



9045

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62		
A. File No.	:	GEN/ADJ/COMM/205/2023-Adjn-O/o Pr. Commr- Cus-Mundra	
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-027-23-24	
C. Passed by	:	K. Engineer Commissioner of Customs, Custom House, AP & SEZ, Mundra.	
D. Date of order and Date of issue of Order	:	05.03.2024. 05.03.2024.	
E. SCN No. & Date	:	SCN F.No. GEN/ADJ/COMM/205/2023-Adjn, dated 24.03.2023.	
F. Noticee(s) / Party / Importer	:	M/s. Singla Timbers Pvt. Ltd., (IEC No. 3009017405) situated at Survey No. 548/1, Mithi Rohar, Gandhidham, Gujarat.	
G. DIN	:	20240378000000020998	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill

Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs. 5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

FACTS OF THE CASE IN BRIEF:

1. **M/s. Singla Timbers Pvt. Ltd.** (holder of IEC No. 3009017405) (hereinafter also referred to as 'the noticee' or also as 'M/s.STPL' for the sake of brevity), situated at Survey No. 548/1, Mithi Rohar, Gandhidham, Gujarat imported the goods i.e. "*Spruce Wall Panels*" covered under previous 59 bills of entry during period of 01.04.2018 to 31.03.2020 classifying it under Tariff Item 44091010 of first schedule of the Custom Tariff Act, 1975. It appears that noticee imported these consignments by highly undervaluing the goods i.e. "*Spruce Wall Panels*" when supplied by Estonia and Russia based suppliers. In many cases, goods were supplied from Estonia and Russia whereas invoices were issued by M/s. Asya Enterprises, Singapore and M/s. Rusfor(s) Pte Ltd, Singapore. The details of bills of entry filed by the noticee are hereunder: -

TABLE-I

Sr. No.	BE No.	BE Date	Declared unit price	Currency	Assessed Value (in Rs.)	Duty paid (in Rs.)
1	6278253	07.05.2018	0.588347	USD	3602007	1115902
2	6278336	07.05.2018	0.584959	USD	3545729	1098467
3	6605321	31.05.2018	0.584358	USD	3506154	1086207
4	6955053	26.06.2018	0.650012	USD	2253113	698014.3
5	6955529	26.06.2018	0.640009	USD	3872662	1199751
6	6973606	27.06.2018	0.605769	EUR	4239746	1313473
7	6973925	27.06.2018	0.58502	EUR	4368871	1353476
8	7604167	11.08.2018	0.631348	USD	3287808	1018563
9	7889581	03.09.2018	0.704061	USD	4490269	1391085
10	7962887	07.09.2018	0.708874	USD	4656879	1442701
11	7973756	09.09.2018	0.637266	USD	4066018	1259652
12	8163900	23.09.2018	0.641944	USD	4127661	1278749
13	8380362	09.10.2018	0.644128	USD	4180904	1295244
14	8455387	15.10.2018	0.647514	USD	4180903	1295244
15	8503004	17.10.2018	0.730349	USD	4794595	1485366
16	8533741	20.10.2018	0.729577	USD	4759425	1474470
17	8998332	26.11.2018	0.61578	USD	3934149	1218800
18	8999250	26.11.2018	0.627145	USD	2950615	914100.5
19	9045773	29.11.2018	0.734442	USD	4662318	1444386
20	9271133	15.12.2018	0.631348	USD	3406501	1055334
21	9281643	17.12.2018	0.615549	USD	967360	299688.1
22	9764662	23.01.2019	0.613143	EUR	4500240	1394174
23	9827920	28.01.2019	0.691082	USD	4424639	1370753
24	9880792	01.02.2019	0.697383	USD	4564085	1413954
25	2394646	12.03.2019	0.580087	EUR	4373640	1354954
26	2394697	12.03.2019	0.591175	EUR	4391839	1360592
27	2650810	01.04.2019	0.592479	EUR	4244046	1314805
28	2684127	02.04.2019	0.537944	EUR	2092860	648368
29	3155874	08.05.2019	0.395	EUR	2865164	887627.8
30	3265277	16.05.2019	0.395	EUR	2914152	902804.3
31	3295649	18.05.2019	0.554951	EUR	3821062	1183765
32	3295653	18.05.2019	0.556385	EUR	3821062	1183765
33	3527037	05.06.2019	0.395	EUR	2911758	902062.7
34	3810123	26.06.2019	0.395	EUR	2895441	897007.6
35	3897569	02.07.2019	0.395	EUR	2908057	900916.1
36	4034882	12.07.2019	0.557441	EUR	3771098	1168286
37	4143020	19.07.2019	0.557441	EUR	3771098	1168286

38	4294644	30.07.2019	0.395	EUR	2868524	888668.6
39	4380954	06.08.2019	0.395	EUR	2801393	867871.6
40	4464549	13.08.2019	0.490981	EUR	3385170	1048726
41	4464666	13.08.2019	0.395	EUR	2829069	876445.6
42	4672457	28.08.2019	0.395	EUR	2921910	905207.7
43	4704841	30.08.2019	0.531893	EUR	3898869	1207870
44	4764974	04.09.2019	0.39	EUR	2873894	890332.5
45	4793193	06.09.2019	0.498598	EUR	3574036	1107236
46	5074650	27.09.2019	0.460303	EUR	3338834	1034371
47	5168056	04.10.2019	0.500291	EUR	1805244	559264.6
48	5198732	07.10.2019	0.353226	EUR	1761141	545601.5
49	5342996	18.10.2019	0.470096	EUR	2643766	819038.7
50	5434319	25.10.2019	0.467603	EUR	2516609	779645.5
51	6713398	31.01.2020	0.38	EUR	2817339	872811.6
52	6717322	01.02.2020	0.500277	EUR	3653181	1131755
53	6805929	08.02.2020	0.49539	EUR	3992602	1236908
54	6829461	10.02.2020	0.38	EUR	2788750	863954.7
55	6833512	11.02.2020	0.38	EUR	2799376	867246.8
56	6879917	14.02.2020	0.40	EUR	2953104	914871.6
57	6892107	15.02.2020	0.38	EUR	2790268	864425
58	6900087	15.02.2020	0.38	EUR	2823666	874771.7
59	7264129	17.03.2020	0.449912	EUR	3513857	1088593
					20,34,74,527	6,30,36,409

2. Earlier, **Show Cause Notice No. VIII/ 48- 2040/Singla/MCH/Gr.II/ 2019-20 dated 24.03.2020** (RUD-1) was issued to (i) M/s. Singla Timbers Pvt. Ltd. Survey No. 548/1, Mithi Rohar, Gandhidham, Gujarat & (ii) M/s. Asya Enterprises Pte. Ltd, 89, Short Street, PO9-09, Golden Wall Centre, Singapore, for undervaluation of imported goods, wherein it was alleged that the noticee had filed a **Bill of Entry No. 7013930 dated 25.02.2020** having assessable value of **Rs. 27,67,844/-** for clearance of 92200 Kgs. of *Spruce Wall Panels* wherein unit price was declared as Euro 0.380 per Kg. In that case, Invoice was issued for the said imported goods by Asya Enterprises Pte. Ltd., Singapore. The supplier of the goods was Rait AS, Estonia. M/s. Rait AS of Estonia shipped the consignment in the name of Asya Enterprises Pte. Ltd. of Singapore who raised the subject invoice in the name of the noticee. During the same period, another importer, M/s. Sitaram International, Anjar also imported 92000 Kgs. of "Spruce Wall Panels" from the same supplier Rait AS of Estonia and filed Bill of Entry No. 6966123 dated 21.02.2020 declaring unit price as Euro 0.892012 per Kgs. On examination the goods imported by other importer i.e. M/s Sitaram International was appeared to be identical to the subject goods imported by the noticee. The quantity and date of bill of lading covered in the consignment imported by the noticee was almost same as imported by M/s. Sitaram International LLP. Both the consignments were simultaneously examined and compared. Goods covered under both the bills of entry were found as same in all respects, including physical characteristics, quality and reputation. As per the import documents, the goods covered under both the Bills of Entry were found to be produced in the same country and produced by the single producer. Therefore, in terms of **Rule 2(1)(d) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, the subject consignment imported by the noticee was found to be identical to goods imported by another party i.e. M/s. Sitaram International LLP.

