

 <p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425</p>	 <p>आज़ादी का अमृत महोत्सव</p>	
A	File No.	CUS/APR/BE/SAO/112/2024-Gr 1
B	Order-in-Original No.	MCH/ADC/AK/139/2024-25
C	Passed by	Arun Kumar Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	04.09.2024
E	Noticee/Party/ Importer/ Exporter	M/s. s. R L Enterprises (IEC – AMLPV7270L), Address :102, Gokul Dham, Gagodar Village, Rapar, Kachchh, Gujarat-370145
F	DIN No.	20240971MO000001060A

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 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ झूटि/व्याज/दण्ड/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

DIN - 20240971MO000001060AOIO
OIO - MCH/ADC/MK/139/2024-25

Brief Facts of the case

M/s. R L Enterprises (IEC AMLPV7270L) Address :102, Gokul Dham, Gagodar Village, Rapar, Kachchh, Gujarat-370145 through their CB M/s. Continental Shipping Services filed Bill of Entry No. 9095965 dated 13.06.2022 (herein after referred to as 'the said BE' for the sake of brevity) for import of Foldable Vanity box, Foldable Trolley Makeup Box, Makeup Box falling under CTH-42021280 having declared Assessable Value as Rs. 8,25,426/- and duty payable as Rs. 3,09,287/-. The supplier name mentioned in the import documents was M/s. Tute Trade (HK) Co. Limited, Hong Kong.

1.1 Item details as declared in the Bill of Entry:

Table-I

Sl. No.	Item Description	CTH	Qty	Unit price per Pcs (USD)	BCD rate	SWS	IGST
1	Foldable Vanity box	4202 1280	2600	1.2	15%	10%	18%
2	Foldable Trolley Makeup Box	4202 1280	2400	1.3	15%	10%	18%
3	Makeup Box	4202 1280	2520	1.65	15%	10%	18%

2. Whereas, the Docks Examination Officers during examination of the consignment covered under the said BE, found items that were not declared in the Bill of Entry. Accordingly, the matter was referred to SIIB, Customs House Mundra.

3. Consequently, the consignment covered under the Bill of Entry No. 9095965 dated 13.06.2022 was examined 2 by the officers of SIIB, Mundra in the presence of authorised representative of the CHA M/s. Continental Shipping Services. During the examination, by the officers of SIIB, several goods were found in addition to the goods declared in Bill of entry as mentioned in Table-I. The details of the items found during the examination is as below:

Table-II

Sl. No.	Description	Total Cartons	Quantity /Carton	UNIT	Total quantity
1	2-pack car	100	540	PCS	54000
2	Die Cast Car	20	544	PCS	10880
3	Police Car	5	180	PCS	900
4	Pressure car (12pcs in a packet)	5	144	PCS	720

5	1:32 Die-Cast Car (12pcs in a packet)	11	192	PCS	2112
6	Truck (12pcs in a packet)	5	288	PCS	1440
7	Construction Truck (12pcs in a packet)	10	288	PCS	2880
8	Construction Truck(10 pcs in a packet)	13	240	PCS	3120
9	Beach Motorcycle (12pcs in a packet)	5	288	PCS	1440
10	Police Motorcycles (12pcs in a packet)	5	288	PCS	1440
11	4 Mixed Construction Vehicles (12pcs in a packet)	5	216	PCS	1080
12	Cartoon Engineering Car (10 pcs in a packet)	5	180	PCS	900
13	Pressing engineering vehicle (12pcs in a packet)	5	240	PCS	1200
14	Flying car (12pcs in a packet)	5	264	PCS	1320
15	1:39 Pull Back Die-Cast (12pcs in a packet)	5	288	PCS	1440
16	Pull Back Die-Cast Simulation Car (6pcs in a packet)	5	168	PCS	840
17	64 Hole Bubble Machine	10	24	PCS	240
18	Small Vanity Box	18	18	PCS	324
19	Vanity Trolley with Black Cover	17	1	PCS	17
20	Vanity Box	62	1	PCS	62
21	Make up Trolley	33	1	PCS	33
22	Vanity Box with Black Cover	22	8	PCS	176
23	Make up box with Door	10	1	PCS	10
	Total	381			86574

