



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाई कोर्ट के सामने, नवरंगपुरा, अहमदाबाद - 380009
“CUSTOMS HOUSE”, FIRST FLOOR, OPP. OLD HIGH COURT,
NAVRANGPURA, AHMEDABAD - 380009

PHONE : (079) 27544630 FAX (079) 27542343 E-mail: cus-ahmd-adj@gov.in

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PREAMBLE

A	फ़ाइल संख्या/ File No.	: VIII/10-181/DRI-AZU/O&A/HQ/2023-24
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	: DRI/AZU/GI-1/ENQ-71(INT-31/14)/2014 dated 07/05/2015 issued by the Additional Director, DRI, AZU, Ahmedabad
C	मूल आदेश संख्या/ Order-In-Original No.	: 03/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	: 12/04/2024
E	जारी करनेकी तारीख/ Date of Issue	: 12/04/2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	: 1. M/s. Gocool Grinders, 30, Ghanshyam Indus. Estate, Nr. Margha Farm, Bapunagar, Ahmedabad, Gujarat-380024. 2. M/s. Gayatri Traders, 31/A, Ghanshyam Indus. Estate, Nr. Margha Farm, Bapunagar, Ahmedabad, Gujarat-380024. 3. M/s. Garvi Traders, 383, Mehta Tiles Compound, Opp: G. H. Board, Singarwa-Kathwada Road, Kathwada, Ahmedabad-382430 & 4 others
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ %अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Subject: - Show-Cause-Notice File No. DRI/AZU/GI-1/ENQ-71(INT-31/14)/2014 dated 07/05/2015 issued by the Additional Director, DRI, AZU, Ahmedabad to (1) M/s. Gocool Grinders, Ahmedabad, (2) M/s. Gayatri Traders, Ahmedabad, (3) M/s. Garvi Traders, Ahmedabad and others.

Brief Facts of the Case:

On the basis of an intelligence gathered by DRI Ahmedabad, cases were booked against six importers M/s. Girnar Products, M/s. Gangotri Industries, M/s. Ganga Products, M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, all having their common office situated at 30/31-A, Ghanshyam Industrial Estate, Margha Farm, Behind Shashtri Stadium, Rakhial, Ahmedabad and M/s. Garvi Traders also having office at 383, Mehta Tiles Compound, Opp. G.H. Board, Singarwa-Kathwada Road, Ahmedabad-382430, for evasion of customs duty by resorting to under valuation and by suppressing the actual transaction value in the invoices in respect of import of "Bamboo Sticks for Agarbatti making, Joss powder & Agarbatti making machine". A common SCN F.NO. DRI/AZU/GI-1/ENQ-71(INT-31/14)/2014 dated 7.5.2015 was issued by DRI, AZU, Ahmedabad to all the Six noticees, M/s. Girnar Products, M/s. Gangotri Industries, M/s. Ganga Products, M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders. The goods imported by M/s. Gocool Grinders & M/s. Gayatri Traders which were placed under seizure vide Panchnama dated 10.12.2014 at ICD Khodiyar, Gandhinagar were ordered for provisional release by the Customs Ahmedabad vide letters F. No. VIII/48-125/1CD/2014 dated 22.12.2014 subject to fulfillment of conditions there under i.e. on furnishing of PD Bond of assessable value of goods and Bank Guarantee of 50% of the bond value by the respective importer.

2. SCN to M/s. Girnar Products, M/s. Gangotri Industries & M/s. Ganga Products was answerable to the Additional Commissioner, Ahmedabad & Nhava Sheva, the three noticees being eligible as per Section 127B of the Act, filed application with the settlement commission who passed Order No. 122/Final order/CUS/VRP/2016 dated 28.7.2016, Order No. 150/ Final order/CUS/VRP/2016 dated 26.9.2016 & Order No. 151/Final order/CUS/VRP/2016 dated 26.9.2016 respectively, in respect of these three noticees which have been accepted by DRI, Ahmedabad.

3. In respect of the remaining three noticees, M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, the SCN was answerable to the Additional Commissioner, Ahmedabad as under:

3.1 M/s. Gocool Grinders were asked to show cause as to why:

- i. The value of Rs. 42,14,215/- declared by them/assessed at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A1 to the show cause notice should not be rejected under Rule 12 of Customs (Determination of value of Imported Goods) Rules, 2007 and re-determined as Rs. 48,32,284/- (Rupees Forty Eight lakh thirty two thousand two hundred and eighty four only) as detailed in Annexure-A1 to the SCN, under sub- section {1} of section 14 of the Customs Act, 1962 read with. Rule 3(1) and Rule 10(2) of (Determination of value of Imported Goods) Rules, 2007, applicable;
- ii. 2000 Kgs of 'Agarbatti Stick 8"- Grade B' valued at Rs. 16,28,951/- (re-determined) imported under Bill of Entry No. 7021893 dated 10/10/2014 & 2000 Kgs of 'Agarbatti Stick 8"- Grade B' valued at Rs. 16,18,492/- (re-determined) imported under Bill of Entry No. 7352481 dated 12/11/2014 as detailed at Sr. No. 2,3 & 4 in Annexure-A1 to the SCN, seized on 10/12/2014 & 30/04/2015, respectively, should not be confiscated under section 111(m) of the Customs Act, 1962;
- iii. The goods valued at Rs.15,84,841/- (re-determined) as detailed in Annexure-A1 to the SCN, which have been cleared and not available for

seizure should not be held liable to confiscation under section 111(m) of the Customs Act, 1962;

- iv. Differential Customs duty amounting to Rs. 90,931/- (Rupees Ninety Thousand Nine Hundred and Thirty One only) on the goods imported valued at Rs. 48,32,284/- (re-determined) covered under Bills of Entry mentioned in Annexure-A1 to the SCN, should not be demanded and recovered from them under section 28(4) of the Customs Act, 1962 (Erstwhile proviso to Section 28(1)) alongwith applicable interest under section 28AA (Erstwhile Section 28AB] *ibid*;
- v. Penalty should not be imposed on them under Section 114A/112(a) of the Customs Act, 1962 for the acts of commission and omission discussed herein above;
- vi. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 for the acts of commission and omission discussed herein above;
- vii. The Customs duty amounting to Rs. 90,931/- paid during the investigation should not be appropriated and adjusted towards their duty liability;
- viii. The interest amounting to Rs.4,441/- paid during the investigation should not be appropriated and adjusted towards their interest liability;
- ix. The bond and bank guarantee furnished by them should not be invoked and enforced for recovery of fine and penalty.

3.1.1 Shri Vrushal Kumar P. Rafaliya residing at 10, Utshav Vihar, Shashtri Bridge, Napier Town, Jabalpur (M.P.) 482001 and Shri Popatbhai T. Rafaliya residing at 1-Niranjan Society, Opp. Chirag Diamonds, Shashtri Marg, Bapunagar, Ahmedabad-380024, as to why Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 and Section 112(b) *ibid*.

3.1.2 Shri Yuvraj P. Firke residing at 39/311, Gujarat Housing Board, B/H City Gold Cinema, Saraspur, Ahmedabad-380018 & Shri Kantibhai Amrabhai Patel residing at C-7, Sonal Apartments, Ashapura Temple Corner, Jivrajpark, Ahmedabad, as to why Penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962.