3. Further, said **Show Cause Notice No. VIII/48-2040/ Singla/ MCH/**

Gr.11/ 2019-20 dated 24.03.2020 was adjudicated vide **Order-in-original no. MCH/ADC/AK/13/2020-21 dated 11.05.2020**. Adjudicating Authority vide said order decided the matter by passed the following orders: -

- Adjudicating Authority rejected the value of 92200 Kgs. Of Spruce Wall Panels declared in Bill of Entry no. 7013930 dated 25.02.2020 as **Rs.27,07,844/-** (at unit price of Euro 0.280 per Kg), under Rule 12 of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and ordered to re- determine the value of goods as **Rs. 64,97,237/-** (at unit price of Euro 0.892012 per Kg.) under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007 read with Section 14 of the Customs Act, 1962.
- The Adjudicating Authority confiscated the said goods having re-determined value of **Rs.64,97,237/-** under Section 111(m) of the Customs Act, 1962. However, option to redeem the same was also given on payment of redemption fine of **Rs.10,00,000/-** under Section 125 of Customs Act, 1962.
- Penalty of **Rs. 5,00,000/-** was imposed on M/s. Singla Timbers Pvt Ltd. under section 112(a) of Customs Act, 1962 and the same amount of Penalty was also imposed on M/s. Asya Enterprises Pvt. Ltd., under Section 112(a) of the Customs Act, 1962.
- Penalty of **Rs. 5,00,000/-** was imposed on M/s. Singla Timbers Pvt Ltd. under section 114AA of Customs Act, 1962 and the same amount of Penalty was also imposed on M/s. Asya Enterprises Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

4. The said Bill of Entry was re-assessed as per adjudication Order dated 11.05.2022 and importer, M/s. Singla Timbers Pvt. Ltd had paid the differential duty amount and fine/penalty imposed vide said **Order No. MCH /ADC/AK/13/2020-21 dated 11.05.2020**. As the differential duty amount and fine /penalty was paid by the noticee, it appears that the noticee has accepted the charges confirmed by Adjudicating Authority.

5. During the period of **01.04.2018 to 31.03.2020**, M/s. Singla Timbers Pvt Ltd. and many other importers i.e. M/s. Sita Ram International LLP & M/s.A.S. Wood Impex Pvt. Ltd have also filed the bills of entry at Custom House Mundra for importation of same commodity i.e. "Spruce Wall Panels" of Estonia and Russia origin from their supplier i.e. M/s. Rait As, Estonia and Russia based supplier and the details of the same is as under -

Table-II

Sl. No.	Bill of Entry	Date	Supplier	Importer Name	Country of Origin	Unit	Unit price per Kgs
1	6982421	27-06-2018	Rusfor(s) PTE Ltd, Singapore	A.S. WOOD IMPEX PRIVATE LIMITED	RUSSIA	USD	0.959904
2	6982473	27-06-2018	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.953188
3	6982427	27-06-2018	Rusfor(s) PTE Ltd, Singapore	A.S. WOOD IMPEX PRIVATE LIMITED	RUSSIA	USD	0.950833
4	7146922	09-07-2018	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.973132
5	7351440	24-07-2018	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.95644
6	7435636	30-07-2018	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.980849
7	7435709	30-07-2018	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.963668

8	7820546	28-08-2018	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.95282
9	7904572	04-09-2018	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.951089
10	9278294	16-12-2018	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.997096
11	9403857	25-12-2018	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.996576
12	9539850	05-01-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.946044
13	9623319	12-01-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.945219
14	9827877	28-01-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.949826
15	9902015	02-02-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.953266
16	9998223	09-02-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.952629
17	2119243	19-02-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.953727
18	4158351	20-07-2019	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.947929
19	4500056	14-08-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.91924
20	4537158	17-08-2019	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.89584
21	4663246	27-08-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.917856
22	4845266	10-09-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.919152
23	5210325	08-10-2019	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.952265
24	5234091	10-10-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.918309
25	5299286	15-10-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.91934
26	5409823	23-10-2019	Rusfor(s) PTE Ltd, Singapore	SITA RAM INTERNATIONAL LLP	RUSSIA	USD	0.952265
27	5500625	31-10-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.918309
28	5592433	07-11-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.918631
29	5675374	14-11-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.91934
30	5865327	28-11-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.917856
31	5950888	05-12-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.91934
32	5950805	05-12-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.917856
33	6118895	17-12-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.892328
34	6304283	31-12-2019	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.891307
35	6740128	03-02-2020	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.892988
36	6740156	03-02-2020	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.892231
37	6966123	21-02-2020	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.892012
38	6995551	24-02-2020	Rait As, Estonia	SITA RAM INTERNATIONAL LLP	ESTONIA	EUR	0.892988
39	7013930	25-02-2020	Asya Enterprises pte. Ltd, Singapore	SINGLA TIMBERS PRIVATE LIMITED	ESTONIA	EUR	0.892012
40	7178518	09-03-2020	Asya Enterprises pte. Ltd, Singapore	SINGLA TIMBERS PRIVATE LIMITED	ESTONIA	EUR	0.892012

On analyzing the above data, it is quite evident that the value declared by the noticee in the import consignments mentioned in **Table-I at para-1.1** of this notice, is quite lower to the contemporaneous imports as mentioned in **Table-II at para-1.7** of this notice. Therefore, investigation was initiated against the Noticee.

Investigation and Action taken: -

6. Whereas, in case of earlier live bill of entry, the **SCN No. VIII/48-2040/Singla/MCH/ Gr.II/ 2019-20 dated 24.03.2020** was adjudicated vide Order-In-Original dated 11.05.2022 whereby the Adjudicating authority confirmed charges of gross undervaluation of "Spruce Wall Panels" imported from Estonia; and duty, fine and penalty were paid by the noticee. After adjudication of the said case, import data of previous two years was retrieved from EDI System. On Scrutiny of past import consignments for the period from 01.04.2018 to 31.03.2020, it was noticed that the importer had imported total **59 consignments** of "Spruce Wall Panels" from Russia and Estonia. In many of such past consignments, invoices were raised from Singapore similar to the modus adopted in the above discussed adjudicated case. However, in many other cases, invoices were raised from the suppliers as mentioned above in Table-II. The declared value in all **59 consignments** was also much less than the value re-determined in adjudicated case and the value declared in bills of entry as mentioned in **Table-II**, on the **basis** of value of identical goods or similar goods.

7. On scrutiny of all 59 bills of entry, it appeared that importer had undervalued the goods and the value of subject consignment imported by the noticee appeared substantially lower than the actual value and the value accepted by importer in earlier imports. In all these bills of entry, importer had declared the unit price lower than the unit price of EUR 0.892012 per Kgs. Importer has already accepted the unit price of EUR 0.892012 per Kgs of said imported goods and already paid differential duty amount and applicable fine and penalty decided vide **Order-in- original dated 11.05.2020 for bill of entry no. 7013930 dated 25.02.2020**. By paying the differential duty, fine and penalty, the noticee has accepted the re-determined value, therefore, it also became evident that importer had undervalued the goods at the time of importation of goods "Spruce Wall Panels" during period of **01.04.2018 to 31.03.2020**.

Further, the noticee i.e. M/s. Singla Timbers Pvt. Ltd. himself imported another consignment of "Spruce Wall Panels" supplied by M/s. Rait As, Estonia covered under bills of entry no. 7178518 dated 09.03.2020 & 7013930 dated 25.02.2020 as mentioned at SI. No.39 & 40 of Table-II wherein declared the unit price of "Spruce Wall Panels" was EUR 0.892012/Kgs. The goods covered under Bills Of Entry No. 7178518 dated 09.03.2020 & 7013930 dated 25.02.2020 were identical to the goods pertaining to some other consignments. From this, it is evident that contemporaneous price of the "Spruce Wall Panels" was EUR 0.892012/Kgs

7.1. On scrutiny of the documents of all previous **59 Nos. of Bills of Entry** of period **01.04.2018 to 31.03.2020**, it is found that importer has mainly imported **identical** and **similar** goods i.e. "Spruce Wall Panels" from Estonia & Russia and by using the following modus operandi: -

- a) In some imports, importer has imported the goods directly from supplier M/s. Rait As, Estonia.
- b) In some cases, invoice is also issued by M/s. Asya Enterprises,

Singapore but country of origin and supplier (in Bill of lading) of goods is declared as Estonia (EE) in some case.

- c) In some cases, invoices are issued by M/s. Rusfor(s) Pte Ltd, Singapore but country of origin is shown as Russia (RU).
- d) In some cases, invoices are issued by M/s. Rusfor(s) Pte Ltd, Singapore but supplier is shown as "M/s. Rait AS on behalf of M/s. Rusfor(s) Pte Ltd, Estonia" and country of origin is shown as Estonia (EE).
- e) In some cases, invoices are issued by M/s. Rusfor(s) Pte Ltd, Singapore but consignor in COO Certificate is mentioned as M/s Rait AS (on behalf of Rusfor(s) Pte Ltd), Estonia (EE).

Hence, it appears that importer had shown country of origin Estonia and Russia in all 59 previous bills of entry and the only apparent difference was that documents of the subject consignments was routed to the noticee through mainly Singapore based companies and consignments was mainly supplied by M/s. Rait AS of Estonia, The goods covered under all **59 bills of Entry** were identical or similar goods to the goods covered under Bills of Entry (mentioned in Table-I) filed by noticee and also identical or similar to the goods imported vide other bills of entry (mentioned in Table-II) filed by M/s. Sitaram International LLP & M/s. A.S. Wood Impex Pvt Ltd. Hence, the noticee was required to correctly self-assess the all 59 bills of entry by declaring the unit price as EUR 0.892012 per Kgs.

8. On scrutiny of documents and information available in ICES (Indian Customs EDI System), out of **59 bills of entry** mentioned in Table-I, the goods covered under **31 bills of entry** were found identical to the goods covered under bills on entry mentioned in Table-II above.