4. Further, another container bearing no. TRHU7001060 against Bill of Lading No. KMTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R L Enterprises, Address :102, Gokul Dham, Gagodar Village, Rapar, Kachchh, Gujarat-370145 and the name of the exporter as M/s. Hongkong Herin Trading Ltd, Hong Kong, was taken on hold and examined under Panchanma dated 17.09.2022 by the officers of SIIB, Mundra. During the examination, it was noticed that boxes in the front row contain nail dryer machine which was UV based, however the boxes in the other rows were found to be different varieties of toys along with their packing material. Therefore, the contents of the container were found to be mis-declared in the B/L which was declared as Nail dryer machine, whereas during examination various types of toys were found hidden behind a row of nail dryer machines. The details of the

items found in the examination are as follows:

Table-III

S1 No	Mark Name	Mark Number	Products	No of Boxes	Pcs/ Box	Total Pcs
1		KAA	LED/UV LAMP (Nail Dryer Machine)	57	24	1368
2		TNWX 8090	PUZZEL	2	12	24
3		TNWX 0132N	ONSHINE	2	8	16
4	SEORD	120372	FISHING GAME	5	12	60
5	VIPUL	JJ (TK 7821)	PUFF COTTON PASTE	5	144	720
6	SEORD	120300	ART AND CARTS FOLDABLE EASAL	5	6	30
7	SEORD	120437	BUILDING TOYS	3	6	18
8	SEORD	120434	MOTOR AND SENSES	5	4	20
9	SEORD	120334	MOTOR AND SENSES	5	6	30
10	SEORD	120314	FAMILY GAMES	5	12	60
11	SEORD	TNWX 7383	DOUBLE SEDDED KITCHEN	3	2	6
12		168 60B	AGRICLUTURE VEHICLE	1	192	192
13		168 55B	FRICTION TRUCK	5	288	1440
14	VIPUL	JJ(TK 5076)	PLASTICENE TOY KITS	4	60	240
15	VIPUL	JJ(TK 7871)	JING JING	5	128	640
16	SEORD	120390	TOP BRIGHT	4	6	24
17	SEORD	120392	TOP BRIGHT	5	12	60
18	VIPUL JJ	TK 7865	FOAMING ADHESIVE	5	120	600
19	VIPUL JJ	TK7714	FOAMING ADHESIVE	5	96	480
20	SEORD	120360	TOP BRIGHT	5	8	40
21	SEORD	170004	BEAR MOVES THE BOX LOGIC GAME	5	12	60
22	SEORD	TNWX0767	LITTLE BEAR TIME RECOGNITION	5	12	60
23	VIPUL JJ	TK 5065	CUTEST INO	5	24	120
24	SEORD	TB 150154	WOODEN PACKING GARAGE	5	4	20
25	SEORD	GB 2225		3	3	9
26	SEORD	TNWX 0163N	FASHION MODEL	4	12	48
27	K AA	49/102	VIP PASTE	2	18	36
28	518	A	LOVELY HOUSE	10	24	240
29	SEORD	TNWX 1672	RAINBOW COUNTRY BEARS	2	16	32
30	SEORD	TNWX 1719	WOODEN TRAIN TRACK TABLE	1	1	1

31	SEORD	120423	DREAM DOLL HOUSE	2	1	2
32	A4		PATROL PAW	8	24	192
33		9704B	ELECTRIC PISTON	4	180	720
34	TD	1011-B65H	TARNADO GYRO COMBAT	5	192	960
35	SEORD	TNWX 6997	LUXURY LARGE KITCHEN	3	4	12
36	SEORD	TNWX 7758	HOLZKUGELBAHN	2	4	8
37	SEORD	TNWX 7499	UNLOCK GAME CITY ROAD	2	12	24
38		9921B	EIGHT SOUND GUN	6	180	1080
39		YJ008	TRICYCLE	10	144	1440
40	SEORD	TNWX 6980	LUXURY LARGE KITCHEN	3	4	12
41		2256	PUZZEL CATERPILLAR	3	240	720
42		E5863	TITAN HERO SERIES	5	16	80
43	TD	1012-B51	TORNADO GYRO COMBAT	3	240	720
44	TD	1012-B41	TORNADO GYRO COMBAT	4	144	576
45		168-60B	AGRICULTURE VEHICLE	2	192	384
46		168-57B	FRICITION TRUCK	7	216	1512
47	TD	1012 B48	TORNADO GYRO COMBAT	6	144	864
48	TD	1012 B51	TORNADO GYRO COMBAT	2	240	480
49		K 15	INVINCIBLE	10	48	480
50		5851A-5	METAL CAR	5	432	2160
51		5851A-2	METAL CAR	5	432	2160
52		A4	PATROL PAW	14	432	6048
53		1166	PJ MAKES	10	1728	17280
54		E35679510	SPIDERMAN	10	3	30
55		GBF78-9056	BARBIL	1	6	6
56		561736XX3EUC	FURNITURE	2	8	16
57	VIPUL	SC-1081101	ROCKEY DELUXE VEHICLE	21	6	126
58	VIPUL	1073061	CHASE DELUXE VEHICLE	4	6	24
59	VIPUL	SC 217023	3 IN 1 SIT WALK AND RIDE ELEPHANT	2	2	4
60		B9692AW00	SPIDERMAN	2	3	6
61	VIPUL	SC 40800	MELISSA DOUD	2	3	6
62		GBF789056	BARBIL	4	6	24
63		PN00042949	AVENGERS	2	10	20
64		E05599510	AVENGERS	5	3	15
65	VIPUL	SC E05599510	TURTELS	2	12	24

