



सीमा शुल्क आयुक्त का कार्यालय  
1व सीमा शुल्क गृह : पणंबूर : मंगलूर - १०

OFFICE OF THE COMMISSIONER OF CUSTOMS  
NEW CUSTOM HOUSE: PANAMBUR: MANGALORE-10

सी.सं./C.No.VIII/10/14/2010 अधिर्णिया/ Adjn  
क्रम सं./Sl.No. 09/2010 (ADC)

Passed on: 23.9.2010  
Issued on : 23.9.2010

मूल आदेश  
ORDER-IN-ORIGINAL

Passed by Shri Ajazuddin, Additional Commissioner of  
Customs, Mangalore Customs, Mangalore.

उद्देशिका  
P R E A M B L E

१. यह प्रति उस व्यक्ति के व्यक्तिगत उपयोग के लिए बेशुल्क दी जाती है, जिसके लिए जारी की जाती है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. कोई भी व्यक्ति जो इस आदेश से व्यथित है, वे इस आदेश के विरुद्ध, सीमा शुल्क और केंद्रीय उत्पाद शुल्क (अपील्स) नियम 1982 के साथ संलग्न प्रपत्र फार्म सी.ए.-1/सी.ए.-2 (द्विप्रति में) में आयुक्त (अपील्स), सीमा शुल्क, बंगलूर को अपील कर सकते हैं। इस आदेश के पावती के दो महीनों के अंदर अपील दायर कराा चाहिए। इस अपील में यायालय शुल्क स्टॉप रु. 1.62/- (रुपये एक और पैसे बासठ मात्र) लगाा चाहिए। उसके साथ मूल आदेश की दो प्रतियाँ, जिसमें से एक प्रमाणित प्रति होा चाहिए और जिसपर यायालय शुल्क नियम, 1870 के खंड मुद्दे सं. 6 में विविदिष्ट के अनुसार 2 रुपये (दो रुपये मात्र) की यायालय शुल्क स्टॉप होा चाहिए।

2. Any person deeming himself aggrieved by this order may appeal against the order in Form C.A-1/C.A-2 (in duplicate) appended to the Customs and Central Excise (Appeals) Rules,1982 to the Commissioner of Customs (Appeals), 16/1, S.P.Complex, 5<sup>th</sup> Floor, Bangalore.560027. The appeal must be filed within 60 days from the date of communication of this order. An appeal should bear a Court Fee Stamp of Rs.1.62 (Rupee One and sixty two paise only). It should be accompanied by two copies of order in original, one copy of which shall be a certified copy and must bear a court fee stamp of Rs.2/- (Rupees two only) as prescribed under Schedule I, Item 6 of the Court Fees Act 1870.

3. इस आदेश के विरुद्ध अगर कोई व्यक्ति अपील कराा चाहते हैं तो वे अपील करो के पहले लगाये गये दंड तथा माँगे गये शुल्क को भुगताा करें और अपील के साथ ऐसे भुगताा के साक्ष्य प्रस्तुत करें, त्हीं तो सीमा शुल्क अधिनियम, 1962 की धारा 129 ई के उल्लंघा के कारण अपील अस्वीकृत किया जा सकता है।

3. Any person desirous of appealing against this order shall pending the appeal, deposit the duty demanded or penalty levied thereon and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance of the provisions of Sec 129 E of the Customs Act 1962.

**BRIEF FACTS OF THE CASE:**

M/s. Manipal Enterprises Pvt Limited, Udayavani Building, Press Corner, Manipal- 576 104 (hereinafter referred to as the "exporter" or "MEP") are engaged in the activities of export of iron ore fines through New Mangalore port. Their Import-Export Code (IEC) is 0708006400. Specific intelligence was received in the Directorate of Revenue Intelligence (hereinafter referred to as "DRI") to the effect that MEP have evaded Custom duty payable on their iron ore exports effected through New Mangalore Port during the period from 13<sup>th</sup> June 2008 to 7<sup>th</sup> December 2008 by resorting to misdeclaration of actual value and quantity shipped. Accordingly, investigation was initiated into the exports of iron ore made by MEP through New Mangalore port during the period from 13<sup>th</sup> June 2008 to 7<sup>th</sup> December 2008.