8.1. The details of **31 bills of entry** under which importer has imported identical goods are as under: -

TABLE-III

Details of previous bills of entry having the COO Estonia(EE) and are found identical to the imports made by Notice and other importers.									
Sr. No.	BE No.	BE Date	Declared unit price	Currency	Declared Assessable Value	Revised Assessable value (@unit price Euro 0.892012 per Kgs)(in Rs.)	Revised duty (in Rs.)	Duty paid (in Rs.)	Differential duty (short levied) (in Rs.)
1	6278253	07.05.2018	0.588347	USD	3602007	7174100	2222536	1115902	1106634
2	6278336	07.05.2018	0.584959	USD	3545729	7102913	2200482	1098467	1102016
3	6605321	31.05.2018	0.584358	USD	3506154	6942897	2150909	1086207	1064703
4	6973606	27.06.2018	0.605769	EUR	4239746	6243146	1934127	1313473	620653.3
5	6973925	27.06.2018	0.58502	EUR	4368871	6661456	2063719	1353476	710243
6	7889581	03.09.2018	0.704061	USD	4490269	7116861	2204804	1391085	813718.3
7	7962887	07.09.2018	0.708874	USD	4656879	7506447	2325497	1442701	882796.2
8	8503004	17.10.2018	0.730349	USD	4794595	7436467	2303817	1485366	818452

9	8533741	20.10.2018	0.729577	USD	4759425	7389729	2289338	1474470	814868.2
10	9045773	29.11.2018	0.734442	USD	4662318	7052660	2184914	1444386	740528.1
11	9764662	23.01.2019	0.613143	EUR	4500240	6547034	2028271	1394174	634096.7
12	9827920	28.01.2019	0.691082	USD	4424639	7157974	2217540	1370753	846787.3
13	2394646	12.03.2019	0.580087	EUR	4373640	6725438	2083541	1354954	728587.1
14	2394697	12.03.2019	0.591175	EUR	4391839	6626757	2052969	1360592	692377.6
15	2650810	01.04.2019	0.592479	EUR	4244046	6389660	1979517	1314805	664711.5
16	3155874	08.05.2019	0.395	EUR	2865164	6470280	2004493	887627.8	1116865
17	3265277	16.05.2019	0.395	EUR	2914152	6580908	2038765	902804.3	1135961
18	3527037	05.06.2019	0.395	EUR	2911758	6575502	2037091	902062.7	1135028
19	3810123	26.06.2019	0.395	EUR	2895441	6538653	2025675	897007.6	1128667
20	3897569	02.07.2019	0.395	EUR	2908057	6567144	2034501	900916.1	1133585
21	4294644	30.07.2019	0.395	EUR	2868524	6477867	2006843	888668.6	1118175
22	4380954	06.08.2019	0.395	EUR	2801393	6326269	1959878	867871.6	1092007
23	4464666	13.08.2019	0.395	EUR	2829069	6388768	1979240	876445.6	1102795
24	4672457	28.08.2019	0.395	EUR	2921910	6598427	2044193	905207.7	1138985
25	4764974	04.09.2019	0.39	EUR	2873894	6573201	2036378	890332.5	1146045
26	6713398	31.01.2020	0.38	EUR	2817339	6613422	2048838	872811.6	1176026
27	6829461	10.02.2020	0.38	EUR	2788750	6546311	2028047	863954.7	1164093
28	6833512	11.02.2020	0.38	EUR	2799376	6571256	2035775	867246.8	1168528
29	6879917	14.02.2020	0.40	EUR	2953104	6585511	2040191	914871.6	1125320
30	6892107	15.02.2020	0.38	EUR	2790268	6549875	2029151	864425	1164726
31	6900087	15.02.2020	0.38	EUR	2823666	6628274	2053439	874771.7	1178667
					11,03,22,262	208665205.9	64644480.79	34177836.13	30466644.67

The above **31 previous consignments** were identical to the goods covered under Bills of Entry mentioned in Table-II which were cleared at the unit price of EUR 0.892012 per Kgs or more than it. It appears that the goods covered under Bills of entry mentioned in Table-III having the country of origin as Estonia and supplied by M/s. Rait AS, Estonia and the only apparent difference is that in some cases documents of said consignments have been routed to the noticee through mainly Singapore based companies and the other consignment has been directly supplied by M/s. Rait AS of Estonia, so that goods covered under Bills of entry mentioned at **01 to 31** of table-3 are found as same in all respects, including physical characteristics, quality and reputation and are **identical** to goods of bills of entry mentioned in Table-II.

8.2. It also appears that goods covered under Bills of entry mentioned at **32 to 59 in Table-1** above, having the same description and characteristics and like component materials which enable them to perform the same functions and invoices are also produced by mainly Singapore based companies appears to be **similar** to goods of bills of entry (mentioned in Table-II). **The details of 28 bills of entry under which importer had imported similar goods are as under:**

Table-IV

Details of previous bills of entry having the COO Russia (RU) and are found SIMILAR to the imports made by Noticee and other importers.									
Sr. No.	BE No.	BE Date	Declared unit price	Currency	Declared Assessable Value	Revised Assess. value (@Euro 0.892012 /Kgs)(in Rs.)	Revised duty (in Rs.)	Duty paid (in Rs.)	Differential duty (short levied) (in Rs.)
1	6955053	26.06.2018	0.650012	USD	2253113	3926184	1216332	698014.3	518317.6
2	6955529	26.06.2018	0.640009	USD	3872662	6853819	2123313	1199751	923562.5
3	7604167	11.08.2018	0.631348	USD	3287808	5951762	1843856	1018563	825292.8
4	7973756	09.09.2018	0.637266	USD	4066018	7290496	2258596	1259652	998943.4
5	8163900	23.09.2018	0.641944	USD	4127661	7365001	2281677	1278749	1002928
6	8380362	09.10.2018	0.644128	USD	4180904	7306108	2263432	1295244	968188.3
7	8455387	15.10.2018	0.647514	USD	4180903	7267901	2251596	1295244	956352.1
8	8998332	26.11.2018	0.61578	USD	3934149	7097965	2198950	1218800	980150.2
9	8999250	26.11.2018	0.627145	USD	2950615	5227008	1619327	914100.5	705226.6
10	9271133	15.12.2018	0.631348	USD	3406501	5994436	1857076	1055334	801742.2
11	9281643	17.12.2018	0.615549	USD	967360	1745959	540898.2	299688.1	241210
12	9880792	01.02.2019	0.697383	USD	4564085	7316852	2266761	1413954	852807.1
13	2684127	02.04.2019	0.537944	EUR	2092860	3470354	1075116	648368	426747.7
14	3295649	18.05.2019	0.554951	EUR	3821062	6141863	1902749	1183765	718984.2
15	3295653	18.05.2019	0.556385	EUR	3821062	6126033	1897845	1183765	714080.1
16	4034882	12.07.2019	0.557441	EUR	3771098	6034477	1869481	1168286	701194.7
17	4143020	19.07.2019	0.557441	EUR	3771098	6034477	1869481	1168286	701194.7
18	4464549	13.08.2019	0.490981	EUR	3385170	6150162	1905320	1048726	856594.3
19	4704841	30.08.2019	0.531893	EUR	3898869	6538604	2025660	1207870	817790

20	4793193	06.09.2019	0.4985 98	EUR	3574036	6394095	1980891	1107236	873654.3
21	5074650	27.09.2019	0.4603 03	EUR	3338834	6470260	2004486	1034371	970115.7
22	5168056	04.10.2019	0.5002 91	EUR	1805244	3218725	997161.1	559264.6	437896.5
23	5198732	07.10.2019	0.3532 26	EUR	1761141	4447461	1377823	545601.5	832222
24	5342996	18.10.2019	0.4700 96	EUR	2643766	5016573	1554134	819038.7	735095.7
25	5434319	25.10.2019	0.4676 03	EUR	2516609	4800751	1487273	779645.5	707627.1
26	6717322	01.02.2020	0.5002 77	EUR	3653181	6513754	2017961	1131755	886205.4
27	6805929	08.02.2020	0.4953 9	EUR	3992602	7189182	2227209	1236908	990300.5
28	7264129	17.03.2020	0.4499 12	EUR	3513857	6966702	2158284	1088593	1069691
Total					93152267	164856964.1	51072687. 49	28858572	22214115

8.3. Hence, as per the import documents, goods covered under **59 Nos. of Bills of Entry** were supplied by supplier i.e. M/s. Rait As, Estonia and M/s. Rusfor (S) PTE Ltd. Therefore, in terms of Rule 2(1) (d) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the goods covered under bills of entry mentioned at **Sr. No. 01 to 31 of Table-III** imported by the noticee appears to be identical to the goods imported by noticee under bills of entry mentioned in Table-2. Further, in terms of Rule 2(l)(f) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the goods covered under bills of entry mentioned at Sr. No. 32 to 59 of Table-I imported by the noticee appears to be similar to the goods imported by noticee under bills of entry mentioned in Table-II.