66	E05609510	AVENGERS	3	3	9		
67	F0231	SPIDERMAN	10	8	80		
68	B056640000	SPIDERMAN	10	4	40		
69	VIPUL	SC E05599510	IRON MAN VS THANOS	10	3	30	
70	SEORD	TNWX 0293N/B	PIANO	2	1	2	
71		WOODEN DRESSUP	MAGNETIC	1	12	12	
72		2027 1/2/3/4	REMOTE CONTROL CAR	10	24	240	
73		7703B	LEFAN WISDOM	3	144	432	
74		168 56B	SIMULATOR TRUCK	5	160	800	
75		168 59B	MANUAL EXAVATOR	5	72	360	
76	SEORD	120402	CAR RACE TRACK	5	8	40	
77		B0443E040	HULK GREEN (TITAN HERO)	10	6	60	
78	SEORD	120478	MATH AND LOGIC BOX				
			TOP BRIGHT	11	10	110	
79		WK8807	BUILDER SERIES				
			CLASSICAL VILLE	2	24	48	
80		120380	BUILDING TOYS	4	8	32	
81		TK7848	BUBBLE MUD	20	72	1440	
82		93140	PEPPA PIG FUN RIDE	5	4	20	
83		7918	LOCK WITH KEY	1	416	416	
84	SEORD	TNWX 2211	TOOLS FOR DINOSOUR	1	480	480	
85	SEORD	TNWX 2167	DINOUSOUR ARCHES	12	40	480	
86	SEORD	120315	MOTOR AND SENSES	5	12	60	
87	SEORD	120312	BUILDING TOYS	5	6	30	
88	SEORD	ZLF7715	CATERPILLAR LACING				
			BLOCKS	10	12	120	
89	SEORD	TNWX 0125N	FOREST LOG SET	2	12	24	
90	SEORD	TNWX8106	LINCON LOGHOSPITAL	2	8	16	
91	SEORD	150185	SCHOOL BUS	3	8	24	
92		TNWX6744	UNLOCK GAME	4	12	48	
93		TNWX1269	WOODEN TRAIN				
			HOUSE	2	1	2	
94		TNWX1696	RAINBOW PEBBLES	1	18	18	
95		TNWX1719	WOODEN TRAIN TABLE	1	1	1	
96		TNWX 8465D	LOGARITH BOARD	3	20	60	
97	SEORD	120408	BUILDING TOYS	5	6	30	
98		TK5077	PLAY DOUGH	5	768	3840	
99	SEORD	130895	PUZZLES CREATIVITY GAME	PEG	5	12	60
100	SEORD	170001	BALL MATCHING LOGIC				
			GAME	5	10	50	
101	SEORD	120560	YUMMY BEAR MATH &				
			LOGIC	5	9	45	
			MOTOR AND SENSES				

102	SEORD	120306	LACING BLOCK	5	12	60
103	SEORD	120384	ACTIVITY CUBE ELEPHANT	4	8	32
104	SEORD	120469	CAT & MOUSE WAR GAME	5	12	60
105	SEORD	120272	CAR RACE TRACK	5	8	40
106		40800	CAMP COOLER	1	3	3

Seizure of the goods:

5. The goods covered under the Bill of Entry No. 9095965 dated 13.06.2022 filed by importer M/s. R. L. Enterprises through CHA M/s. Continental Shipping Services said to contain Foldable vanity box, Foldable Trolley Make-up Box and Make-up Box was seized under section 110 of the Customs Act, 1962 vide Seizure Memo dated 12.12.2022.