2 DRI, Mangalore issued summons dated 22.11.2009 to the exporter for production of relevant documents pertaining to the subject exports. Shri K. M Shetty, Vice President of MEP appeared to DRI Office at Mangalore and furnished export documents related to one shipment of iron ore fines made by their company during the period from 13<sup>th</sup> June 2008 to 7<sup>th</sup> December 2008. On scrutiny of the aforesaid documents, it was apparently noticed that the exporter had filed to Customs requisite documents like Shipping Bills (S/B), Invoices, Packing Lists, Supply/Purchase Contracts etc pertaining to the exports of iron ore made. On verification of the various documents listed above, it was apparently noticed that the base supply price of iron ore fines exported was fixed per Dry Metric Tonne (DMT) on FOB (Free On Board) basis at New Mangalore Port (load port). Further, the price adjustment in accordance with the existence of actual Ferrous (Fe) content and other elements like phosphorous, sulphur, silica, alumina etc., in the iron ore exported was also agreed upon between the exporter and the buyers. Further, it was apparently noticed from the concerned S/B and relevant invoice filed at the time of shipment, the exporter had declared to Customs, the maximum permissible moisture allowed in the supply/purchase contracts and the corresponding Dry Metric Tonne (DMT) quantity of iron ore fines exported. It is also apparently noticed that at the time of shipment, the FOB value of the export goods was declared to Customs based on the unit supply price per DMT quantity, as agreed upon in the supply/purchase contracts. It is also apparently noticed that the export duty was paid on the basis of this FOB value declared on DMT quantity of goods arrived at by deducting maximum moisture content allowed in the supply/purchase contracts from the declared wet metric tonne (WMT) quantity. Furthermore, it is apparently noticed that the unit price of iron ore declared in the Customs Invoice and that indicated in final/commercial invoice issued for realization of export remittance from their buyers differed due to the reason of price adjustment made in the final /commercial invoice in accordance with the actual specification of the iron ore exported.

3. Investigation further revealed that the exporter had arranged assayers/surveyors at load port for carrying out sampling and analysis of iron ore fines exported. From the survey reports given by these assayers/surveyors subsequent to shipment, it is noticed that the DMT quantity of iron ore shipped was actually arrived at by deducting the actual moisture content present in the iron ore, which was determined by methodical sampling and analysis. It is noticed that the actual moisture content so determined by the assayers/surveyors after testing the samples of goods shipped is lesser than the moisture content declared to Customs at the time of shipment. It is also noticed that the exporter had raised parallel invoice other than the one furnished to Customs on their overseas buyer for receipt of payment of export sale value that is applicable on the actual DMT quantity reported by the assayers/surveyors. In other

words, the actual export price/ value was arrived at in the final invoices on the actual DMT quantity of iron ore shipped determined by deducting the actual moisture content from the West Metric Ton (WMT) quantity. Further, the actual export price/value (FOB) of iron ore fines exported was also arrived at by the exporter in the final/commercial invoices after considering and making necessary price adjustments towards presence of actual Fe content and existence of other elements as impurities beyond permissible limits. The overseas buyer has accordingly remitted the amount (actual price of the goods) raised in these commercial invoices. In other words, it is apparent that the exporter has realized the actual price of the goods exported as indicated in the final/commercial invoices raised subsequent to each shipment. The exporter has actually realized higher amount (being actual value of the goods exported) than that declared to Customs at the time of shipment for the purpose of assessment to duty.