3.2 Gayatri Traders were asked to show cause as to why:

- i. The value of Rs. 40,01,827/- declared by them/assessed at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A2 to the show cause notice should not be rejected under Rule 12 of Customs (Determination of value of Imported Goods) Rules, 2007 and re-determined as Rs. 48,29,721/- (Rupees Forty Eight Lakh Twenty Nine Thousand Seven Hundred and Twenty One only) as detailed in Annexure-A2 to the SCN, under sub-section (1) of section 14 of the Customs Act, 1962 read with Rule 3(1) and Rule 10(2) of (Determination of value of Imported Goods) Rules, 2007 as applicable;
- ii. 20000 Kgs of 'Agarbatti Stick 8"- Grade B item code BRS-01/8' valued at Rs.16,18,492/- (re-determined) imported under Bill of Entry No. 7352437 dated 12/11/2014 as detailed at Sr. No. 4 in Annexure-A2 to the SCN,

seized on 10/12/2014 should not be confiscated under section 111(m) of the Customs Act, 1962;

- iii. The goods valued at Rs.32,11,229/- (re-determined) as detailed in Annexure-A2 to the SCN, which have been cleared and not available for seizure should not be held liable to confiscation under section 111(m) of the Customs Act, 1962;
- iv. Differential Customs duty amounting to RS. 1,21,800/- (Rupees One Lakh Twenty One Thousand and Eight Hundred only) on the goods imported valued at Rs.48,29,721/- (re-determined) covered under Bills of Entry mentioned in Annexure-A2 to the SCN, should not be demanded and recovered from them under section 28(4) of the Customs Act, 1962 [Erstwhile proviso to Section 28(1)] alongwith applicable interest under section 28AA [Erstwhile Section 28AB] ibid;
- v. Penalty should not be imposed on them under Section 114A/112(a) of the Customs Act, 1962 for the acts of commission and omission discussed herein above;
- vi. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 for the acts of commission and omission discussed herein above;
- vii. The Customs duty amounting to Rs. 1,21,800/- paid during the investigation should not be appropriated and adjusted towards their duty liability;
- viii. The interest amounting to Rs.5,312/- paid during the investigation should not be appropriated and adjusted towards their interest liability;
- ix. The bond and bank guarantee furnished by them should not be invoked and enforced for recovery of fine and penalty.

3.2.1 Shri Vrushal Kumar P. Rafaliya residing at 10, Utshav Vihar, Shashtri Bridge, Nepier town, Jabalpur (M.P.) 482001 and Shri Popatbhal T. Rafaliya residing at 1-Niranjan Society, Opp. Chirag Diamonds, Shashtri Marg, Bapunagar, Ahmedabad-380024 as to why Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 and Section 112(b) ibid.

3.2.2 Shri Yuvraj P. Firke residing at 39/311, Gujarat Housing Board, B/H City Gold Cinema, Saraspur, Ahmedabad-380018 & Shri Kantibhai Amrabhai Patel residing at C-7, Sonal Apartments, Ashapura Temple Corner, Jivrajpark, Ahmedabad as to why Penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962

3.3 M/s. Garvi Traders were asked to show cause as to why:

- i. The value of Rs.72,08,357/- declared by them/assessed at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A3 to the show cause notice should not be rejected under Rule 12 of Customs (Determination of value of Imported Goods) Rules, 2007 and re-determined as Rs. 85,45,953/- (Rupees Eighty Five Lakh Forty Five Thousand Nine Hundred and Fifty Three only) as detailed in Annexure-A3 to the SCN, under sub- section (1) of section 14 of the Customs Act, 1962

read with Rule 3(1) and Rule 10(2) of (Determination of value of Imported Goods) Rules, 2007 as applicable;

- ii. 21916 Kgs of 'Agarbatti Sticks' valued at Rs.17,75,183/- (re-determined) imported under Bills of Entry No. 6673314 dated 6/9/2014 & 7021691 dated 10/10/2014 and 46 Nos of 'Machine Making Incense stick', valued at Rs. 20,40,692/- (re-determined) imported under Bill of Entry No. 7231167 dated 31/10/2014 as detailed at Sr. No. 4, 6 & 7 in Annexure-A3 to the SCN, seized on 30/04/2015 should not be confiscated under section 111(m) of the Customs Act, 1962;
- iii. The goods valued at Rs.47,30,078/- (re-determined) as detailed in Annexure-A3 to the SCN, which have been cleared and not available for seizure should not be held liable to confiscation under section 111(m) of the Customs Act, 1962;
- iv. Differential Customs duty amounting to Rs. 1,96,787/- (Rupees One Lakh Ninety-Six Thousand Seven Hundred Eighty-Seven only) on the goods imported valued at Rs.85,45,953/- (re-determined) covered under Bills of Entry mentioned in Annexure-A3 to the SCN, should not be demanded and recovered from them under section 28(4) of the Customs Act, 1962 (Erstwhile proviso to Section 28(1)) alongwith applicable interest under section 28AA (Erstwhile Section 28AB) *ibid*;
- v. Penalty should not be imposed on them under Section 114A/ 112(a) of the Customs Act, 1962 for the acts of commission and omission discussed herein above;
- vi. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 for the acts of commission and omission discussed herein above;
- vii. The Customs duty amounting to Rs.1,96,787/- paid during the investigation should not be appropriated and adjusted towards their duty liability;
- viii. The interest amounting to Rs.12,758/- paid during the investigation should not be appropriated and adjusted towards their interest liability;
- ix. The bond and bank guarantee furnished by them should not be invoked and enforced for recovery of fine and penalty.

3.3.1 Shri Vrushal Kumar P. Rafaliya residing at 10, Utshav Vihar, Shashtri Bridge, Nepier Town, Jabalpur (M.P.) 482001 and Shri Popatbhai T. Rafaliya residing at 1- Niranjana Society, Opp. Chirag Diamonds, Shashtri Marg, Bapunagar, Ahmedabad-380024 as to why Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 and Section 112(b) *ibid*.

3.3.2 Shri Yuvraj P. Firke residing at 39/311, Gujarat Housing Board, B/H City Gold Cinema, Saraspur, Ahmedabad-380018 & Shri Kantibhai Amrabhai Patel residing at C-7, Sonal Apartments, Ashapura Temple Corner, Jivrajpark, Ahmedabad as to why Penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962.

4. Order-in-Original-

In pursuance to the Show Cause Notice issued vide F. No. DRI/AZU/GI-1/(INT-31/14/2014 dated 07.05.2015 adjudication proceedings were carried wherein opportunities were given to the relevant noticees. The Noticees were allowed opportunities to present their submissions and to present their viewpoints regarding the allegations and proposals for recovery of dues and penalties, as mentioned in the Show Cause Notice.

4.1. After conclusion of the proceedings, an Order in Original No. 80/ADC-ML/ICD-Khod/O&A/2017 dated 25.04.2017 was issued by the Additional Commissioner of Customs, Ahmedabad. The order was as follows:

- a) The value of Rs. 42,14,215/- declared by M/s. Gocool Grinders for assessment at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A1 to the show cause notice under Rule 12 of Customs (Determination of value of Imported Goods) Rules, 2007 was rejected and the value was re-determined as Rs. 48,32,284/- (Rupees Forty Eight Lakhs Thirty Two Thousand Two Hundred and Eighty Four only) as detailed in Annexure-A1 to the SCN, under sub-section (1) of section 14 of the Customs Act, 1962 read with Rule 3(1) and Rule 10(2) of (Determination of value of imported Goods) Rules, 2007, as applicable;
- b) 20000 Kgs of 'Agarbatti Stick 8"- Grade B' valued at Rs.16,28,951/- (re-determined), imported under Bill of Entry No. 7021893 dated 10/10/2014 & 20000 Kgs of 'Agarbatti Sticks Grade B' valued at Rs. 16,18,492/- (re-determined) imported under Bill of Entry No. 7352481 dated 12/11/2014 as detailed at Sr. No. 2,3 & 4 in Annexure-A1 to the SCN, seized on 10/12/2014 & 30/04/2015 under section 111(m) of the Customs Act, 1962 was ordered to be confiscated. However, an option was given to the said importer M/s. Gocool Grinders to redeem the imported goods on payment of fine of Rs.3,20,000/- (Rupees Three Lakh Twenty Thousand only) under section 125 of the Customs Act, 1962.
- c) The goods valued at Rs.15,84,841/- (re-determined) as detailed in Annexure-A1 to the SCN, which were cleared and were not seized and were hence not available for confiscation and therefore, no fine was imposed;
- d) The differential Customs duty amounting to Rs.90,931/- (Rupees Ninety Thousand Nine Hundred and Thirty-One only) on the goods imported valued at Rs.48,32,284/- (re-determined) covered under Bills of Entry mentioned in Annexure-A1 to the SCN, under section 28(4) of the Customs Act, 1962 (Erstwhile proviso to Section 28(1)) was confirmed and ordered to recover the same from the said importer M/s. Gocool Grinders and the Customs duty amounting to Rs.90,931/- paid during the investigation should be appropriated and adjusted towards the recovery of above differential duty;
- e) An interest of Rs.4,441/- (Rupees Four Thousand Four Hundred and Forty One only) was ordered to be recovered from the said importer M/s. Gocool Grinders on the above duty at the appropriate rate under Section 28AA [erstwhile section 28AB] of the Customs Act, 1962 and the interest amounting to Rs.4,441/- paid during the investigation was appropriated and adjusted towards the recovery of interest ordered above;
- f) Penalty of Rs.90,931/- (Rupees Ninety Thousand Nine Hundred and Thirty-One only) on the said importer, M/s. Gocool Grinders, was imposed under

section 114A of the Customs Act, 1962 and penalty under section 112(a) of the Customs Act, 1962 was not imposed;

- g) Penalty of Rs.1,00,000/- (Rupees One Lakh only) was imposed on the said importer, M/s. Gocool Grinders, under section 114AA of the Customs Act, 1962;
- h) The bond and bank guarantee furnished by the said importer M/s. Gocool Grinders was invoked and enforced for recovery of any unpaid fine and penalty as imposed in this Order.
- i) The value of Rs.40,01,827/- declared by M/s. Gayatri Traders for assessment at time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A2 under Rule 12 of Customs (Determination or Value of Imported Goods) Rule 2007 was rejected and re-determined as Rs.43,29,721/- (Rupees Forty Eight Lakh Twenty Nine Thousand Seven Hundred and Twenty One only) as detailed in, Annexure-A2 to the Show Cause Notice under sub-section (1) of section 14 of the Customs Act, 1962 read with Rule 3(1) and Rule 10(2) of (Determination of value of Imported Goods) Rules, 2007 as applicable;
- j) 20000 Kgs of 'Agarbatti Stick 8". Grade B' valued at Rs.16,18,492/- (redetermined) imported under Bill of Entry No. 7352437 dated 12/11/2014 as detailed at Sr. No. 4 in, Annexure-A2 to the SCN, seized on 10/12/2014 under section 111(m) of the Customs Act, 1962; was ordered to be confiscated. However, an option was given to the said importer M/s. Gayatri Traders to redeem the imported goods on payment of fine of Rs.1,60 000/- (Rupees One Lakh Sixty Thousand only) under section 125 of the Customs Act 1962;
- k) The goods valued at Rs.32,11,229/- (redetermined) as detailed in Annexure-A2 to the SCN, which had been cleared and were not seized and were not available for confiscation and therefore, no fine was imposed;
- l) The differential Customs duty amounting to Rs.1,21,800/- (Rupees One Lakh Twenty One Thousand Eight Hundred only) on the goods imported valued at Rs.48,29,721/- (re-determined) covered under Bills of Entry mentioned in Annexure-A2 to the SCN, Section 28(4) of the Customs Act, 1962 (Erstwhile proviso to Section 28(1)) was confirmed and was ordered to be recovered from the said importer M/s. Gayatri Traders and the Customs duty amounting to Rs.1,21,800/- paid during the investigation was appropriated and adjusted towards the recovery of above differential duty;
- m) Interest of Rs.5,312/- (Rupees Five Thousand Three Hundred and Twelve only) was ordered to be recovered from the said importer i.e. M/s. Gayatri Traders on the above duty at the appropriate rate under Section 28AA (erstwhile section 28AB) of the Customs Act, 1962 and the interest amounting to Rs.5,312/- paid during the investigation was ordered to be appropriated and adjusted towards the recovery of interest ordered above;
- n) Penalty of Rs.1,21,800/- (Rupees One Lakh Twenty-One Thousand Eight Hundred only) was imposed on the said importer i.e. M/s. Gayatri Traders, under section 114A of the Customs Act, 1962 and penalty under section 112(a) of the Customs Act 1962 was not imposed;

- o) Penalty of Rs.1,00,000/- (Rupees One Lakh only) was imposed on the said importer i.e. M/s. Gayatri Traders, under section 114AA of the Customs Act 1962;
- p) The bond and bank guarantee furnished by the said importer i.e. M/s. Gayatri Traders, was ordered to be invoked and enforced for recovery of any unpaid fine and penalty as imposed in the order.
- q) The value of Rs.72,08,357/- declared by M/s. Garvi Traders at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A3 under Rule 12 of Customs (Determination of value of imported Goods) Rules, 2007 was rejected and re-determined to Rs.85,45,953/- (Rupees Eighty Five Lakh Forty Five Thousand Nine Hundred and Fifty Three only) as detailed in Annexure-A3 to the SCN, under sub-section (1) of section 14 of the Customs Act, 1962 read with Rule 3(1) and Rule 10(2) of Customs (Determination of value of imported Goods) Rules, 2007 as applicable;
- r) 21916 Kgs of "Agarbatti Sticks" valued at Rs.17,75,183/- (re-determined) Bills of Entry No. 6673314 dated 6/9/2014 & 7021691 dated 10/10/2014 and 46 Nos of "Machine Making Incense stick", valued at RS. 20,40,692/- (re-determined) imported under Bill of Entry No. 7231167 dated 31/04/2015 as detailed at Sr. No. 4, 6 & 7 in Annexure- A3 to the SCN, seized on 30/04/2015 under section 111(m) of the Customs Act, 1962 was ordered to be confiscated. However, an option was given to the said importer i.e. M/s. Garvi Traders to redeem the imported goods on payment of fine of Rs.3,80,000/- (Rupees Three lakh eighty thousand only) under section 125 of the Customs Act 1962;
- s) The goods valued at Rs.47,30,078/- (re-determined) as detailed in Annexure-A3 to the SCN, which had been cleared and were not seized and were not available for confiscation and therefore, no fine was imposed;
- t) The differential Customs duty amounting to Rs.1,96,787/- (Rupees One Lakh Ninety Six Thousand Seven Hundred and Eighty Seven only) on the goods imported valued at Rs.85,45,953/- (re-determined) covered under Bills of Entry mentioned in Annexure-A3 to the SCN under section 28(4) of the Customs Act, 1962 (Erstwhile proviso to Section 28(1)) and order to recover the same from the said importer M/s. Garvi Traders was confirmed. The Customs duty amounting to Rs.1,96,787/- paid during the investigation was ordered to be appropriated and adjusted towards the recovery of above differential duty;
- u) Interest of Rs.12,758/- (Rupees Twelve Thousand Seven Hundred and Fifty-Eight only) was ordered to be recovered from the importer i.e. M/s. Garvi Traders on the above duty at the appropriate rate under Section 28AA (erstwhile section 28AB) of the Customs Act, 1962. The interest amount of Rs.12,758/- paid during the investigation was ordered to be appropriated and adjusted towards the recovery of interest ordered above;
- v) Penalty of Rs.1,96,787/- (Rupees One Lakh Ninety-Six Thousand Hundred and Eighty Seven only) was imposed on the said importer i.e. M/s. Garvi Traders, under section 114A of the Customs Act, 1962 and penalty under section 112(a) of the Customs Act 1962 was not imposed;