6. The goods in the container bearing no. TRHU7001060 against Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R L Enterprises and description of the goods is declared as Nail Dryer Machine was seized under section 110 of the Customs Act, 1962 vide Seizure Memo dated 12.12.2022.

Issuance of Summons and recording of statements:

7. Summons dated 21.07.2022 were issued to the importer M/s. R L Enterprise and CHA M/s. Continental Shipping Services respectively to present themselves before SIIB, Mundra for further investigation in the matter.

Statement of IEC holder:

8. A statement of Proprietor of M/s. R.L. Enterprises, Shri Rajesh Kumar Valand, was recorded on 28.07.2022, wherein, he informed that he runs a hair-cutting shop in Gagodar, Kutch, and has no information regarding any business carried out in the name of M/s. R. L. Enterprise. He does not handle any work related to this IEC and everything is being handled by one Shri Vishvajitsinh Zala. He has given Power of Attorney to Shri Vishvajit Sinh Zala who is the beneficial owner of this consignment with 90% share in profits.

Statement of Beneficial owner:

9. A statement of the beneficial owner Vishvajitsinh Bhupendrasinh Zala (Shri V B Zala hereafter) was recorded on 29.07.2022, wherein, he inter alia submitted that he is the beneficial owner of M/s. R L Enterprises and residing at Mahakali Road, Vajubhai Vakil No Khacho, Jawahar Road, Limbdi, Surendranagar, Gujarat-363421; that he works as a commission agent and is associated with M/s. R.L. Enterprises; that he has imported a few items including vanity boxes, makeup kits and toys to sell in the local market. On

being asked the details of date of incorporation, business specialization etc. of M/s. R.L. Enterprises he denied having those details. Shri V B Zala informed that he is responsible for importing and procuring toys and vanity boxes, makeup kits and then selling them in the local market. He further added that so far he has not done any financial transactions in relation to M/s. RL Enterprises and that this was his 1st import. He further stated that he is not related to any other firm. On being asked the items in which he deals, he informed that he deals in vanity boxes, makeup kits and toys. One being asked about the main buyers of the products imported by M/s. R L Enterprises, he informed that he was told by one Mr. Ahmed Shaikh that he would help him sell all the items in the open market and will charge one percent commission on the profit of the goods sold. He further added that he had ordered all the material through Mr. Ahmed Shaikh. On being asked about the details of Mr. Ahmed Shaikh like his residential address, mobile number and place of business, he replied that he is not aware of the same. On being asked who had filed the Bill of Entry No. 9095965 dated 13.06.2022 for M/s. RL Enterprises, he informed that he had given all the documents and details to Mr. Ankit Travadi who had told him that he worked as a CB and will file the Bill of Entry for import of goods. He further informed that he knew Ankit from the time he worked in Transworld CFS, Mundra as a surveyor for 4 months during 2013-2014. He further informed that Ankit resides at Plot No. 35A, Riddhi Nagar-2, Near Ganesh Mandir, Mundra. On being asked who decided the product description and classification he informed that Shri Ankit Travadi, filed all the details on behalf of CB. On being asked the documents that were submitted by him to Ankit for filing the Bill of Entry No.9095965 dated 13.06.2022 he stated that he had given the following documents to Ankit for further submission to CB: (a) Aadhaar Card (b) Packing List (c) Bill of Lading (d) Commercial Invoice. He further added that these documents were made available to him by Ahmed Shaikh. On being shown the examination report dated 09.07.2022 for BE No. 9095965 dated 13.06.2022 wherein it was found that the goods are toys without BIS certificate whereas the goods declared in Bill of Entry are foldable vanity box, foldable trolley makeup box and makeup box, he stated that he was not aware about BIS certification; he further added that he wanted to covertly import the toys to avoid customs duty, that's why he mis-declared the goods. On being asked to provide the details of terms and conditions of import made from M/s. Tut Trade (HK) Company Limited and a copy of the said agreement, he informed that he does not have the same. On being asked about how he had made the payment to the said supplier i.e. M/s. Tut Trade (HK) Company Limited, he informed that he has not paid the supplier, that the condition for this is that the payment will be made after 180 days of receipt of the goods in India. He further informed that this was the first B/E filed by him through M/s. Continental Shipping Services i.e. Customs Broker on his behalf. He further

informed that the Customs Broker was aware of the concealment of toys in the said consignment. While concluding the statement he added that he will co-operate in the investigation and he does not want any personal Hearing or Show Cause Notice in the matter and assured that he will settle liability arising out of the matter.