9. A summon was also issued to noticee i.e, M/s. Singla Timbers Pvt. Ltd. to appear on 20.01.2022 to record the statement under Section 108 of Customs Act, 1962 for enquiry for the imports made in previous bills of entry. But, the noticee didn't turn up to present himself on summoned date and submitted a letter dated 20.01.2022 wherein he submitted that they enquired from other importers of Spruce Wall Panels and were told that none of them had received any such Summons. The noticee, further, submitted that enquiry in respect of all imports of Spruce Wall Panels into India from Estonia at all India Ports against all the importers had been initiated and for that matter SIIB officers of Mundra Customs had been specifically empowered and authorized to enquire into against all the imports of Spruce Wall Panels into India from Estonia and also submitted that all the relevant import documents are already available with Mundra Customs. Hence, importer tried to avoid being part of the investigation in the said case.

9.1. Earlier, importer vide letter dated 21.12.2021 also submitted that **Order-in-Original dated 11.05.2020** passed by Additional Commissioner against **Bill of Entry no. 7013930 dated 25.02.2020** was challenged before the Commissioner of Customs (Appeals) Ahmedabad but Appeal was rejected by the First Appellate Authority vide Order-in-Appeal no. **MUN-CUSTM-000-APP-054-21-22 dated 21.06.2021** and they have preferred further Appeal before the Hon'ble CESTAT.

LEGAL PROVISIONS: -**10. RELEVANT SECTIONS OF CUSTOMS ACT, 1962:-****Section 46: Entry of goods on importation: -**

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form: Provided that if the importer makes and subscribes to a declaration before the proper officer to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouses appointed under section 57 without warehousing the same.

(2)

(3)

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

111. Confiscation of improperly imported goods, etc.:-

The following goods brought from a place outside India shall be liable to confiscation: -

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

112. Penalty for improper importation of goods, etc. -Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

114. Penalty for attempt to export goods improperly, etc.

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—

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

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;

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

114AA. Penalty for use of false and incorrect material: -

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

CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007.

2. Definitions. -

(1) In these rules, unless the context otherwise requires, -

.....

(d) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

.....

(f) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

4. Transaction value of identical goods:-

(1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

5. Transaction value of similar goods:-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

12. Rejection of declared value:-

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

10.1. Whereas, the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (here-in-after also referred to as "the CVR, 2007") provides for rejection of declared value on the basis of reasons to doubt the truth or accuracy of the declared value. The explanation (1) (iii) (a) of the said Rule provides that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include; - the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed. Since the declared unit price of goods covered under bills of entry mentioned at Table-III & Table-IV appears to be substantially lower than the declared unit price of the goods covered under Bills of Entry mentioned in Table-II, it appears that the unit price declared by the noticee in all 59 Bills of Entry as mentioned in Table-I is not true and correct and thus the same is liable to be rejected under Rule 12 *ibid*.

10.2. Whereas, Section 2(49) of the Customs Act, 1962 provides that "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14 *ibid*. The Section 14(1) *ibid* provides that for the purposes of the Customs Tariff Act, 1975 or any other law for the time being in force, the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation subject to such other conditions as may be specified in the rules made in this behalf. Further, second proviso to Section 14(1) provides that the rules made in this behalf may provide for the manner of acceptance or rejection of value declared by the importer where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

10.3. Whereas, Rule 3(1) of the CVR, 2007 provides that subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. However, in the instant case, as discussed above, the value declared by the noticee appears liable for rejection under Rule 12 *ibid*. Therefore, as provided under Rule 3(4) *ibid*, true and correct value is required to be determined by proceeding sequentially through Rule 4 to 9.

10.4. Whereas, Rule 4 of the CVR, 2007 provides that subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; provided that such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962. In case of imported identical goods mentioned at Table-II, it appears from declaration and import documents that the subject goods imported by the noticee and the above discussed goods imported by the other party are same in all respects, including physical characteristics, quality and reputation. Further consignments are being supplied by the same producer. Therefore, the subject goods are identical to the goods imported by the noticee itself and other party also. Therefore, transaction value of the subject goods i.e. Spruce Wall Panels of 31 bills of entry as mentioned in Table-3 are liable to be re-determined under Rule 4 of the CVR, 2007, read with Section 14 of the Customs Act, 1962, as **Rs.20,86,65,206/-** (at unit price of Euro 0.892012) as per the transaction value of the identical goods covered under Bills of Entry as mentioned in Table-II.

10.5. The Rule 5 of the CVR, 2007 provides that subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued; provided that such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962. In case of imported similar goods mentioned at Table-IV, it appears from declaration and import documents that the subject goods imported by the noticee and the above discussed goods imported by the other party are not alike in all respects. Further consignments are supplied by another supplier M/s. Rusfor (S) PTE Ltd other than supplier M/s. Rait As, but goods are same in description. However, supplier M/s. Rais As has also supplied many shipments on behalf of M/s. Rusfor (S) PTE Ltd. Hence, the subject goods are similar to the goods imported by the noticee itself and other party also. Therefore, transaction value of the subject goods i.e. Spruce Wall Panels of 28 bills of entry as mentioned in Table-IV are liable to be re-determined under Rule 5 of the CVR, 2007, read with Section 14 of the Customs Act, 1962, as **Rs.16,48,56,964/-** (at unit price of **Euro 0.892012** per Kg) as per the transaction value of the similar goods covered under Bills of Entry mentioned as in Table-II.

10.6. Whereas, it appears that the noticee had contravened the provisions of Section 46(4) of Customs Act, 1902 and noticee failed to declare the true value of the goods and undervalued the goods, failed to submit genuine documents while filing the Bill of entry. The mis-declaration of the goods in terms of value was done with willful intent to evade the payment of appropriate custom duty leviable thereon. Noticee imported the goods by resorting to mis-declaration by way of wilful mis- statement in the Bills of Entry filed under Section 46 of the Customs Act, 1962, before the Customs Authority. Hence, they had suppressed the facts to short pay the customs duty as per provisions laid down under Section 28 (4) of Customs Act, 1962. The **identical goods** having revised assessable value of **Rs. 20,86,65,206/- (Rupees Twenty Crore Eighty-Six Lakhs Sixty-Five Thousand Two Hundred Six only)** as detailed in Bills of Entry mentioned in Table-3 and **similar goods** having assessable Value of **Rs.16,48,56,964/- (Rupees Sixteen Crores Forty-Eight Lakhs Fifty-Six Thousand Nine Hundred Sixty-Four only)** as detailed above, were liable to confiscation under the provisions of Customs Act, 1962 at the time of importation.

10.7. Whereas, in many imports made by noticee, it also appears from the import documents submitted and uploaded on e-sanchit that the subject goods were supplied by M/s. Rait AS of Estonia but the invoice was raised on the noticee by M/s. Asya Enterprises Pte. Ltd. of Singapore. Despite this fact the value declared by the noticee was substantially lower than the value of contemporary value declared by other importer for identical/ similar goods. Whereas, on scrutiny of invoices issued by M/s. Rait ABS of Estonia, M/s. Rusfor (S) Pte Ltd of Singapore, M/s. Asya Enterprises Pte. Ltd, Singapore, it appears that the quantity had been mentioned in cubic meter in invoices but Bills of entry were filed by mentioning the quantity in Kgs. It appears that the unit quantity code was also changed in the invoice issued from Singapore so that the figure of unit price may look high and near about the figure of other imports. From these facts, it appears that the noticee had knowingly suppressed the actual value of the goods and deliberately attempted to clear the goods by resorting to well-planned modus of undervaluation to evade payment of appropriate duty. It was also supported by the facts that the noticee did not produce copy of invoice raised by M/s. Rait AS of Estonia or any other document showing actual transaction between supplier M/s. Rait AS of Estonia and Invoicing Party i.e. M/s. Asya Enterprises Pte. Ltd. i.e. M/s. Rusfor(S) Pte Ltd of Singapore. It appears that Singapore based invoicing parties also actively facilitated the noticee by way of providing the invoices showing false value of the goods though they were aware of actual value of the goods. By way of providing falsified documents they abetted noticee in the deliberate act of undervaluation. By this act the noticee had attempted to evade Customs duty to the tune of **Rs.5,26,80,759/- (actual duty of Rs.11,57,17,168/- (minus) declared duty of Rs.6,30,36,409/-)**. These facts show that noticee had contravened the provisions of Section 46(4) of Customs Act, 1962 and noticee failed to declare the true value of the goods and undervalued the goods and failed to submit genuine documents while filing the Bill of entry, The mis-declaration of the goods in terms of value was done with willful intent to evade the payment of appropriate custom duty leviable thereon. Noticee imported the goods by resorting to mis-declaration by way of wilful mis-statement in the Bills of Entry filed under Section 46 of the Customs Act, 1962, before the Customs Authority. Hence, they had suppressed the facts to short pay the customs duty as per provisions laid down under Section 28 (4) of Customs Act, 1962. The subject goods i.e. Spruce Wall Panels cleared under previous 59 bills of entry had been intentionally mis-declared by the noticee in respect of value, rendering the same, having re-determined value of **Rs. 37,35,22,170/-**, liable for confiscation under Section 111(m) of the Customs Act, 1962 for their act of omission and commission. The deliberate act of this mis- declaration by the noticee also rendered themselves liable for penalty under Section 114A of the Customs Act, 1962. Further, it appears that the noticee was aware of the actual value of the goods but managed to get invoices from Singapore based companies showing false value of the goods. For this act of knowingly submitting invoices having false value, the noticee also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