- w) Penalty of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) was imposed on the said importer i.e. M/s. Garvi Traders, under section 114AA of the Customs Act 1962;
- x) The bond and bank guarantee furnished by the said importers M/s. Garvi Traders were invoked and enforced for recovery of any unpaid fine and penalty as imposed in the order;
- y) Penalty of Rs.50,000/- (Rupees Fifty Thousand only) was imposed on Shri Popatbhai T. Rafaliya the person responsible for the business activities of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, under section 114AA of the Customs Act, 1962;
- z) Penalty of Rs.50,000/- (Rupees Fifty Thousand only) was imposed on Shri Popatbhai T. safaliya, the person responsible for the business activities of the importers M/s. Gocool Grinders, M/s. Gavatri Traders & M/s. Garvi Traders, under section 112(b) of the Customs Act;
- aa) Penalty of Rs.50,000/- (Rupees Fifty Thousand only) was imposed on Shri Vrushal Kumar P. Rafaliya, the person looking after the import related work of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traderss, under section 114AA of the Customs Act;
- bb) Penalty of Rs.50,000/- (Rupees Fifty thousand only) was imposed on Shri Vrushal Kumar P. Rafaliya, the person looking after all the import related work of the importers i.e. M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, under section 112(b) of the Customs Act, 1962;
- cc) Penalty of Rs.25,000/- (Rupees Twenty-Five Thousand only) was imposed on Shri Yuvraj P. Firke, the person looking after the accounts of the importers i.e. M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, under section 112(a) of the Customs Act, 1962;
- dd) Penalty of Rs.25,000/- (Rupees Twenty Five Thousand only) was imposed on Shri Kantibhai Amrabhai Patel, the person who arranged to transfer the foreign remittances for the importers i.e. M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, to suppliers in Vietnam through unofficial channels under section 112(a) of the Customs Act, 1962;

5. Order-in-Appeals:

5.1. Being aggrieved by the Order in Original dated 25.04.2017, the Noticees preferred an appeal before Commissioner (Appeals).

5.2. The Commissioner (Appeals) vide their Order in Appeal No. AHD-CUSTOM-000-APP-12 to 18-18-19 Dated 18.04.2018 dated, rejected all the 7 appeals filed by M/s. Gocool Grinders, M/s. Gayatri Traders, M/s. Garvi Traders, Shri Vrushal Kumar P. Rafaliya, Shri Popatbhai T Rafaliya, Shri Yuvraj P. Firke and Shri Kantibhai Amrabhai Patel, against the OIO dated 25.04.2017.

6. CESTAT, Ahmedabad:

6.1 Being aggrieved by the Order in Appeal dated 18.04.2018, all the 7 appellants i.e. M/s. Gocool Grinders, M/s. Gayatri Traders, M/s. Garvi Traders, Shri Vrushal

Kumar P. Rafaliya, Shri Popatbhai T Rafaliya, Shri Yuvraj P. Firke and Shri Kantibhai Amrabhai Patel filed an appeal before Hon'ble CESTAT, Ahmedabad.

6.2 Hon'ble CESTAT, Ahmedabad vide their Final Order No. A/11714-11720/2023 dated 16.08.2023 observed as follows:

"The appellants in these matters have come before us aggrieved by order of both the lower authorities imposing penalties and redemption fine despite payment of duty and interest by them during the investigation itself. The option of lesser penalty was not afforded to them by the lower authorities especially the adjudicating authority. Accordingly, they submit that issue being legal and they having complied with the requirements of Section 28(5), the penalty is reducible against the main accused by providing them option, and against the co-accused as well, as laid down by the department in the CBIC Circular No. 11/2016, dated 15 March, 2016, as also various case law cited by them as given below:

*K. P Pouches (P) Ltd- 2008 (228) ELT 31 (Del.)
Commr. of C.EX. & Cus., Surat-I Vs. Bhagyoday Silk Industries- 2010 (262) ELT 248 (Guj.)
Sonam Clock Pvt. Ltd.-2012 (278) ELT 263 (Tri.-Ahmd.)*

2. Learned AR on the other hand indicates that the question of waiver of penalty provision of Section 28(5) was never taken up before the appellate authority, so the legality and the facts of the same, he cannot comment about. He reiterates the findings of the lower authority.

3. Considered. We find that party has paid the whole duty and interest as the fact is available on record as well as in the orders of lower authorities Prima facie, the parties are entitled to claim waiver of penalty under Section 28(5), but as the same has not been considered by the original Adjudicating Authority as well as appellate authority for providing of option, we are inclined to remit back the matter to Adjudicating Authority to consider the same and on the payment of penalty as per the requirements of Section 28(5), and also to consider the waiver of penalty of various co-accused as per the above cited CBIC circular. Question of redemption fine as well as party's submissions relating thereto are also kept open to be considered a fresh by the adjudicating authority in the light of immunity etc., after party pays the penalty on option being given as per Section 28(5) by the Adjudication Authority.

4. Matter remanded in above terms. Appeals are allowed by remand."

7. Submission:

7.1 I find that two submissions were made by the noticee regarding the subject matter. First submission was made by them on 04.10.2023. In that submission the noticee submitted that they seek conclusion of proceedings consequent upon payment of penalty @15% as provided under Section 28(5) of the Customs Act, 1962 as per Hon'ble CESTAT order no A/11714-11720/2023 dated 16.08.2023, remanding back the case.

7.2 They also submitted following case laws in support of their claim:

- a) Sonam Cloack Pvt. Ltd vs Commissioner of Central Excise, Rajkot- 2012 (278) ELT 263 (Tri. Ahmd.) wherein it was held that if option to pay 15% or 25%

penalty within 30 days from the date of receipt of notice is not given same can be extended at tribunal level too.

- b) Commissioner of Central Excise & Cus. Daman vs R.A. Shaikh Paper Mills Pvt. Ltd – 2010 (259) E.L.T. 53 (Guj.) wherein it was observed that if the option is explicitly not stated in the notice with proper quantification of particular amount of duty and interest, the failure on the part of person to pay duty, interest and penalty amount equivalent to 25% of duty, within 30 days of the notice, under Section 11A of the Central Excise Act, 1944/ section 28 of the Customs Act, 1962, it cannot be held against the person and he shall get option of the said beneficiary scheme even on payment within 30 days of the subsequent communication, with proper quantification and particular amount of duty and interest.
- c) COMMISSIONER OF CENTRAL EXCISE, VAPI Versus TECHNOVINYL POLYMERS LIMITED - 2013 (298) E.L.T. 50 (Tri. Ahmd.) wherein again same is held and in addition to that it is specifically held that if option to pay 15% or 25% penalty within 30 days from the date of receipt of notice can be given before issue of the SCN same can be extended after issue of the SCN.