4. The exporter has misdeclared to Customs about the actual DMT quantity of iron ore exported and the actual export value of the said goods thereof in order to evade payment of appropriate customs duty. Further, it appeared that for the purpose of evasion of export duty, the exporter has suppressed to Customs about the existence of concerned documents like certificates of sampling and analysis issued by the surveyors/assayers at the load port/disport, invoices (provisional/final) raised on the overseas buyer after each shipment for realization of export sale proceeds and the bank advices/documents which indicated actual amount realized for the goods exported.

5. The exporter filed a S/B No. 1031276 dated 28-07-2008 at Mangalore Customs for the export of 10200 WMT of iron ore fines of Fe 63.5% per vessel MV SPAR LYRA through M/s Steve Exports, Mylapore, Chennai on a third party export basis to the buyer M/s. Adani Global Pte Ltd, Singapore for delivery in China. The export was to be made under Contract No.AGPTE/XXX/PUR/08-09/IRON ORE/02/26 dated 22.07.2008. In this regard, MEP through M/s. Steve Exports had apparently filed an Invoice No. 001/08-09 dated 25-07-2008 initially wherein dry weight quantity of the export goods (iron ore fines) was shown as 9200 DMT by deducting 8% moisture (800 MT) from the gross wet quantity of the said goods declared to be 10,000 WMT (Wet Metric Tonne). The FOB value shown in the said Invoice was US \$ (US Dollars) 13,01,800.00 for 9200 DMT @ US \$ 141.50 per DMT. However, as per the draft survey report dated 04.08.2008 of M/s. Delta Marine Services, Mangalore, the quantity of iron fines loaded and received on board the vessel MV SPAR LYRA was 10200 WMT and a Bill of Lading No. 03 dated 04.08.2008 was issued. Accordingly, the quantity and FOB value of the goods exported was amended in the EDI system. The shipping bill No. 1031276 dated 28-07-2008 was generated for a quantity of 9384 DMT by deducting 8% moisture (816 MT) from the gross wet quantity of the said goods exported to be 10,200 WMT (Wet Metric Tonne) and FOB value of the goods declared to be USD 1327836.00 @ US \$ 141.50 per DMT. The said export goods of iron ore fines were assessed to duty accordingly by Customs and consequently, MEP paid an export duty of Rs.73,95,469/-.

6. The aforesaid shipment was subsequently completed on 04-08-2008 per vessel MV SPAR LYRA. It is noticed that on completion of the shipment, a Certificate of Quality No.IN/BGL/MIN/20080120/1 dated 07.08.2008 and Certificate of Weight No. IN/BGL/MIN/20080120/1 dated 07-08-2008 were apparently issued by the appointed assayers M/s. SGS India Pvt Limited wherein the total weight of the goods shipped was reported to be 10,200 WMT and the moisture content in the said goods was reported to be 4.55%. Based on the aforesaid certificates issued by the assayers, the exporter MEP

raised a final invoice No. 001/08-09 dated 08-08-2008 on the buyer M/s. Adani Global Pte Limited, Singapore for payment of an amount of US \$ 13,77,629.85 towards shipment of 9735.90 DMT of iron ore fines arrived at by deducting actual moisture of 4.55% than declared moisture of 8% from quantity shipped. The exporter on 12.8.2008 realized the final amount.

7. However, the fact of receipt of this higher payment of US \$ 13,77,629.85 against the declared amount of US \$ 1327836.00 was not brought to the notice of Customs for reassessment to duty resulting in short levy. The said documents i.e., final Invoice No. 001/08-09 dated 08-08-2008, Certificate of Quality and Certificate of weight bearing no. IN/BGL/MIN/20080120/1 dated 07.08.2008 indicating actual export value of the goods, actual moisture content (i.e 4.55% as against declared 8%) issued by the appointed assayers M/s. SGS India Limited at load port were suppressed from Customs with an intent to evade duty.

8. During the course of investigation, the statements of following persons were recorded under Section 108 of the Customs Act, 1962 (hereinafter referred as the said Act.)