11. Therefore, a **Show Cause Notice No. GEN/ADJ/COMM/205/2023-Adjn dated 24.03.2023** was issued to **M/s. Singla Timbers Pvt. Ltd.**, by the **Commissioner of Customs, Custom House, Mundra** wherein it was proposed as to why:

- (i) The value of imported goods i.e. Spruce Wall Panels declared in 59 Bills of Entry mentioned in Table-I as **Rs.20,34,74,527/- (Rs.11,03,22,260/-** for

Bills of entry mentioned in Table-III and **Rs. 9,31,52,267/-** for Bills of entry mentioned in Table-IV) should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

- (ii) The value of identical goods declared in 31 Bills of Entry as mentioned in Table-III should not be re-determined as **Rs.20,86,05,206/-** (at unit price of Euro 0.892012 per Kg.) under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- (iii) The value of similar goods declared in 28 Bills of Entry as mentioned in Table-IV should not be re-determined as **Rs.16,48,56,964/-** (at unit price of Euro 0.892012 per Kg.) under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962,
- (iv) All **59 Bills of Entry** should not be re-assessed under Section 17(4) of the Customs Act, 1962 on the re-determined value as discussed in (ii) & (iii) above and differential duty amount **Rs.5,26,80,759/- (Rupees Five Crores Twenty-Six Lakhs Eighty Thousand Seven Hundred Fifty-Nine only)** should not be recovered from Noticee under Section 28 (4) of Customs Act, 1962.
- (v) The goods i.e. Spruce Wall Panels covered under all 59 bills of entry mentioning in Table-II & Table-III, having re-determined value of **Rs.37,35,22,170/-** should not have been confiscated under Section 111 (m) of the Customs Act, 1962 at the time of importation.
- (vi) Penalty should not be imposed on them under Section 114A and Section 114AA of the Customs Act, 1962.

DEFENSE SUBMISSION:

12. M/s. STPL vide their letter dated 'nil' received in this office in the month of January 2024; wherein they interalia stated as under:

- (i) that extended period of limitation under Section 28(4) of the Customs Act, 1962 was resorted to without explaining and justifying the same.
- (ii) that picking one Bill of Entry No. 6966123 dated 21.02.2020 of M/s. Sita Ram International (which was relied upon for enhancement of value of this noticee in the case of Bill of Entry No. 7013930 dated 25.02.2020.
- (iii) that in the SCN reliance is placed on the imports of two importers however, during this period similar goods have been imported by the other importer also at the Mundra Port and clearance is done at the value lower than that of M/s. Sita Ram & M/s. AS Wood Impex; therefore, while applying the value of the contemporaneous imports the lowest value is to be applied among all the values at which the similar goods have been allowed to be cleared by Mundra Customs.
- (iv) that similar SCN should have been issued to all other importers whose values were found lesser than that of M/s. Sita Ram International & M/s. AS Impex.

- (v) that it cannot be alleged that the importer who is importing goods at lesser price is resorting to undervaluation; that the price of each consignment depends on various factors/ parameters including the grading of the goods; that the Spruce Wall Panels are not standardized products; that the major factor which determines the price is the quality of the wood, colour and texture of the wood etc.
- (vi) that it cannot be alleged that the goods were undervalued when there is no evidence of having extra money against any of the impugned imports of wood panel; that import consignment has been purchased at the mutually agreed price under contract/ Proforma invoice and all the payments against LCs are made through banking channels only.
- (vii) that many of the Bills of Entry amongst **59 BEs** detailed in the Table-I of the SCN have already been re-assessed at the enhanced value rejecting the transaction value and self-assessment.
- (viii) that when the assessment at the Transaction Value has already been rejected by the Proper Officer under Rule 12 of the CVR 2007 and the value has already been enhanced and the duty at the enhanced value has already been re-determined by the Proper Officer under Section 17(4) of the Customs Act, 1962, at the material time before allowing clearance of the goods, the extended period cannot be invoked without alleging collusion on the part of Assessing Officer and facilitating clearance of the goods re-assessed by him at the lower value, without taking cognizance of the value of the value declared by M/s. Sita Ram International and M/s. AS Impex.
- (ix) that once the Bill of Entry has been re-assessed by the Proper Officer under Section 17(4) of the Customs Act, and the re-assessment order has not been challenged by the department; then the department cannot proceed against the importer for none of its faults.
- (x) that the copies of the relied upon documents have not been supplied with the SCN.
- (xi) that the Customs department has to consider all the instances of contemporaneous imports of identical/ similar goods and take the lowest price while proceeding to reject the already re-assessed value and proceed to re-determine the duty in terms of Rule 4(3) of the CVR, 2007.
- (xii) that if more than one transaction value of identical goods are found, the lowest such value shall be used to determine the value of imported goods.
- (xiii) that no evidence or material has been brought on record that the declared transaction value was incorrect or the reassessed value of Bills of Entry by the proper officer were not correct.
- (xiv) that all the imports of this notice are ordinary business transaction between the two parties at arm's length as such it has ready been accepted by the proper officer in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) & (2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (xv) that there was no situation which covered under the Proviso to sub-rule 3(2) read with sub-Rule 3(3) & (4) of the CVR, 2007. Hence, the invoice value which reflects true and correct transaction value, merited

acceptance under Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the CVR, 2007.

- (xvi) that Customs cannot propose and proceed to order confiscation of those goods which were never placed under Seizure, nor were available for confiscation.
- (xvii) that there is no cause for imposition of penalty under Section 114AA of the Act when there is no evidence of false or incorrect declaration or statement in respect of impugned goods.
- (xviii) that the Principal Commissioner or any other officer who has not been designated as the Proper Officer under Section 17 of the Customs Act, has no jurisdiction or propriety to himself proceed to re-assess the Bills of Entry under Section 17(4) of the Customs Act, when it has already been processed by the Proper Assessing Officer.
- (xix) that the impugned SCN devoid of any lawful authority as such it merits to be dropped.

RECORDS OF PERSONAL HEARING:

13. After following principal of natural justice Personal hearing in the matter was granted to all the noticees on 29.11.2023, 16.01.2024 and 25.01.2024. Details of the PH are as under:

- (i) **1st PH granted on 29.11.2023: M/s. STPL vide their letter dated 25.11.2023** stated that their consultant was in the United States and facing health problems there; due to which, unable to attend the PH. Therefore, they requested to adjourn the PH to second week of January 2024.
- (ii) **2nd PH granted on 16.01.2024:** Shri Vikas Mehta, authorized representative of noticee vide his email dated 16.01.2024 requested for short adjournment.
- (iii) **3rd PH granted on 25.01.2024:** The PH was attended by Shri Vikas Mehta, authorized representative of noticee i.e. M/s. STPL, therein, he interalia reiterated their earlier written submission. He also stated that they would submit their final submission in one week.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the **Show Cause Notice** No. GEN/ADJ/COMM/205/2023-Adjn dated 24.03.2023 issued by the Commissioner of Customs, Custom House, Mundra, relied upon documents, submissions made by the Noticees and the records available before me. The issues in the instant case before me to decide are:

- (i) Whether assessable value declared by importer i.e. M/s. STPL at the time of clearance of goods is liable for rejection under **Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, if Yes, determination of re-determined value, or otherwise.
- (ii) Whether the value of identical goods declared in **31 Nos. of Bills of Entry** as mentioned in Table-III, is liable to be re-determined under **Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** read with Section 14 of the Customs Act, 1962, or otherwise.

- (iii) The value of similar goods declared in **28 Nos. of Bills of Entry** as mentioned in Table-IV is liable to be re-determined under **Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** read with Section 14 of the Customs Act, 1962.
- (iv) Whether, all **59 Nos. Bills of Entry** are liable to be re-assessed under **Section 17(4) of the Customs Act, 1962** on the re-determined value and the differential duty is liable to be recovered from Noticee under Section 28 (4) of Customs Act, 1962.
- (v) Whether the goods are liable for confiscation under Section 111 (m) of the Customs Act 1962 or otherwise.
- (vi) Whether penalty should be imposed on M/s. STPL, under Section 114A and Section 114AA of the Customs Act, 1962 or otherwise.

15. I find that in the instant investigation was carried out by the SIIB Custom House Mundra against M/s. STPL on the charges of undervaluation of imported goods i.e. "*Spruce Wall Panels*" classified under Tariff item 44091010. On Scrutiny of past import consignments for the period from **01.04.2018 to 31.03.2020**, it was noticed that M/s.STPL had imported total **59 consignments** of "*Spruce Wall Panels*" from Russia and Estonia. In many of such past consignments, invoices were raised from Singapore similar to the modus adopted in the above discussed adjudicated case. However, in many other cases, invoices were raised from the suppliers as mentioned above in **Table-II**. On further examination of another imported consignment of "*Spruce Wall Panels*" imported by M/s. STPL, supplied by M/s. Rait As, Estonia covered under bills of entry no. **7178518 dated 09.03.2020 & 7013930 dated 25.02.2020 as mentioned at SI. No.39 & 40 of Table-II** wherein they declared the unit price of "*Spruce Wall Panels*" of EUR 0.892012/Kgs. The goods covered under Bills Of Entry No. 7178518 dated 09.03.2020 & 7013930 dated 25.02.2020 were **identical** to the goods pertaining to some other consignments. From this, it is evident that contemporaneous price of the "*Spruce Wall Panels*" was **EUR 0.892012/Kgs.** Therefore, SIIB Custom House Mundra alleged that correct unit price of imported goods is **EUR 0.892012 per Kgs.**, whereas M/s. STPL declared the price much lower than that. Therefore, the impugned SCN dated 24.03.2023 was issued to them for demand and recovery of the government dues.

