunity to make a representation against those grounds and a reasonable opportunity of being heard. These requirements are not mere procedural formalities. They are intended to ensure that the person against whom penal action is proposed is informed of the case he is required to meet and is afforded a meaningful opportunity to answer it.

138. In ***Kothari Filaments & Anr. v. Commissioner of Customs (Port), Kolkata & Ors***.[19], the Supreme Court emphasised that a person proceeded against for misdeclaration is entitled to know the grounds on which the penalty is sought to be imposed and to a proper hearing, which includes access to the documents relied upon by the adjudicating authority. The Court held that adverse findings cannot be founded upon material that has neither been supplied to the affected person nor made available for inspection, thereby depriving that person of an effective opportunity to respond.

139. In view of the statutory mandate under Section 124 of the Act and the principles laid down in ***Kothari Filaments*** (supra), the penalty imposed upon Shri Nitin Gupta cannot be restored unless the requisite notice and opportunity contemplated by law were afforded to him. The allegations recorded in paragraph 43.13 of the Order-in-Original, including the alleged arrangement of false landing certificates, cannot by themselves cure a failure to comply with these mandatory requirements. Accordingly, notwithstanding the conclusions reached in respect of the other noticees, the penalty imposed upon Shri Nitin

[19] (2009) 2 SCC 192

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Gupta must remain set aside, consistently with the finding recorded by the CESTAT on this distinct procedural ground.

CONCLUSION:

140. Accordingly, the present Appeals are allowed. The Final Order Nos. 59488-59509/2024 dated 25.11.2024 passed by the CESTAT are set aside, except to the extent that the penalty imposed upon Shri Nitin Gupta of M/s Oak Shipping Services Pvt. Ltd. was set aside on the ground of non-compliance with the requirements of notice, supply of documents and opportunity of hearing. The Order-in-Original dated 30.05.2023 passed by the Commissioner of Customs (Export) is restored in all other respects, but the penalty imposed upon Shri Nitin Gupta shall remain set aside.

141. The present Appeal, along with the pending applications, stands disposed of.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

NOVEMBER 04, 2026
jai/pal