10. After the examination of second container bearing container no. TRHU7001060 against Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R L Enterprises and description of the goods is declared as Nail Dryer Machine, summons were again issued to Shri V B Zala, the beneficial owner for recording his statement with respect to consignment covered under the aforementioned B/L and container number.

11. Shri V. B. Zala appeared before officer of SIIB, Mundra for recording his statement on 20.04.2023. In his statement, he inter alia stated that he stands by his statement dated 29.07.2022. On being shown the Panchnama dated 17.09.2022 in which container no. TRHU7001060 B/L No. KMTTCSHK7092248 dated 19.06.2022 and consignee name is mentioned as M/s. R L Enterprise and in the item description as 'Nail Dryer Machine', he informed that he had booked 02 containers from his overseas supplier; that he had ordered toys, vanity box and nail dryer machine; that over video call, he had told his supplier to send 01 container of vanity box first; that the said Container for vanity box was the one against which B/E No. 9095965 was imported earlier on 13.06.2022; however, the supplier also sent toys in the same container; that the first container was examined by SIIB, meanwhile the foreign supplier also dispatched the second container of nail dryers. On being asked why the toys were not declared on any bill of lading and that whether he had planned to remove toys through mis-declaration, he informed that he was not aware that BIS Certificate is required for importation of toys. However, Ankit Travadi had told him that he would help him in clearing the goods from Mundra Port. On being asked about Ahmed Shaikh who he had named in his earlier statement, he informed that he had met him in Mumbai. Shri V. B. Zala submitted self-attested copies of Commercial Invoice No. UAE-7387 dated 25.06.2022 for container no. TRHU7001060 showing total value as USD 19,500.50. As per the invoice, there are 110 different items, most of which were toys.

12. Further statement of Shri V. B. Zala was recorded on 26.07.2023 u/s 108 of the Customs Act, 1962 after the valuation of goods in the second container said to contain 'Nail Dryers' had been concluded. During the recording of the said statement, Shri V B Zala confirmed to what he had said in his earlier statement dated 29.07.2022 and 20.04.2023. On being asked if he had filed any Bill of Entry in respect of the second container no. TRHU7001060 for B/L no. KMTTCSHK7092248 dated 19.06.2022, he informed that no Bill of Entry was filed. On being asked the source of money for importing the

consignment of toys, he replied that he does odd jobs to earn money; that he earns around 5-6 lakhs in a year; that to import these consignments, he had raised money from many people i.e. his friends, acquaintances etc. On being asked the details and role of Ahmad Shaikh whom he had named in his earlier statements, he stated that Ahmed Shaikh is a person whom he had met in Ghatkopar, Mumbai; that after placing the order, Ahmad Sheikh sent him the invoice and packing list via WhatsApp, which he forwarded to Ankit to file the Bill of Entry, who was then working with Continental Shipping Services; that Ahmed Shaikh had told him that it costs around 33-35 lakhs to import two containers of items like toys, vanity boxes and nail dryers; he further informed that he does not know the whereabouts of Ahmed Sheikh these days. On being informed that the valuation of the goods in both the containers was carried out by a Chartered Engineer and that the Chartered Engineer has determined the market value of the goods covered under Bill of Entry No.9095965 dated 13.06.2022 to be Rs.1,16,60,014/- and the market value of the consignment of second container bearing Container number TRHU7001060 under Bill of Lading no. KMTCSHK7092248 dated 29.06.2022 to be Rs.81,45,525/-, Shri V B Zala stated that the Chartered Engineer has overestimated the cost of the goods; that the items sold in the market are at the retail level; that there are many intermediary levels of the market after which the goods reach the retailer with its profit margin; that the goods are sold by the importer to the large wholesalers; the large wholesalers sell goods to medium wholesalers and medium wholesalers sell goods to small wholesalers who in turn sell goods to retailers; that the Retailers typically mark-up goods by up to 100%, with intermediary wholesalers typically keeping a margin of 30% at each level; he stated further that the total cost of the containers is not more than 40-50 lakh rupees. He further added that this was the first time he tried to import something to earn some money, however, due to lack of knowledge he got stuck in this problem; he further requested that he may be allowed to re-export the toys as he has now understood that the toys require BIS Certification without which, the toys cannot be imported into India; he further added that he does not want any show cause notice in this matter and is ready to pay any fine and penalty that may be applicable.