16. I find that on scrutiny of the documents of all aforementioned **59 Bills Of Entry** filed for the period from **01.04.2018 to 31.03.2020**, it was found that M/s. STPL had mainly imported the '**identical**' and '**similar**' goods i.e. "*Spruce Wall Panels*" from Estonia & Russia and by using the following modus operandi:

- a) In some imports, M/s.STPL has imported the goods directly from supplier M/s. Rait As, Estonia.
- b) In some cases, invoice is also issued by M/s. Asya Enterprises, Singapore but country of origin and supplier (in Bill of lading) of goods is declared as Estonia (EE) in some case.
- c) In some cases, invoices are issued by M/s. Rusfor(s) Pte Ltd, Singapore but country of origin is shown as Russia (RU).
- d) In some cases, invoices are issued by M/s. Rusfor(s) Pte Ltd, Singapore but supplier is shown as "M/s. Rait AS on behalf of M/s. Rusfor(s) Pte Ltd, Estonia" and country of origin is shown as Estonia (EE).

- e) In some cases, invoices are issued by M/s. Rusfor(s) Pte Ltd, Singapore but consignor in COO Certificate is mentioned as M/s Rait AS (on behalf of Rusfor(s) Pte Ltd), Estonia (EE).

16.1. Hence, it was revealed that M/s.STPL had shown country of origin Estonia and Russia in all **59 previous Bills of Entry** and the only apparent difference was that documents of the subject consignments was routed through mainly Singapore based companies and consignments was mainly supplied by M/s. Rait AS of Estonia, The goods covered under all **59 Bills of Entry** were **identical or similar** goods to the goods covered under Bills of Entry (mentioned in Table-I) filed by M/s. STPL and also identical or similar to the goods imported vide other bills of entry (mentioned in Table-II) filed by M/s. Sitaram International LLP & M/s. A,S. Wood Impex Pvt Ltd. Hence, STPL were required to correctly self-assess the all 59 bills of entry by declaring the **unit price as EUR 0.892012 per Kgs.**

17. I find that in the present investigation the investigating wing of Custom House, Mundra i.e. SIIB have reasonably taken the unit price of imported goods as EUR 0.892012 per Kgs. I find that earlier an investigation carried in a live case of Bill of Entry No. 7013930 dated 25.02.2020 filed by M/s. STPL, having assessable value of **Rs.27,67,844/-** for clearance of 92200 Kgs. of imported goods i.e. "*Spruce Wall Panels*" wherein unit price was declared as **Euro 0.380 per Kg.** In that case, Invoice was issued for the said imported goods by Asya Enterprises Pte. Ltd., Singapore. The said imported goods were supplied by Rait AS, Estonia. M/s. Rait AS of Estonia shipped the consignment in the name of Asya Enterprises Pte. Ltd. of Singapore who raised the subject invoice in the name of M/s.STPL. During the same period, another importer, M/s. Sitaram International, Anjar also imported 92000 Kgs. of "*Spruce Wall Panels*" from the same supplier Rait AS of Estonia and filed Bill of Entry No. 6966123 dated 21.02.2020 declaring unit price as **Euro 0.892012** per Kgs. Therefore, both the consignments were simultaneously examined and compared whereby the Goods covered under both the aforementioned bills of entry were found as same in all respects, including physical characteristics, quality and reputation. As per the import documents, the goods covered under both the Bills of Entry were found to be produced in the same country and produced by the single producer. Therefore, in terms of **Rule 2(1)(d) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, the subject consignment imported by M/s.STPL was found to be identical to goods imported by M/s. Sitaram International LLP. Consequently, a **Show Cause Notice No. VIII/ 48-2040/Singla/MCH/Gr.II/ 2019-20 dated 24.03.2020** was issued by Competent Authority to M/s. Singla Timbers Pvt. Ltd. and others. The said Show Cause Notice was adjudicated vide **Order-In-Original No. MCH/ADC/AK/13/2020-21 dated 11.05.2020**. Consequently, M/s. STPL had paid the duty, fine and penalty. It clearly indicates that M/s. STPL had accepted the undervaluation of imported goods and accepted that correct unit price of imported goods is **EUR 0.892012 per Kgs.**

18. I find that M/s. STPL vide their written submission dated 30.12.2023 have argued that the Principal Commissioner or any other officer who has not been designated as the Proper Officer under Section 17 of the Customs Act, has no jurisdiction or propriety to himself proceed to re-assess the Bills of Entry under Section 17(4) of the Customs Act, when it has already been processed by the Proper Assessing Officer. I find that Noticee have also argued that demand is not sustainable as the assessments has attained finality:

18.1. I find that this issue has already been settled by the Hon'ble Supreme Court in the case of **Union of India V/s. Jain Shudh Vanaspati Limited – reported at 1996 (86) ELT 460 (SC)** wherein it has been clearly held that Show Cause Notice under Section 28 of the Customs Act, 1962 can be issued without revising the order of assessment. The same ratio was once again pronounced by the Hon'ble Supreme Court in the case of **Collector of Central Excise, Bhubaneswar V/s. Re-Rolling Mills reported at 1997 (94) ELT 8 (SC)**. Once again by relying the ratio of Jain Shudh Vanaspati Limited – reported at 1996 (86) ELT 460 (SC) the Civil Appeal No. 327/1998 filed by Component Corporation was rejected by the Supreme Court as reported at **Component Corporation V/s Collector – 1998 (99) ELT A228** and thus upholding the Tribunal's order dated 19-09-1996 reported at **Component Corporation V/s. Collector of Customs, New Delhi – 1997 (93) ELT 225 (Tribunal)**.

- This view has been also expressed by Hon'ble High Court of Madras in the case of **Venus Enterprises V/s. Commissioner of Customs, Chennai – 2006 (199) ELT 405 (Mad)** which was later on upheld by the Supreme Court as reported at **Venus Enterprises v/s. Commissioner - 2007 (209) E.L.T. A61 (S.C.)**.
- The said judicial ratio has been once again applied by the Tribunal in the case of
 - **D. A. Srinivasulu V/s. Commissioner of Customs, Mumbai reported at 2006 (202) ELT 69 (Tri. Bang),**
 - **Dow Agrosciences India Private Limited V/s. Commissioner of Customs, Mumbai reported at 2012 (283) ELT 524 (Tri Mumbai),**
 - **Rajesh Gandhi V/s. Commissioner of Customs (Import) Mumbai reported at 2019 (366) ELT 59 (Tri. Mumbai)**

19. With regards submission of M/s. STPL that similar SCN should have been issued to all other importers whose values were found lesser than that of M/s. Sita Ram International & M/s. AS Impex; I find that the import values of goods imported during the period 01.04.2018 to 31.03.2020 by M/s. Sita Ram International, M/s. AS Wood Impex, and M/s. Singla Timbers Pvt. Ltd., have been taken into consideration to ascertain the contemporaneous value of 'Spruce Wall Panels'. I find that M/s. STPL vide their written submission have shared the data of other importers whereby claiming that other importers have also imported thorough Mundra Port at the lower value than that of M/s. Sita Ram International and M/s. AS Wood Impex.

19.1. In this connection, I observe that Adjudication of offences under the Customs Act 1962 are important functions of the officers of Customs to adjudge/determine offences/contravention. I find that the instant SCN was issued to M/s. STPL after conclusion of investigation, which abdicates the scope of further investigation in the matter. However, instead of producing concrete evidence in support of their case they vide their written submission produced data of other importers, which clearly does not prove that M/s. STPL did not undervalued their impugned imported goods, and therefore are liable to pay the differential duty as mentioned vide impugned SCN.

19.2. I observe that the legal maxim '*Ex injuria jus non oritur*', has a clear mandate that a legal right or entitlement cannot arise from an unlawful act or omission. Therefore, the persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. In the instant case in the investigation wing of Custom House, Mundra, identical and

similar goods have been imported by M/s. STPL below the contemporaneous price.

20. There is a contention of importer-M/s.STPL that it cannot be alleged that the goods were undervalued when there is no evidence of having received extra money against any of the impugned imports of wood panel. They have also contested that if more than one transaction value of identical goods are found, the lowest such value shall be used to determine the value of imported goods. In this connection, I find that in the instant case the investigating officers have proved that contemporaneous unit price of 'Spruce Wall Panels' is Euor 0.892012 per Kg. by comparison of import data of M/s.STPL with other importers as detailed vide Table-II hereinabove, it is evident that M/s. STPL have undervalued their imported goods. However, there remains no ambiguity on the issue of transaction value of identical goods and similar goods as per Rule 4 and Rule 3 of CVR 2007. Therefore, it is reasonable to assume that M/s. STPL have undervalued their goods in order to evade the duty.