" 6. In my considered view, the apprehension of the Revenue seems to be misplaced to that extent that the provisions of Section 11A(1A) of Central Excise Act, 1944 read with proviso to sub-section (2) of the said Section 11, very clearly indicates that if an assessee discharges the entire duty liability along with interest and 25% of the amount of duty liability, then the proceedings comes to an end. Provisions also indicate that there is no need for issuance of show cause notice. It is pointed out by the learned DR that in this case, the duty liability has been discharged after the issuance of show cause notice. In my view, the benefits which are available to an assessee prior to issuance of show cause notice should also be extended after the issuance of show cause notice, if liability is discharged before the adjudication order. Be that as it may, the issue seems to be covered by the Division Bench decision of this Tribunal in the case of Sonam Clock Put. Limited & Others v. CCE, Rajkot - 2011- TIOL-1893-CESTAT-DEL = 2012 (278) E.L.T. 263 (Tri.-Ahmd.) (wherein I was one of the Member). I do not find any merits in the grounds raised by the Revenue that assessee may seek refund of the amount as that the entire order-in-original is set aside as the first appellate authority has considered the extension of benefits of Section 11A to the assessee only on the ground that he has paid the amount in full. If the assessee would not have paid this amount, this benefit would not have been extended to him."

- d) In the case of N. S. Mahesh Vs. Commissioner of Customs, Cochin 2018 (363) ELT 644 (Tri. – Bang.) wherein it is also held the same.

"6. After considering the submissions of both the parties and perusal of the evidences on record, I find that there is no clearcut evidence of abetment or instigation on the part of the appellant to undervalue the goods declared by the importers. In fact, the appellant has only acted as a Clearing and Forwarding Agent and there is no independent corroborative evidence to conclude that he has helped the importer in evading the payment of customs duty. Infact there is no legally sustainable evidence of connivance against the appellant. More over it has been accepted but the Revenue that the importer has paid the differential duty along with interest and penalty and the same has been appropriated in the order-in-original. Further, I find that the appellant's case is squarely covered by the provisions of Section 28(6) of the Customs Act which clearly lays down that once the duty with interest and penalty has been paid in full, then proceedings in respect of the importer as well as other persons should be deemed conclusive. For the purpose of better appreciation, the provisions of sub- section (6) of Section 28 is reproduced below: -

Section 28(6): Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty

with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, proper officer is of the opinion-

- (i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person Or other persons to whom the notice is served under sub- section (1) or sub-section (4), shall, without prejudice to the provisions of Sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

7. In view of the statutory provisions cited supra, I am of the considered view that the case of the appellant is covered by Section 28(6) and therefore I hold that the proceedings against him also stands concluded once the importer has accepted the undervaluation and paid the differential duty along with interest and penalty. Consequently, I allow all the three appeals of the appellant and drop penalties of Rs. 1 lakh, Rs. 10,000/- and Rs.50,000/- imposed under Section 112(a) of the Customs Act, 1962."

During the course of personal hearing on 12.03.2024, the authorized representative of the Noticee also presented another submission containing explanation of provisions of Section 28 of the Customs Act, 1962.

In the said submission board circular 11/2016-Cus dated 15.03.2016 is referred wherein "clarifications regarding other persons (co-noticees) used in sub-section (2) & Sub-section (6) of the Section 28 of the Customs Act, 1962" was issued. They also submitted a circular issued vide F. No. 208/07/2008-CX-6 dated 22.05.2008, regarding mention of clause of reduced penalty at 25% w.r.t. Section 11AC of the Central Excise Act (and also applicable to Customs cases), to be mentioned in OIO.

In the submission, several other case laws were also mentioned by the noticee in support of their claim of their eligibility of availing benefit of reduced penalty. The case laws cited by them are as under-

- a) K.P. Pouches (P) Ltd vs Union of India, 2008 (228) E.L.T. 31 (Del.) High Court of Delhi
- b) Commissioner of Central Excise & Customs, Surat-I vs Bhagyoday Silk Industries 2010 (262) E.L.T 248 (Guj.), High Court of Gujarat
- c) Commissioner of Central Excise & Customs, Daman vs R.A. Shaikh Paper Mills Pvt. Ltd 2010 (259) E.L.T 53 (Guj.), High Court of Gujarat
- d) Sonam Clocks Pvt. Ltd vs Commissioner of Central Excise, Rajkot, 2012 (278) E.L.T 263 (Tri., Ahmedabad)
- e) Commissioner of Central Excise & Service Tax, Surat vs Jalaram Security Services, 2020 (37) G.S.T.L. 189 (Tri. Ahmedabad)

8. Personal Hearing:

8.1 In light of the Hon'ble CESTAT order dated 16.08.2023 mentioned in para supra, the matter being remitted back to the original adjudication authority for consideration of entitlement of the Appellants (Noticees) to claim waiver of penalty under Section 28(5) of the Customs Act, 1962, the matter was taken up for re-adjudication.

8.2 Accordingly, opportunity of personal hearing was granted to all the relevant 7 Noticees on 12.03.2024. The authorized representative of the Noticees appeared to present their view point and submitted that in the instant matter Hon'ble CESTAT, Ahmedabad vide their Order No. A/11714-11720/2023 dated 16.08.2023 has

remitted back the matter to consider the immunity from penalty and fine as all three importers have paid differential Customs Duty amount and have also paid penalty @ 15% post CESTAT order, as provided u/s 28(5) of the Customs Act, 1962. Further, it was also submitted by the authorized representative that u/s 28(6), read with proviso to Section 125 of the customs Act, 1962, no further penalties maybe imposed upon all 7 noticee and no fine can be imposed and hence, matter may please be concluded.

9. Discussion and Findings:

9.1 I have carefully gone through the facts of the case, documents on record and the submissions made by the three noticees M/s. Gocool Grinders, M/s. Gayatri Traders & four co-noticees vide their letter dated 26.10.2016 and joint submissions dated 04.10.2023 and 12.03.2024.

9.2 I find that the said three noticees have admitted to having engaged themselves in mis-declaring the value of imported goods and thereby evading customs duty. They have also not challenged the rejection and re-determination of the value during the course of investigation or during the adjudication proceedings or during the course of their appellate proceedings, first before Commissioner (Appeals) and later before, Hon'ble CESTAT, Ahmedabad. They have already paid the differential duty on the basis of re-determined value. Therefore, I accept the re-determined value as per the show cause notice. I also find that Shri Vrushal Kumar Rafaliya in his statement dated 24.11.2014 has clearly accepted that they got the differential, amount transferred to their overseas Suppliers through Shri Kantibhai Amrabhai Patel's firm. I further find that Shri Kantibhai Amrabhai Patel in his statements dated 13.11.2014 and 14.11.2014 has admitted that he had arranged to transfer the foreign remittances to suppliers at Vietnam of these importers through unofficial channel. Shri Yuvraj Firke and Shri Popatbhai Rafaliya the co-noticees have also accepted to the undervaluation and their role in their respective statements. In view of the above, there remains no dispute to the fact that the said three noticees had imported 'Agarbatti Sticks' and one of them M/s. Garvi Traders had also imported 'Machine Making Incense stick' under the cover of Bills of Entry as detailed in the above paras by mis-declaring the value of the consignments. The allegations in the SCN thus sustain. The differential duty of As. 90,931/-, Rs.1,21,800/- and Rs.1,96,787/- respectively is recoverable from the said M/s. Garvi Traders under section importers M/s. Gocool Grinders, M/s. Gayatri Traders 28(4) of the Customs Act, 1962. According to Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty accordance with the provisions of section 28 shall in addition to such duty, be liable to pay interest, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section. Therefore, the said importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders are respectively required to pay interest of Rs.4,441/-, Rs.5,312/- and Rs.12,758/- under Section 28AA of the Customs Act, 1962. The above stated Customs duty of Rs.90,931/-, Rs.1,21,800/- and Rs.1,96,787/- and interest of Rs.4,441/-, Rs.5,312/- and Rs.12,758/- respectively paid by the said three importers during investigation shall be appropriated and adjusted towards their respective duty and interest liability.