Summons to the Customs Broker:

13. Summons were issued to the M/s. Continental Shipping Services (hereinafter referred as Customs Broker) to appear before the SIIB, Mundra on 29.07.2022 for recording their statement under Section 108 the Customs Act, 1962. In response to the said summons, the Customs Broker vide letter dated 29.07.2022 submitted that they are not able to present themselves for giving statement because of a sudden medical emergency which they couldn't ignore.

14. Further summons u/s 108 of the Customs Act, 1962 were issued on

08.08.2022 and 01.11.2022 to the Customs Broker. However, nobody appeared against the said summon.

15. The Customs Broker vide letter dated 19.04.2023 has submitted that they had filed the Bill of Entry No.9095965 Dated 13.06.2022 on behalf of their consignee M/s. R L Enterprises. The said Bill of Entry was under faceless assessment and released with second check. But after Assessment & Custom Duty Payment, at the time of further clearance party did not gave proper response & details required in this shipment, so they informed the SIIB to look into the matter for further Customs process. They have further informed that they do not have any more information on the subject shipment.

16. A summon dated 18.08.2022 was issued to Shri Ahmad Sheikh through Shri V. B. Zala. However, nobody appeared against the said summons.

Statement of Ankit Travadi:

17. Summons dated 06.06.2023 was issued to Shri Ankit Travadi, who was named by Shri V B Zala in his statements u/s 108 of the Customs Act, 1962 as person who had helped him filing the Bill of Entry for first container. Ankit Shailaeshbhai Travadi, aged 31 years, S/o Shailaeshbhai Travadi, , residing at 31 A, Riddhi Nagar, Mundra, 370421 (Phone No, 7567177907) appeared before SIIB, Mundra on 08.06.2023 and tendered his statement before the Officer of SIIB, Mundra under section 108 of the Customs Act, 1962. In his statement Ankit Shailaeshbhai Travadi interalia submitted that he works as a commission agent, as well as provides service in transportation like getting Consignment Notes (Bilti) stamped, etc. at Rangoli gate; that he help trucks coming from Rajasthan or any other state into port area (of Adani Port at Mundra) to get their consignment note stamped for nominal fees; that he has contacts with transport companies, through which he gets steady work; that he earns around 2-3 lakhs in a year. On being asked he stated that he was employed with M/s. Continental Shipping Services for around 7 months, i.e. from February-2021 to September- 2021; that his job there was to get the examination of consignments done in Docks Examination and getting the examination report fed in the system. On being asked, he stated that he did not have any card such as G-card or H-card. He further added that he left the job at M/s. Continental Shipping Services because he was not happy with the salary and sundry payouts being offered by the company and thereafter he started doing his own work. On being asked whether he helped importers in filing Bills of Entry and clearing consignments through M/s. Continental Shipping Services even after leaving the company and specifically about the Bill of Entry No.9095965 dated 13.06.2022 filed by M/s. R L Enterprises in which toys were found to be concealed and who had filed this Bill of Entry, Shri Ankit Travadi stated that in May-2022, Shri V B Zala, contacted him and told that he has container which