- a) Shri K.M Shetty, Vice President, MEP on 15.12.2009.
- b) Shri Gangadhar V Shetty, M/s. Sri Ganesh Shipping Agency, Custom House Agent, Mangalore on 27.11.2009.

9. Shri K.M Shetty, Vice President, MEP in his statement dated 15.12.2009, inter alia, stated as under:

- that as Vice President in his company, he is looking after export procedures and overall management of the company;
- that their company have effected one shipment of iron ore during July 2008 through New Mangalore no shipments through other ports;
- that their company procured iron ore from M/s. Suraj Inc, Legacy Commercial Complex, Baindoorwel, Mangalore who is the trader in the iron ore business;
- that they supplied iron ore at New Mangalore port in the plot allotted to M/s. Steve Exports, Chennai;
- that their company entered into an agreement with M/s. Adani Global Pvt Ltd, Singapore indicating sale price, delivery period, specifications of the cargo, shipment terms, loading port etc;
- that before berthing of the vessel, various shipping documents like Customs Invoice, packing list, contract are prepared in their company and forwarded to C&F Agent M/s. Sri Ganesh Shipping Agency, Mangalore;
- that based on these documents, M/s. Sri Ganesh Shipping Agency prepared the Annexure to file the shipping bill with Customs(EDI) at Panambur, Mangalore and shipping bill was generated in EDI system and export duty was remitted based on the assessment by Customs as intimated by their C&F Agent and shipment was done to M/s. Adani Global Pte Limited;
- that at the time of shipment samples were drawn by surveyors(Assayers) appointed by them in order to ascertain the quality and quantity of the iron ore fines;
- that based on the results of survey and sampling analysis done by their appointed surveyors, commercial invoice was raised on the buyer by them which would indicate the sale price of the goods;

- that they opened letter of credit on the basis of invoice raised and the amount was realised through their bank (Corporation Bank, Mangalore);
- that this invoice is different from the Customs Invoice initially furnished to Customs as the said invoice was prepared before survey and sampling analysis of the cargo;
- that they declared the quantity and quality of goods based on their contract entered with their buyer and declared the contractual allowable maximum moisture content in the Custom Invoice in order to arrive dry metric ton (DMT) of the cargo and that the invoice value was arrived based on this DMT quantity and sale price as per the contract;
- that as they prepared Commercial Invoice based on the load port analysis certificate issued by their authorised surveyors, the final quantity and quality differed from the particulars declared in the Customs invoice;
- that this Commercial invoice showing the transaction value was not furnished to the customs as there was no procedure for such submission nor Customs demanded such Commercial Invoice;
- that their company was aware that duty was levied on the basis of value of the goods with effect from 13<sup>th</sup> June 2008 and they had paid Customs duty based on the value arrived at based on the initial value of the cargo;
- that since there was no request from the Customs side they had not furnished the final value of the iron ore exported and on the basis of DRI request, they furnished now the said invoice showing the actual value of the goods exported and other related particulars in respect of shipment per vessel MV SPAR LYRA made during July 2008;
- that on the query by not furnishing the Commercial invoice to Customs along with the corresponding Survey reports and payment particulars, have they not suppressed the facts of existence of these documents and resorted to wilful misdeclaration of value of the goods exported for the purpose of evading duty, he stated that the value of the cargo was declared based on the contract and Customs have not demanded the final value of the cargo after shipment and had the Customs demanded the Commercial Invoice showing the actual transaction value of the goods they would have complied with the requirement at that time itself;
- that they have not suppressed or misdeclared the value intentionally for the purpose of evading Customs duty.