20.1. I place reliance on the Order passed by the Hon'ble CESTAT, Ahmedabad in the case of M/s. Apurva Aluminum Corporation reported at 2010 (261) E.L.T. 515 (Tri. Ahmd.) and affirmed by the Hon'ble High Court of Gujarat [2014 (302) E.L.T. 495 (Guj.)], wherein the Hon'ble Tribunal has inter alia held that it would not be possible for any investigating officer to unearth all the evidences with mathematical precision. Relevant part of Para 5.1 reads as under:-

"5.1 The case ...

... Once again the onus of proving that they have accounted for all the goods produced, shifts to the appellants and they have failed to discharge this burden. They want the department to show challan wise details of goods transported or not transported. There are several decisions Of Hon'ble Supreme Court and High Courts wherein it has been held that in such clandestine activities, only the person who indulges in such activities knows all the details and it would not be possible for any investigating officer to unearth all the evidences required and prove with mathematical precision, the evasion or the other illegal activities".

20.2. In view of above discussion, I find that after thorough investigation the instant SCN was issued to M/s. STPL wherein it is clearly emphasised that the importer have resorted to evade duty in as much as the undervalued the impugned goods though identical and similar goods were imported by other importers through Mundra Port at a substantially higher value. Therefore, it is evident that M/s. STPL are liable to pay the differential duty as proposed vide impugned SCN.

REJECTION AND RE-DETERMINATION OF VALUE:

21. I observe that Rule 12 of CVR, 2007 provides that when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may call further information from importer including documents or other evidence and in case, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of Rule 3(1) of the CVR 2007. Explanation (iii) to Rule 12 provides that the proper officer shall have the powers to raise doubts

on the truth or accuracy of the declared value based on certain reasons, which may include any of the six reasons contained therein, one of which is that there is a significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed. Whereas, the Rule 3(1) of the CVR, 2007 provides that subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. However, in the instant case, as discussed above, the value declared by the M/s.STPL are liable for rejection under Rule 12 *ibid*. Therefore, I find that as provided under Rule 3(4) *ibid*, true and correct value is required to be determined by proceeding sequentially through Rule 4 to 9.

21.1. I observe that Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (here-in-after also referred to as "the CVR, 2007") provides for rejection of declared value on the basis of reasons to doubt the truth or accuracy of the declared value. The explanation (1)(iii)(a) of the said Rule 12 of CVR provides that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include; - the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

Relevant portion of Rule 12 of CVR is reproduced as under:

12. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

...

21.2. I find that in the instant case, since the declared unit price of goods covered under bills of entry mentioned at **Table-III & Table-IV** are substantially lower than the declared unit price of the goods covered under Bills of Entry mentioned in **Table-II**, I hold that the unit price declared by the M/s.STPL in all **59 Bills of Entry** as mentioned in **Table-I** is not true and thus the same is liable to be rejected under Rule 12 *ibid*.

21.3. I find that during the period from **01.04.2018 to 31.03.2020**, M/s. STPL and other importers i.e. M/s. Sita Ram International, M/s. A.S. Wood Impex Pvt. Ltd., have also imported 'Spruce Wall Panel' of Estonia and Russian Origin through Mundra Port, supplied by M/s. Rait AS, Estonia and Russia based suppliers. Such contemporaneous data of **40 consignments** has been detailed vide **Table-II** hereinabove, and are identical to the goods imported by M/s. STPL. From details as mentioned vide **Table-II** it is evident that the unit price of impugned goods is **EUR 0.892012 per Kg**. Therefore, it is evident that the contemporaneous value of 'Spruce Wall Panels' is **EUR 0.892012 per Kg**.

RE-DETERMINATION OF VALUE IN TERMS OF RULE 4 OF CVR, 2007 IN RESPECT OF THE IDENTICAL GOODS:

22. I find that during the period from 01.04.2018 to 31.03.2020 M/s. STPL and other importers imported impugned goods i.e. 'Spruce Wall Panel', vide **31 Nos. of Bills of Entry** as detailed vide **Table-III** hereinabove. These consignments were supplied by M/s. Rait AS, Estonia and having country of origin as Estonia. These goods are found to be **identical** to the goods detailed vide Table-II, in other words, these goods are same in all respect including physical characteristics, quality and reputation.

22.1. I observe that Rule 4 of the CVR, 2007 provides that subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; provided that such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962. In case of imported identical goods mentioned at **Table-III** hereinabove, it is evident from declaration and import documents that the subject goods imported by the M/s. STPL and the above discussed goods imported by the other importer are identical. Further consignments are being supplied by the same producer. Therefore, the subject goods are identical to the goods imported by M/s. STPL itself and other importer i.e. M/s.Sita Ram International LLP also. Therefore, **I hold that** transaction value of the subject goods i.e. Spruce Wall Panels of **31 bills of entry** as mentioned in **Table-III** are liable to be re-determined under Rule 4 of the CVR, 2007, read with Section 14 of the Customs Act, 1962, as **Rs.20,86,65,206/-** (at unit price of Euro 0.892012) as per the transaction value of the identical goods covered under Bills of Entry as mentioned in Table-II.

RE-DETERMINATION OF VALUE IN TERMS OF RULE 5 OF CVR, 2007 IN RESPECT OF THE SIMILAR GOODS:

23. I find that during the period from **01.04.2018 to 31.03.2020**, M/s. STPL and other importers have also imported 'Spruce Wall Panel' supplied by M/s. Rusfor (S) PTE Ltd. through Mundra Port. From declaration and import documents it is evident that such goods are not alike in all respect. Further, the consignments were supplied by M/s. Rusfor (S) PTE Ltd., i.e by another supplier M/s. Rait AS, but these goods are same in description. These goods are similar

to the goods imported by M/s. STPL and other importers also. Details of **28 Bills of Entry** under which importer had imported similar goods are mentioned vide **Table-VI** hereinabove.

23.1. I observe that Rule 5 of the CVR, 2007 provides that subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued; provided that such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962. In case of imported **similar** goods mentioned at **Table-IV**, it appears from declaration and import documents that the subject goods imported by the M/s. STPL and the above discussed goods imported by other importer i.e. M/s. Sita Ram International LLP are not alike in all respects. Further consignments are supplied by another supplier M/s. Rusfor (S) PTE Ltd other than supplier M/s. Rait As, but goods are same in description. However, supplier M/s. Rait As has also supplied many shipments on behalf of M/s. Rusfor (S) PTE Ltd. Hence, the subject goods are similar to the goods imported by M/s. STPL and other importer M/s. Sita Ram International LLP also. Therefore, **I hold that** transaction value of the subject goods i.e. Spruce Wall Panels of **28 Nos.** of Bills of Entry as mentioned in **Table-IV** are liable to be re-determined under Rule 5 of the CVR, 2007, read with Section 14 of the Customs Act, 1962, as **Rs.16,48,56,964/-** (at unit price of **Euro 0.892012** per Kg) as per the transaction value of the similar goods covered under Bills of Entry mentioned as in **Table-II**.

DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962

24. I find that w.e.f. 08-04-2011 the concept of self-assessment was introduced in the Customs Act, 1962. Accordingly, the onus was on the Noticee to ensure that accurate and complete information is given in the Bill of Entry, as mandated under Section 46(4A) of the Customs Act, 1962. Further, Rule 4 of Bill of Entry (Electronic Integrated Declaration) Regulations, 2011 clearly stipulates that bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the integrated declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry is generated by the Indian Customs Electronic Data Interchange for the said declaration. The terms accurate and complete information in Bill of Entry also includes reporting correct valuation of the goods. I find that all subject 59 Nos. of Bills of Entry have been facilitated by the System itself accepting assessment done by the Noticee. Thus, whatever was declared by the Noticee in subject Bills of Entry by making a declaration under Section 46(4A) of the Customs Act, 1962 has been accepted by the systems.

24.1. Earlier, the noticee M/s. STPL accepted the said Order-In-Original dated 11.05.2020 whereby the unit price of 'Spruce Wall Panel' was re-determined at **Euro 0.892012 per Kg** and paid differential duty along with fine/ penalty. This clearly suggested that M/s. STPL have accepted the undervaluation of imported goods.

24.2. I find that *mens-rea* is an essential element of offence when it is expressly mentioned but in a case of statutory offence regardless of *mens-rea*, penalty can be invoked on the main offender i.e. exporter/importer. However, nature of customs law is different from criminal law, as customs law is basically a civil law barring some provisions. Being civil law it proceeds on pre-ponderance of probability. But evasion of duty/avilment of undue export incentive beyond

certain threshold limit prescribed by the act and commissioned with knowledge is criminally liable in court of law. In such offence knowledge is necessary to prove the charges. In other statutory offence in absence of requirement of *mens-rea*, wrong is penalized through quasi-judicial proceedings.