In view of the discussions in the foregoing paras, I hold that 20000 Kgs of 'Agarbatti Stick 8"- Grade B' valued at Rs. 16,28,951 (re-determined) imported under Bill of Entry No. 7021893 dated 10/10/2014 & 20000 Kgs of 'Agarbatti Stick 8"- Grade **9.3** 'B' valued at Rs.16,18,492/- (re-determined) imported under Bill of Entry No. 7352481 dated 12/11/2014 by M/s. Gocool Grinders as detailed at Sr. No. 2,3 & 4 in Annexure-A1 to the SCN, seized on 10/12/2014 & 30/04/2015, respectively are liable for confiscation under section 111 (m) of the Customs Act, 1962.

9.4 I further hold that 20000 Kgs of 'Agarbatti Stick 8"- Grade B item code BRS-01/8' valued at Rs. 16, 18,492 (redetermined) imported under Bill of Entry No. 7352437 dated 12/11/2014 by M/s. Gayatri Traders as detailed at Sr. No. 4 in Annexure-A2 to the SCN, seized on 10/12/2014 are liable for confiscation under section 111(m) of the Customs Act, 1962.

9.5 I further hold that 21916 Kgs of 'Agarbatti Sticks' valued at Rs. 17,75,183/- (re-determined) imported under Bills of Entry No, 6673314 dated 6/9/2014 & 7021691 dated 10/10/2014 and 46 Nos of 'Machine Making Incense stick', valued at Rs. 20,40,692/- (re-determined) imported under Bill of Entry No. 7231167 dated 31/10/2014 by M/s. Garvi Traders as detailed at Sr. No. 4, 6 & 7 in Annexure-A3 to the SCN (seized on 30/04/2015) are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give an option to these three importers, M/s. Gocool Grinders, M/s. Gayatri, M/s. Garvi Traders to redeem the goods on payment of fine under Section 125 of the Customs Act, 1962.

9.6 I find that the goods valued at Rs.15,84,841/- (re-determined) as detailed in Annexure-A1 to the SCN, have been cleared by M/s. Gocool Grinders and were not available for seizure. I further find that, the goods valued at Rs. 32,11,229/- (re-determined) as detailed in Annexur-A2 to the SCN, have been cleared by M/s. Gayatri Traders and were not available for seizure. I further find that, the goods valued at Rs. 47,30,078 (re-determined) as detailed in Annexure-A3 to the SCN, have been cleared by M/s. Garvi Traders and were not available for seizure. Since the said goods are not physically available for confiscation, confiscation fine under Section 125 of the Customs Act, 1962 is not liable to be imposed on the said goods. I place reliance on the judgment of the Hon'ble Tribunal in the case of-Shiv Kripa Ispat Pvt. Ltd. Vs Commissioner of C.Ex & Cus Nasik reported at 2009(235) ELT623 (Tri. -LB).

9.7 In view of above findings, the demand raised u/s 28 (4) by invoking extended period is justified, as the importers had evaded duty by mis-declaring the value of the goods.

9.8 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in the case of Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 sec 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed:

"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions." (para 10).

As discussed above, since the importers, M/s. Gocool Grinders, M/s. Gayatri Traders, M/s. Garvi Traders had evaded Customs duty by mis-declaring the value of the goods. Thus, I find that in the instant case, Customs Duty was not levied and paid on the imported goods by reason of collusion, willful misstatement and suppression of facts by the importers and consequently, the importers M/s. Gocool Grinders, M/s. Gayatri Traders, M/s. Garvi Traders are liable for penalty under Section 114A of the Customs Act, 1962

9.9 Further, on cogent reading of Provisions of the Section 28(5) & 28(6), I find that, when a notice has been served under sub-section (4) by the proper officer, the person to whom the notice is served, may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to 15% of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper

officer of such payment in writing. Whereas section 28(6) (i) stipulates that where duty with interest and penalty under sub-section (5) has been paid in full then the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein.

9.9.1 In the instant case, I find that the duty along with interest has been paid in full prior to issuance of SCN. Further, I find that the three importers have paid 15% penalty on 27/09/2023, after lapse of a considerable period of almost 8 and ½ years after issuance of SCN. Hence, I find that the Noticees have not paid the penalty of 15% of the duty demanded within thirty days of the receipt of the notice, as stipulated in section 28(5) of the Customs Act, 1962. I also find that the ratio of case laws presented by the importers in their submissions are not squarely applicable in this case.

9.9.2 Further, I find that the requirement of the statute [Section 28 (5)] for payment of Penalty @15% of duty is that the importers/noticee have to pay the penalty equal to 15% of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing. The statute doesn't leave any option/room for adjudicating authority to reduce the penalty (15%) after thirty days of the receipt of the notice under Section 28 of the Customs Act, 1962. In the absence of any such right, the adjudicating authority doesn't have any jurisdiction to entertain the same. No adjudicating authority is empowered to usurp jurisdiction, which it does not have.

Therefore, in my considered view, the proceedings initiated against the Noticee shall not be concluded under section 28(6) read with Section 28 (5) of the Customs Act, 1962.

9.10 Since, as Noticee(s) have been held liable for penalty under Section 114A, a penalty under Section 112(a) cannot be imposed on them in terms of the fifth proviso to Section 114A of the Customs Act, 1962.

9.11 As regards imposition of penalty under section 114AA of the Customs Act, 1962, I find that the value of the import goods given by these three importers in the Bills of Entry filed by them as well as other documents such as invoice presented to the Customs Authorities was mis-declared as admitted by them as well as the co-noticees. This has resulted into undervaluation by these three importers. Therefore, I hold the said importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders liable to penalty under section 114AA of the Customs Act, 1962.

9.12 The said importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders have already paid the duty and interest which have been ordered to be appropriated, the bond and bank guarantee furnished by them should be invoked and enforced for recovery of any unpaid fine and penalty as imposed in this order.

9.13 The show cause notice proposes penalty under Section 114AA and Section 112(b) of the Customs Act, 1962 on Shri Vrushal Kumar P. Rafaliya and Shri Popatbhai T. Rafaliya and under Section 112(a) of the Customs Act, 1962 on Shri Yuvraj P. Firke & Shri Kantibhai Amarbhai Patel.

9.14 I find that Shri Popatbhai I. Rafaliya, in his statement dated 12-13/11/2014 stated that he was the person responsible for the business activities of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders and these firms were owned by his family members. He admitted his role in the undervaluation of import

goods to evade the customs duty. Therefore, I hold him liable to penalty under Section 114AA of the Customs Act, 1962. I further find that Shri Vrushal Kumar P. Rafaliya was the person looking, after all the import related work of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders. He admitted to being engaged himself in arranging two sets of invoices one of full negotiated value and the other for lower value for presenting to customs authorities for undervaluation of goods and subsequent evasion of customs duty. Therefore, I hold him liable to penalty under Section 114AA of the Customs Act, 1962. Shri Popatbhai T. Rafaliya and Shri Vrushal Kumar P. Rafaliya have both dealt with the purchase of goods and deliberately undervaluing the said goods with the purpose of evading Customs duty when they had reasons to believe that the said goods were liable to confiscation. Therefore, I also hold both of them liable to penalty under Section 112(b) of the Customs Act, 1962.

9.15 I find that Shri Yuvraj P. Firke, who looked after the accounts of the three importers, M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders in his statement dated 12-13/11/2014 has also admitted to his role in misdeclaration of the value of the goods and suppressing the actual transaction value with a motive to evade customs duty. Thus, he has abetted the act of misdeclaration of value leading to evasion of customs duty by the importers. Therefore, I hold him liable to penalty under Section 112(a) of the Customs Act, 1962.