10                      Shri Gangadhar V Shetty, Authorised Signatory(F-Card holder), M/s. Sri Ganesh Shipping Agency, Custom House Agent [CHA], Mangalore in his statement dated 27.11.2009, inter alia, stated that:

- Being a CHA, their company is involved in the activities of Customs documentation work and rendering custom house agents services to clients viz M/s. Gem Laboratories Pvt Ltd, Bangalore; M/s. Manipal Enterprises Limited, Manipal; M/s. Raj Mahal Silks, Bangalore and M/s. Hospet Mines and Minerals, Hospet;
- he look after Customs documentation work of their company related to exports of iron ore through Mangalore port effected by their clients like filing of documents for generation of shipping bills/checklist etc;
- On receipt of the pre shipment documents like invoice, packing list, SDF, contract as the case may be from the above mentioned exporters their company prepare the relevant annexure for export to submit the same to EDI center of Custom House, Panambur, Mangalore for filing the shipping bill with Customs;

- In EDI, checklist for export is generated and given to him for verification of its details including value, duty, description of the cargo etc;
- On verification of the checklist and endorsement made by them the same was submitted back to EDI for generating of the shipping bill number and thereafter, the officers of Customs assess the shipping bill and arrive at the duty amount payable by the exporter and our company remits the duty amount through TR-6 challan to the Commissioner of Customs account as the DD was already sent by the above exporters alongwith the connected documents;
- After payment of duty, EDI system forward the shipping bill to the Superintendent of Docks(Shed AO) for goods registration/examination and the hard copy of the check list with the relevant export documents also handed over to Docks for examination of the goods and that the goods are examined by the Inspectors of Docks and let export order is given by the Superintendent of Docks based on the export documents and examination report given by the examination officer;
- When the vessel is arrived, cargo would be loaded onto the vessel and after completion of loading they obtain necessary Mate receipt from the Master of the vessel and a draft survey report also prepared by the authorized surveyors appointed by the exporters under the supervision of the officer of Customs;
- Afterwards, final print out of the relevant shipping bill is taken from the EDI system with necessary endorsement by the officers of Customs/Master of the vessel and given to them and the documents like Invoice, packing list, bill of lading, SDF, draft survey report, exchange control copy of the shipping bill were handed over to the concerned exporter;
- Copy of draft survey report endorsed by the Inspector of Customs, Docks indicating the actual quantity of cargo loaded in terms of wet metric tonne is given to Customs alongwith Customs copy of the relevant shipping bill;
- The iron ore fines exported are assessed to duty by Customs in terms of the quantity, quality and value declared in the pre-shipment invoice and contract furnished by the exporters;
- The exporters declared the quantity, quality and value of the export goods in the pre-shipment invoice on provisional basis since the actual quantity and value are known only after survey and analyzing of the cargo done by their authorized assayers while loading/discharging of the cargo;
- The department assesses the iron ore fines based on the declared value in the pre-shipment invoice, which was arrived by the exporter after deducting the maximum moisture content of the iron ore mentioned in the relevant contract
- The export duty is paid accordingly by the exporters based on the assessment done by Customs;
- The final quantity and value of the goods exported would be arrived based on the load port/disport survey (as the case may be) and analysis report of the Surveyors appointed by the exporters and buyers as agreed mutually in their contract;
- The final quantity of the cargo exported and its value usually vary to the declaration made with Customs during assessment and the value of the goods applicable to duty for the purpose of assessment is dry metric ton (DMT) value of iron ore and that this DMT quantity was arrived initially by deducting the maximum declared moisture content from the declared wet metric tonne (WMT) quantity of iron ore;
- However, the actual moisture will generally be lesser or more to the declared maximum moisture content and therefore DMT quantity of goods shipped will be either more or lesser than the declared quantity and value;