21.3. The Supreme Court in Chairman SEBI v Shriram Mutual Fund (2006)

5.SCC has held that *mens-rea* is not an essential ingredient for contravention of the provisions of a Civil Act, unless the language of the statute indicates the need to establish the element of *mens rea*, it is generally sufficient to prove that a default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether the such violation was intentional or not. The breach would attract penalty regardless of the fact whether the contravention was intentional or not. The relevant portion of order is as under:

"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not".

Therefore, I find that it is appropriate to invoke section 28(4) of the customs act to demand the duty in the instance case.

The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts."

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

21.3. I find that M/s.STPL had contravened the provisions of Section 46(4) of Customs Act, 1902 in as much as they failed to declare the true value of the goods, undervalued the goods and failed to submit genuine documents while filing the Bill of entry. M/s.STPL imported the goods by resorting to mis-declaration by way of wilful mis-statement in the Bills of Entry filed under Section 46 of the Customs Act, 1962, before the Customs Authority. Hence, they had suppressed the facts to short pay the customs duty as per provisions laid

down under Section 28 (4) of Customs Act, 1962. Therefore, the short paid duty is liable to be recovered from the importer under aforementioned section. I observe that in terms of Section 28AA (1) of the Customs Act, 1962 the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

21.4. From the evidences on records before me, I find that from the import documents submitted and uploaded on e-sanchit by M/s.STPL it is evident that the subject goods were supplied by M/s. Rait AS of Estonia but the invoice was raised on M/s.STPL by M/s. Asya Enterprises Pte. Ltd. of Singapore. I find that the value declared by M/s. STPL was substantially lower than the value of contemporary value declared by other importer for identical/ similar goods. I find that the scrutiny of invoices issued by M/s. Rait ABS of Estonia, M/s. Rusfor (S) Pte Ltd of Singapore, M/s. Asya Enterprises Pte. Ltd, Singapore, revealed that the quantity had been mentioned in cubic meter in invoices but Bills of entry were filed by mentioning the quantity in Kgs. It clearly indicates that the unit quantity code was also changed in the invoice issued from Singapore so as to project the figure of unit price to look higher and near about the figure of other imports. From these facts, it is evident that M/s.STPL had knowingly suppressed the actual value of the goods and deliberately attempted to clear the goods by resorting to well-planned modus of undervaluation to evade payment of appropriate duty. It was also corroborated by the facts that M/s.STPL did not produce copy of invoice raised by M/s. Rait AS of Estonia or any other document showing actual transaction between supplier M/s. Rait AS of Estonia and Invoicing Party i.e. M/s. Asya Enterprises Pte. Ltd. and M/s. Rusfor(S) Pte Ltd of Singapore. It implies that Singapore based invoicing firms/ companies also actively connived with M/s.STPL by way of providing the invoices showing false value of the goods though they were aware of actual value of the goods. By way of providing falsified documents they abetted M/s.STPL in the deliberate act of undervaluation. By such acts of omission and commissions M/s. STPL had attempted to evade Customs duty to the tune of **Rs.5,26,80,759/- (actual of Rs.11,57,17,168/- minus declared of Rs.6,30,36,409/-)**. From above, it is evident that the mis-declaration of value has been done by M/s.STPL willfully with sole purpose of executing this modus of undervaluation and evasion of customs duty with suppression of the actual value.

Whether the goods are liable for confiscation under Section 111(m) of the Customs Act 1962 or not

22. From the facts discussed above, it is proven that M/s.STPL had contravened the provisions of Section 46(4) of Customs Act, 1962 in as much as they failed to declare the true value of the goods and undervalued the goods and failed to submit genuine documents while filing the Bill of entry under Section 46 of the Customs Act, 1962, before the Customs Authority. The mis-declaration of the goods in terms of value was committed with willful intent to evade the payment of appropriate custom duty leviable thereon. Hence, M/s.STPL had suppressed the facts to short pay the Customs Duty as per provisions laid down under Section 28 (4) of Customs Act, 1962. Therefore, I hold that the value of subject goods i.e. 'Spruce Wall Panels' cleared under previous 59 bills of entry having been intentionally mis-declared and under-valued by M/s.STPL are liable to be re-determined to **Rs. 37,35,22,170/-**. I further hold that the impugned

imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 for act of omission and commission on part of M/s. STPL.

22.1. As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the goods mentioned in Table-A. The Section 125 *ibid* reads as under:-

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

22.2. A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

22.3. I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripa Ispat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any ground to hold.

22.4. In this regard, I find that the subject imported goods were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A *ibid* covering recovery of redemption fine is available. I, therefore, hold that redemption fine cannot be imposed in respect of imported goods imported vide Bills of Entry as detailed vide Tables hereinabove.

Liability of Penalty under Section 114A and Section 114AA of the Customs Act, 1962.

23. I find that M/s.STPL had knowingly suppressed the actual value of the goods and deliberately attempted to clear the goods by resorting to well-planned modus of undervaluation to evade payment of appropriate duty. It was also corroborated by the facts that M/s.STPL did not produce copy of invoice or any other document showing actual transaction between supplier and Invoicing firms/ companies. It implies that Singapore based invoicing firms/ companies also actively connived with M/s.STPL and abetted M/s.STPL in the deliberate act of undervaluation in order to evade the payment of Customs duty to the tune of **Rs.5,26,80,759/-**. I hold that the deliberate acts of this mis-declaration on part of M/s.STPL have rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

23.1. I observe that the Section 114AA envisages penalty for use of false or incorrect material. In the instant case the importer undervalued imported goods and resultantly evaded the duty. I observe that penalty under section 114AA is imposable only if knowingly or intentionally a false statement or document is made, signed or used. Therefore, I refrain from imposing penalty upon M/s. STPL under Section 114AA of the Customs Act, 1962. However, penalty under Section 114A is expressly mentioned and imposed upon M/s. STPL. **I hold so.**

24. In view of discussion and findings supra, I pass the following order:

ORDER

- (i) I reject the value of imported goods imported by **M/s. Singla Timbers Pvt. Ltd. (IEC No. 3009017405)** i.e. Spruce Wall Panels as declared in **59 Nos. of Bills of Entry** mentioned in Table-I as **Rs.20,34,74,527/- (Rs.11,03,22,260/-** for Bills of entry mentioned in Table-III and **Rs.9,31,52,267/-** for Bills of entry mentioned in Table-IV) under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- (ii) I order to re-determine the value of identical goods declared in **31 Nos. of Bills of Entry** as mentioned in **Table-III** to **Rs.20,86,05,206/-** (at unit price of Euro 0.892012 per Kg.) under **Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** read with Section 14 of the Customs Act, 1962.
- (iii) I order to re-determine the value of similar goods declared in **28 Nos. of Bills of Entry** as mentioned in **Table-IV** to **Rs.16,48,56,964/-** (at unit price of Euro 0.892012 per Kg.) under **Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** read with Section 14 of the Customs Act, 1962,
- (iv) I order to reassess **59 Nos. of Bills of Entry** under Section 17(4) of the Customs Act, 1962 on the re-determined value as discussed in (ii) & (iii) above.
- (v) I confirm the demand of differential duty amount of **Rs.5,26,80,759/- (Rupees Five Crores Twenty-Six Lakhs Eighty Thousand Seven Hundred Fifty-Nine only)** and order to recover the same from the Noticee in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962 read with Section 28 (4) of Customs Act, 1962.
- (vi) I order to recover the interest from **M/s. Singla Timbers Pvt. Ltd. (IEC No. 3009017405)** at appropriate rate under Section 28AA of the Customs Act,

1962 on the above confirmed demand of duty as mentioned at (v) above.

- (vii) I order to confiscate the impugned goods i.e. Spruce Wall Panels mentioned in Table-III & Table-IV having re-determined value of **Rs.37,35,22,170/-** under Section 111 (m) of the Customs Act 1962. Since, the subject goods are not physically available for confiscation, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962.
- (viii) I impose Penalty of **Rs.5,26,80,759/- (Rupees Five Crores Twenty-Six Lakhs Eighty Thousand Seven Hundred Fifty-Nine only)** under Section 114A of the Customs Act, 1962 plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (v) above upon on **M/s. Singla Timbers Pvt. Ltd. (IEC No. 3009017405)**.
- (ix) I refrain from imposing penalty upon **M/s. Singla Timbers Pvt. Ltd. (IEC No. 3009017405)** in terms of Section 114AA of the Customs Act, 1962, for the reasons discussed hereinabove.

25. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(K. Engineer)

Commissioner of Customs
Custom House Mundra.

Date:05.03.2024

DIN: 20240378000000020998.

F.No. CUS/ADJ/COMM/205/2023-Adjn

BY SPEED POST/BY EMAIL/BY HAND/ NOTICE BOARD OR BY OTHER LEGALLY PERMISSIBLE MEANS:

To (The Noticee),

M/s. Singla Timbers Pvt. Ltd.,
Survey No. 548/1, Mithi Rohar,
Gandhidham, Gujarat.

COPY TO:-

- 1) The Chief Commissioner of Customs, Ahmedabad Zone, Ahmedabad.
- 2) The Deputy/Assistant Commissioner (SHB), Customs House, Mundra
- 3) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 4) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 5) Notice Board.
- 6) Guard File.