9.16 I find that Shri Kantibhai Amrabhai Patel has admitted that he had arranged to transfer the foreign remittances to suppliers at Vietnam through unofficial channels. Thus, he has abetted the act of mis-declaration of value leading to evasion of Customs duty by the importers. Therefore, I hold him liable to penalty under Section 112(a) of the Customs Act, 1962.

10. In view of the above, I pass following order:

ORDER

M/s. Gocool Grinders:

- (i) I reject the value of Rs.42,14,215/- declared by M/s. Gocool Grinders for assessment at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A1 to the show cause notice under Rule 12 of Customs (Determination of value of imported Goods) Rules, 2007 and re-determine the value as Rs.48,32,284/- (Rupees Forty Eight Lakh Thirty Two Thousand Two Hundred and Eighty Four only) as detailed in Annexure-A1 to the SCN, under sub-section (1) of section 14 of the Customs Act, 1962 read with Rule 3(1) and Rule 12 of (Determination of value of Imported Goods) Rules, 2007, as applicable;
- (ii) I confiscate 20000 Kgs of 'Agarbatti Stick 8"- Grade B' valued at Rs.16,28,951/- (determined) imported under Bill of Entry No. 7021893 dated 10/10/2014 & 20000 Kgs of Agarbatti Stick 8" Grade B' valued at Rs.16,18,492/- (redetermined) imported under Bill of Entry No. 7352481 dated 12/11/2014 as detailed at Sr. No. 2,3 & 4 in Annexure-A1 to the SCN, seized on 10/12/2014 & 30/04/2015 under section 111(m) of the Customs Act, 1962; I however give an option to the said importer M/s. Gocool Grinders to redeem the imported goods on payment of fine of **Rs.3,20,000/-** (Rupees Three Lakh Twenty Thousand only) under section 125 of the Customs Act, 1962.

- (iii) The goods valued at Rs.15,84,841/- (redetermined) as detailed in Annexure-A1 to the SCN, which had been cleared and were not seized are not available for confiscation and therefore, no fine is being imposed;
- (iv) I confirm the differential Customs duty amounting to **Rs.90,931/-** (Rupees Ninety Thousand Nine Hundred and Thirty-One only) on the goods imported valued at Rs.48,32,284/- (re-determined) covered under Bills of Entry mentioned in Annexure-A1 to the SCN, under section 28(4) of the Customs Act, 1962 [Erstwhile proviso to Section 28(1)] and order to recover the same from the said importer M/s. Gocool Grinders and the Customs duty amounting to Rs.90,931/- paid during the investigation should be appropriated and adjusted towards the recovery of above differential duty;
- (v) I order to recover interest of **Rs.4,441/-** (Rupees Four Thousand Four Hundred and Forty-One only) from the said importer M/s. Gocool Grinders on the above duty at the appropriate rate under Section 28AA (erstwhile section 28AB) of the Customs Act, 1962 and the interest amounting to Rs.4,441/- paid during the investigation should be appropriated and adjusted towards the recovery of interest ordered above;
- (vi) I impose penalty of **Rs.90,931/-** (Rupees Ninety Thousand Nine Hundred Thirty-One only) on the importer, M/s. Gocool Grinders, plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded under section 114A of the Customs Act, 1962 and do not impose any penalty under section 112(a) of the Customs Act, 1962;

However, as provided in proviso to Section 114A of the Act, where duty as determined above under Section 28(8) and the interest payable thereon under Section 28AA is paid within thirty-days from the date of the communication of this order, the amount of penalty liable to be paid by Noticee under this Section shall be Twenty Five per cent of the duty or interest, as the case may be, so determined, provided that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of said thirty days as referred to in this proviso.

- (vii) I impose penalty of **Rs.1,00,000/-** (Rupees One Lakh only) on the said importer, M/s. Gocool Grinders, under section 114AA of the Customs Act, 1962;
- (viii) The Bond and Bank Guarantee furnished by the importers, M/s. Gocool Grinders should be invoked and enforced for recovery of any unpaid fine and penalty imposed in this order.

Gayatri Traders

- (i) I reject the value of Rs.40,01,827/- declared by M/s. Gayatri Traders for assessment at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A2 to the show cause notice under Rule 12 of Customs (Determination of value of imported Goods) Rules, 2007 and re-determine the value as Rs.48,29,721/-

(Rupees Forty Eight Lakh Twenty-Nine Thousand Seven Hundred and Twenty-One only) as detailed in Annexure-A2 to the SCN, under sub-section (1) of section 14 of the Customs Act, 1962 read with Rule 3(1) and Rule 12 of (Determination of value of Imported Goods) Rules, 2007, as applicable;

- (ii) I confiscate 20000 Kgs of 'Agarbatti Stick 8" Grade B' valued at Rs.16,18,492/- (re-determined) imported under Bill of Entry No. 7352437 dated 12/11/2014 as detailed at Sl. No. 4 in Annexure - A2 to the SCN, seized on 10/12/2014 under section 111(m) of the Customs Act, 1962; I however give an option to the said importer M/s. Gayatri Traders to redeem the imported goods on payment of fine of **Rs.1,60,000/-** (Rupees One Lakh Sixty Thousand only) under section 125 of the Customs Act, 1962;
- (iii) The goods valued at Rs.32,11,229/- (re-determined) as detailed in Annexure-A2 to the SCN. Which had been cleared and were not seized are not available for confiscation and therefore, no fine is being imposed;
- (iv) I confirm the differential Customs duty amounting to Rs.1,21,800/- (Rupees One Lakh Twenty-One Thousand Eight Hundred only) on the goods imported valued at Rs.48,29,721/- (re-determined) covered under Bills of Entry mentioned in Annexure-A2 to the SCN, under section 28(4) of the Customs Act, 1962 (Erstwhile proviso to Section 28(1)) and order to recover the same from the said importer M/s. Gayatri Traders and the Customs duty amounting to Rs.1,21,800/- paid during the investigation should be appropriated and adjusted towards the recovery of above differential duty;
- (v) I order to recover interest of **Rs.5,312/-** (Rupees Five Thousand Three Hundred and Twelve only) from the said importer M/s. Gayatri Traders on the above duty at the appropriate rate under Section 28AA [erstwhile section 28AB] of the Customs Act, 1962 and the interest amounting to Rs.5,312/- paid during the investigation should be appropriated and adjusted towards the recovery of interest ordered above;
- (vi) I impose penalty of **Rs.1,21,800/-** (Rupees One Lakh Twenty-One Thousand Eight Hundred only) on the importer, M/s. Gayatri Traders, plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded under section 114A of the Customs Act, 1962 and do not impose any penalty under section 112(a) of the Customs Act, 1962;

However, as provided in proviso to Section 114A of the Act, where duty as determined above under Section 28(8) and the interest payable thereon under Section 28AA is paid within thirty-days from the date of the communication of this order, the amount of penalty liable to be paid by Noticee under this Section shall be Twenty Five per cent of the duty or interest, as the case may be, so determined, provided that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of said thirty days as referred to in this proviso.

- (vii) I impose penalty of **Rs.1,00,000/-** (Rupees One Lakh only) on the said importer, M/s. Gayatri Traders, under section 114AA of the Customs Act 1962;
- (viii) The bond and bank guarantee furnished by the said importers M/s. Gayatri Traders, should be invoked and enforced for recovery of any unpaid fine and penalty as imposed in this order.