- The sales proceeds was received by the exporters based on the actual DMT quantity supplied and hence, the actual sale proceeds received will be either more or lesser than the value of the goods declared to Customs;
- Further, the Fe content and the presence of other elements (impurities) like sulphur, silica etc also have an impact of the final value of the goods;
- the exporters never furnished to them or to the Customs the final DMT quantity loaded onto the vessel, the actual value of the export goods and also the survey analysis reports showing the actual weight of the cargo;
- Now, they understand that the exporters were raised final invoices on their buyers for receipt of actual export sales proceeds other than the pre-shipment invoices furnished to them/Customs;
- To the query when he knew that final quantity and actual value of the goods shipped is in variance to the declared value and quantity in the preshipment invoice, being a CHA conversant with the assessment procedure, why he has not made efforts to collect the same from the exporters, he stated that their company was never came to know the actual value of the goods exported as the final invoice showing the actual sale value of the goods were not given by the exporter at any time;
- Further, the survey analysis report of the cargo exported also not furnished to them by the exporter at any time and they were directly dealing with their authorized surveyors;
- Further, the exporter has furnished the relevant contract to Customs, Mangalore and no query was raised by the Customs in this regard;
- As per the records the exporter are mandatory to submit the final invoices and other related documents with the Customs and since they have failed to comply this, he stated that the exporter M/s. Manipal Enterprises Limited had suppressed the actual facts from the department.

11. During the course of investigation, MEP made payments of Rs. 3,25,400/- vide TR-6 challan No. 52 dated 19.01.2010 towards their duty and interest liability.

12. DRI sought details of payments received towards the shipment under investigation from the Corporation Bank, Mangalore and they have furnished the concerned documents vide their letter dated 02.01.2010.

13. It appeared that in the one shipment effected per vessel MV SPAR LYRA , the exporter had raised more than one invoice showing different quantity and value i.e one indicating lesser DMT quantity and lesser value for Customs (Customs invoice) purpose and the other invoice (commercial invoice showing higher DMT quantity and value for receipt of actual payments. The second invoice indicating the higher value i.e. the actual transaction value of the goods exported were apparently not furnished to Customs at anytime. On comparison of the actual remittance amounts received in respect of the shipment (as listed in the Annexure to this notice) by the exporter from their overseas buyers with the corresponding invoice values declared in the relevant shipping bill filed with Customs during shipment, it is noticed that for the purpose of assessment to duty, MEP had declared to Customs a total invoice value of US \$ US \$ 1327836.00 (Rs. 5,66,98,597 /-) as against the corresponding actual amount of US \$ 13,77,629.85 (Rs.5,88,24,797 /-). Accordingly, it appeared that the exporter has undervalued the subject goods to the extent of Rs.21,26,197/- in order to evade payment of Customs duty, by resorting to willful misdeclaration to Customs about the actual DMT quantity of the goods shipped and also its actual value and by suppression

of relevant material facts to Customs about the existence of parallel invoices. It appeared that on account of this undervaluation of the exported goods to the extent of Rs.21,26,197/-, export duty amounting to Rs.2,77,330/- has been short levied.

14. It appeared that in respect of the shipment of iron ore fines the actual value of the goods received by the exporter from their overseas buyers would constitute the transaction value under Rule 2(1)(b) of the Customs Valuation Rules, 2007 read with sub-section (1) of section 14 of the said Act. Accordingly, the goods exported in respect of the subject two shipments do not correspond in respect of quantity, value and in other material particulars with the entry made under the said Act and are in excess of those included in the entry made under the said Act resulting in improper exportation and thereby, rendering the subject goods liable to confiscation under Section 113(h) and 113(i) of the said Act, 1962.

15. Thus, it appeared that the said duty amount of Rs.2,77,330 / is payable /recoverable from the said exporter in terms of proviso to Section 28(1) of the said Act. Further it appears that the exporter is also liable to pay the applicable interest of , Rs 53,042/- under Section 28AB of the said Act on the short levied duty amount of Rs.2,77,330/- It further appeared that by their acts of omission and commission the exporters have rendered themselves liable to penalty under section 114A and/or Section 114(ii) of the said Act. Further, the exporter has knowingly given false declarations in respect of quantity and value of the subject goods in the concerned export documents furnished to Customs and hence, they appeared to be liable to penalty under Section 114AA of the said Act.

16. Therefore, a show cause notice NO DRI//MRU/INVN/MEP/76/2009 dtd 03.6.2010 was issued to M/s. Manipal Enterprises Pvt Udayavani Building, Press Corner, Manipal- 576 104 directing them to show cause to the Additional Commissioner of Customs, New Custom House, Panambur, Mangalore-575010 within 30 days of receipt of this notice as to why:

- i) the total declared FOB value of the goods i.e., 9384 DMT iron ore fines exported vide shipping bill No. 1031276 dated 28.7.2008 amounting to US \$ 1327836.00/Rs. 5,66,98,597/- (Rupees Five Crores Sixty Six Lakhs Ninety Eight Thousand Five Hundred and Ninety Seven only) listed in Annexure-A to this notice should not be redetermined at 9735.90 DMT iron ore fines amounting to US \$ 1377629.85/Rs. 5,88,24,795/- (Rupees Five Crores Eighty Eight Lakhs Twenty Four Thousands Seven Hundred and Ninety Five only) by adopting the actual quantity of 9735.90 DMT exported and export value of the said goods amounting to US \$ 1377629.85 (Rs. 5,88,24,795/-) as the true and actual transaction value in terms of Rule 3(1) of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007 read with Rule 2(1)(b) ibid and sub-section (1) of section 14 of the said Act;
- ii) the aforesaid 9735.90 DMT iron ore fines detailed in Annexure-A to this notice should not be held/rendered liable to confiscation under Section 113(h) and 113(i) of Customs Act, 1962 for being improperly exported as discussed hitherto;
- iii) an amount of Rs. 2,77,330/- (Rupees Two lakhs seventy seven thousand three hundred and thirty only) in total (as detailed in Annexure-A to this notice) being the export duty short paid owing to re determination of value of the subject exported goods referred above as detailed in Annexure to this notice should not be demanded and recovered from them in terms of proviso to Section 28(1) of the said Act
- iv) an amount of Rs. 53,042/- (Rupees Fifty three thousand and forty two only) as detailed in Annexure-B to this notice, being the interest payable at applicable rates

- on the duty short paid referred above at Sl. No.(iii) above should not be demanded from them under Section 28AB of the said Act ;
- v) penalty under Section 114A and/or Section 114(ii) of the said Act should not be imposed on them for their acts of omission and commission by which the exported goods referred above at Sl. No.(i) and detailed in Annexure-A to this notice are rendered liable to confiscation under Section 113(h) and 113(i) of the said Act;
  - vi) penalty under Section 114AA of the said Act should not be imposed on them for furnishing false declarations in the export documents filed in respect of the subject goods referred above at Sl. No.(i); and
  - vii) an amount of Rs. 3,25,400/- (Rupees three lakhs twenty five thousand and four hundred only) paid vide TR-6 challan No. 52/19.1.2010& by them during investigation should not be appropriated and adjusted against their duty and interest liability referred above.

#### **DEFENCE:**

17. Vide letter dated 24.6.2010 the exporter sought one month extension of time to reply to the show cause notice. The same was granted. Vide letter dated 31.8.2010 the exporter informed that they have remitted Rs.3,25,400/- vide challan No.52/19.01.2010 being the short paid duty and interest. They submitted that they want to pay the duty payable to the Government as per rules and do not want any further hearing in the matter. They have requested to close the matter and waive the penalty since they have paid the dues of the Government with interest.

#### **FINDINGS**

18. I have gone through the records of the case, and proceed to decide the case.

19. M/s Manipal Enterprises Pvt Ltd, Manipal filed Shipping Bill No. 1031276/28.7.2008 or export of Iron Ore Fines from New Mangalore Port. The quantity declared was 9384 DMT and FOB value declared was US\$ 1327836 (Rs. 5,66,98,597.20). However, on the basis of intelligence, that the exporter misdeclared quantity as well as value of the consignment to evade payment of export duty, the case was investigated. During investigation, it has found that the actual quantity exported was 9735.90 DMT and FOB value whereof was US\$ 13,77,629.85 (Rs. 5,88,24,795 /-).