M/s. Garvi Traders

- (ix) I reject the value of Rs.72,08,357/- declared by M/s. Garvi Traders for assessment at the time of clearance of goods imported by them under Bills of Entry mentioned under Annexure-A3 under Rule 12 of Customs (Determination of value-imported Goods) Rules, 2007 and re-determine the value as Rs.85,45,953/- (Rupees Eighty Five Lakh Forty Five Thousand Nine Hundred and Fifty Three only) as detailed in Annexure-A3 to the SCN, under sub-section (1) of section 14 of the Customs Act, 1962 read with Rule 3(1) and Rule 10(2) of (Determination of value of Imported Goods) Rules, 2007 as applicable;
- (x) I confiscate 21916 Kgs of 'Agarbatti Sticks' valued at Rs.17,75,183/- (re-determined) imported under Bills of Entry No. 6673314 dated 6/9/2014 & 7021691 dated 10/10/2014 and a6 Nos of 'Machine Making incense stick', valued at Rs.20,40,692/- (re-determined) imported under Bill of Entry No. 7231167 dated 31/10/2014 as detailed at Sr. No. 4, 6 & 7 in Annexure-A3 to the SCN, seized on 30/04/2015 under section 111(m) of the Customs Act, 1962; I however give an option to the said importer M/s. Garvi Traders to redeem the imported goods on payment of fine of **Rs.3,80,000/-** (Rupees Three Lakh Eighty Thousand only) under section 125 of the Customs Act, 1962;
- (xi) The goods valued at Rs.47,30,078/- (re-determined) as detailed in Annexure-A3 to the SCN, which had been cleared and were not seized and are not available for confiscation, therefore, no fine is imposed;
- (xii) I confirm the differential Customs duty amounting to **Rs.1,96,787/-** (Rupees One Lakh Ninety-Six Thousand Seven Hundred and Eighty-Seven only) on the goods imported valued at Rs.85,45,953/- (re-determined) covered under Bills of Entry mentioned in Annexure-A3 to the SCN, under section 28(4) of the Customs Act, 1962 (Erstwhile proviso to Section 28(1)) and order to recover the same from the said importer M/s. Garvi Traders and the Customs duty amounting to Rs.1,96,787/- paid during the investigation should be appropriated and adjusted towards the recovery of above differential duty;
- (xiii) I order to recover interest of **Rs.12,758/-** (Rupees Twelve Thousand Seven Hundred and Fifty-Eight only) from the said importer M/s. Garvi Traders on the above duty at the appropriate rate under Section 28AA (erstwhile section 28AB) of the Customs Act, 1962 and the interest amounting to Rs.12,758/- paid during the investigation should be appropriated and adjusted towards the recovery of interest ordered above;

- (xiv) I impose penalty of **Rs.1,96,787/-** (Rupees One Lakh Ninety-Six Thousand Seven Hundred Eighty-Seven only) on the importer, M/s. Garvi Traders, plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded under Section 114A of the Customs Act, 1962 and do not impose any penalty under section 112(a) of the Customs Act, 1962;

However, as provided in proviso to Section 114A of the Act, where duty as determined above under Section 28(8) and the interest payable thereon under Section 28AA is paid within thirty-days from the date of the communication of this order, the amount of penalty liable to be paid by Noticee under this Section shall be Twenty Five per cent of the duty or interest, as the case may be, so determined, provided that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of said thirty days as referred to in this proviso.

- (xv) I impose penalty of **Rs.1,75,000/-** (Rupees One Lakh Seventy-Five Thousand only) on the said importer, M/s. Garvi Trades, under section 114AA of the Customs Act 1962;
- (xvi) The bond and bank guarantee furnished by the said importers M/s. Garvi Traders, should be invoked and enforced for recovery of any unpaid fine and penalty as imposed in this order.
- (xvii) I impose penalty of **Rs.50,000/-** (Rupees Fifty Thousand only) on Shri Popatbhai T. Rafaliya, the person responsible for the business activities of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, under section 114AA of the Customs Act 1962;
- (xviii) I impose penalty of **Rs.50,000/-** (Rupees Fifty Thousand only) on Shri Popatbhai T- 26 Rafaliya, the person responsible for the business activities of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, under section 112(b) of the Customs Act, 1962;
- (xix) I impose penalty of **Rs.50,000/-** (Rupees Fifty Thousand only) on Shri Vrushal Kumar P. Rafaliya, the person looking after all the import related work of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, under section 114AA of the Customs Act, 1962;
- (xx) I impose penalty of **Rs.50,000/-** (Rupees Fifty Thousand only) on Shri Vrushal Kumar P. Rafaliya, the person looking after all the import related work of the importers M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders, under section 112(b) of the Customs Act 1962;
- (xxi) I impose penalty of **Rs.25,000/-** (Rupees Twenty Five Thousand only) on Shri Yuvraj P. Firke, the person looking after the accounts of the importers, M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders under section 112(a) of the Customs Act, 1962;

- (xxii) I impose penalty of **Rs.25,000/-** (Rupees Twenty Five Thousand only) on Shri Kantibhai Amrabhai Patel, the person who arranged to transfer the foreign remittances for the importers, M/s. Gocool Grinders, M/s. Gayatri Traders & M/s. Garvi Traders to suppliers at Vietnam through unofficial channels under section 112(a) of the Customs Act, 1962;

11. The Show Cause Notice issued vide F. No. DRI/AZU/GI-1/ENQ-71 (INT-31/14)/2014 dated 07.05.2015, in light of CESTAT order no A/11714-11720/2023 dated 16.08.2023, stands disposed of accordingly.


(Vishal Malani)

Additional Commissioner,
Customs, Ahmedabad.

o/c

DIN: 220240471MN0000020270

F. No. VIII/10-181/DRI-AZU/O&A/HQ/2023-24

Dated: 12.04.2024

BY SPEED POST A.D./E-mail/Hand Delivery/Through Notice Board:

1. M/s. Gocool Grinders, 30, Ghanshyam Indus. Estate, Nr. Margha Farm, Bapunagar, Ahmedabad, Gujarat-380024.
2. M/s. Gayatri Traders, 31/A, Ghanshyam Indus. Estate, Nr. Margha Farm, Bapunagar, Ahmedabad, Gujarat-380024.
3. M/s. Garvi Traders, 383, Mehta Tiles Compound, Opp: G. H. Board, Singarwa-Kathwada Road, Kathwada, Ahmedabad-382430
4. Shri Vrushal Kumar P. Rafaliya, 10, Utshav Vihar, Shastri Bridge, Nepiertown, Jabalpur (M.P.)-482001.
5. Shri Popatbhai T. Rafaliya, 1- Niranjan Society, Opp. Chirag Diamonds, Shastri Marg, Bapunagar, Ahmedabad-380024.
6. Shri Yuvraj P. Firke, 39/311, Gujarat Housing Board, B/H City Gold Cinema, Saraspur, Ahmedabad-380018.
7. Shri Kantibhai Amrabhai Patel, C-7, Sonal Apartment, Ashapura Temple Corner, Jivraj Park, Ahmedabad.

Copy to:-

1. The Pr. Commissioner of Customs, Custom House Ahmedabad, Nr. Akashvani, Navrangpura, Ahmedabad- 380009 for information please.
2. The Additional Director, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, Unit No. 15, Magnet Corporate Park, Near Sola Flyover, S. G. Highway, Thaltej, Ahmedabad -380054 for information and record please.
3. The Deputy/Assist. Commissioner of Customs (Import), ICD Khodiyar, Jamiyatpura Road Nr. Khodiyar Railway Station S.G. Highway Ta. & Dist - Gandhinagar-382423 for information and record please.
4. The Dy/Assist Commissioner of Customs (Systems), Customs HQ, Ahmedabad for uploading on the official website i.e. <https://ahmedabadcustoms.gov.in>.
5. The Deputy Commissioner of Customs (Task Force), Custom House Ahmedabad, Nr. Akashvani, Navrangpura, Ahmedabad- 380009 for information please.
6. Guard file.