20. Misdeclaration of quantity and value of export consignment is established by the fact of the case. The exporter has also accepted the findings of the investigations and has paid the differential duty and interest.

21. The quantity and FOB value of the export consignment is liable to be redetermined as 9735.90 DMT and USD 1377629.89 (Rs.5,88,24,794/-) in terms of of Rule 3(1) of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007 read with Rule 2(1)(b) ibid and sub-section (1) of Section 14 of the said Act.

22. The export consignment is, consequently, liable to confiscation under Section 113(h) and 113(i) of the said Act. However, the goods are not available for confiscation.

23. The exporter is liable to pay differential export duty amounting to Rs.2,77,330/- (Rupees Two Lakh Seventy Seven Thousand Three Hundred and Thirty Only), under the Proviso to Section 28(1) of the said Act along with interest of Rs.53,042/- under Section 28 AB of the said Act.

24. From the facts of the case, it is apparent that the exporter suppressed the fact of the test report showing actual moisture content and also the final commercial invoice showing actual quantity and FOB value of the consignment. The said test was got done by the exporter through assayers M/s SGS India Private Limited, Mumbai at the behest of their buyers. The Customs had no knowledge of such test report. At the relevant time, the Department did not test the moisture content of the Iron Ore consignment and the declaration given by the exporter was relied upon for the purpose of assessment. Hence, the exporter is liable to penalty under Section 114A of the said Act.

25. However, as the actual dry weight of Iron Ore and actual FOB value thereof are not ascertainable at the time of filing the Shipping Bill, it cannot be said that the exporter knowingly or intentionally made false declaration before Customs at the time of filing the shipping bill. Therefore, Section 114 AA of the said Act is not applicable to the facts of the present case.

In view of the above I pass the following order.

### **ORDER**

- (i) The FOB value of the goods exported under S.B No.1031276 dated 28.7.2008 (i.e. 9735.90 DMT Iron ore fines ) is hereby re-determined as US \$1377629.85 (Rs.5,88,24,795/ ) under Rule 3(1) of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007 read with Rule 2(1)(b) ibid and sub-section (1) of Section 14 of the said Act.
- (ii) The said export consignment is held liable to confiscation under Section 113 (h) and 113(i) of the said Act; however, the goods are not available for confiscation.
- (iii) Demand of export duty amounting to Rs.2,77,330/- (Rupees Two Lakh Seventy Seven Thousand Three Hundred and Thirty Only), under the proviso to section 28(1) of the said Act, is confirmed along with interest ( Rs 53042/ )under section 28AB of the said Act.
- (iv) The amount of Rs.3.25,400 / (Rupees Three lakh Twenty Five Thousand Four Hundred only) paid by the exporter towards duty and interest mentioned at (iii) above, is hereby appropriated.

- (v) I impose penalty of Rs. 3,30,372/ (Rupees Three lakh Thirty Thousand Three Hundred Seventy Two only) on M/s Manipal Enterprises Pvt Ltd, Manipal under Section 114A of the said Act.
- (vi) Section 114AA of the said Act, is not applicable to the facts of the case.

The show cause notice No.DRI/MRU/INVN/MEP/76/2009 dtd 3.6.2010 is hereby disposed of, accordingly.

(AJAZUDDIN)  
ADDITIONAL COMMISSIONER

To

M/s. Manipal Enterprises Pvt Limited,  
Udayavani Building, Press Corner,  
Manipal- 576 104

(By RPAD)

Copy submitted to the Commissioner of Customs, Review Section, New Customs House, Panambur, Mangalore - 575 101.

2. The Additional Director General, Directorate of Revenue Intelligence, No. 503, Rajarajeshwari Krupa, 3rd A Main Road, OMBR Layout, Banswadi, Bangalore – 560 043.

3. The Deputy Director, Directorate of Revenue Intelligence, Regional Unit, Bharathi Bhavan, Bijai Church Road, Bijai, Mangalore – 575 004.