he wants to clear; that he knew V B Zala since 2012, when Vishvjit Zala worked as a Surveyor in Adani Port and he (i.e. Ankit) was an RTG operator. He informed that he asked V B Zala what was in the container, to which V B Zala said that the container comprised of Vanity Box/make up box; that Vishvjit Zala had not informed him that the container had toys. He consulted Satish, who is the Main person of M/s. Continental Shipping Services whether he will file the Bill of Entry; that Satish told him to call for documents from the importer (i.e. M/s. R. L. Enterprises) and he will see. After that Shri V B Zala gave him printout of documents which he handed over to Satish; then Satish after seeing the documents informed him that he will do the clearing of the same; Satish did not ask for any money at that time and gave a lump sum figure of Rupees 10-15 Thousand and said that if any additional costs will be required, he will tell later. Satish had asked him for Bill of Lading, invoice, packing list, importing company's PAN, electricity etc. After that the Bill of entry was filed. Satish told that Customs Duty has to be paid so he collected Rs.3 Lakh from Vishvjit Zala and gave it to Satish. Then Satish, after a few days informed that SIIB will examine the consignment; that during the SIIB examination he was informed by officer of SIIB to call importer; that then he contacted V B Zala and informed that the importer will have to come; that V B Zala told that the importer will come and he will also come; that the IEC is of Rajesh and V B Zala used the IEC; that he only came to know that the container had toys when it was examined by SIIB. He further submitted that for clearing and importing this consignment V B Zala has borrowed money from a number of people; that V B Zala was importing it for people in Mumbai; that he does not know their names. He further submitted that currently the whereabouts of V B Zala is unknown and that he is not at his home since last 15-20 days. He further informed that he had gone to his native place in Surendranagar a few days ago to search for him; that the phone of V B Zala is also switched off. He further submitted that he has no role in mis-declaration of consignment or concealment of toys in it; that his only role is that he knew V B Zala since year 2012 when they worked together and that when he asked him to help in getting one consignment cleared, he connected him to M/s. Continental Shipping Services.

Searches:

18. During the course of investigation, searches were conducted at the premise of importer of M/s. R L Enterprises a 102, Gokul Dham, Gagodar, Vill Rapar, Kachchha, Gujarat-370145, and at the residence of beneficial owner Shri Vishwajeet Zala, residing at Mahakali Rad, Vajubhai Vakil No Khacho, Jawahar Road, Limbdi, Surendranagar, Gujarat 363421.

19. The searches at the above mentioned locations were conducted through the office of jurisdictional CGST Commissionerate (Anti Evasion), Kachchh and

through the office of Customs Commissionerate (Preventive), Jamnagar respectively. However, no incriminating documents were recovered from any of the above mentioned location which were searched.

Valuation:

20.1 As the goods in the Bill of Entry No. 9095965 dated 13.06.2022 were found to be mis-declared and apparently the invoices uploaded on e-sanchit corresponding to the Bill of Entry was fabricated, an empanelled Chartered Engineer cum Valuer was deployed to ascertain the market value of the goods. The empanelled Chartered Engineer M/s. Suvikaa Associates submitted their valuation report bearing report no. CUS/118/22-23 dated 16.08.2022. On the basis of inspection and examination of sample collected from the container no. ECNU4010029 imported by M/s. R. L. Enterprises, the Chartered Engineer in his valuation report has interalia submitted that samples of toys were from different manufacturers and were made up of cheap plastics. The toys were breaking apart and loose dangling parts were seen. Some had their cogs missing. Stickers or the highlighters were missing on some of the samples. Many toys were hollow from the inside and weighed very less. The toys were non battery operated. Also, along with the toys, 6 pcs of make-up vanity boxes were shown. These vanity boxes were boxes were of different sizes, colours and types. The vanity bags were made of soft plastics and some were wrapped in fabric like material. The handles were loose and wobbly.

20.2 The market price of the said samples has been estimated on the basis of following parameters.

- => Quality of the product.
- => Quantity of the product.
- => Availability of the product.
- => Online Presence of the product
- => Price as actual after market survey.

20.3 The item -wise valuation of the goods as suggested by Chartered Engineer is as per the following table;

Table-IV

Sr no.	Description	Total no. of Cartons	No. of Pcs per Cartons	Unit	Total Quantity	Price Per Piece	Total Amount
1	2-Pack Car	100	540	Pcs	54000	₹35	₹18,90,000
2	Die Cast Car	20	544	Pcs	10880	₹299	₹32,53,120
3	Police Car	5	180	Pcs	900	₹219	₹1,97,100
4	Pressure Car (12 pcs in a set)	5	144	Pcs	720	₹207	₹1,49,040
5	1:32 Die Cast	11	192	Pcs	2112	₹242	₹5,11,104

	Car						
6	Truck (12 pcs in a set)	5	288	Pcs	1440	₹58	₹83,520
7	Construction Truck (12 pcs in a set)	10	288	Pcs	2880	₹288	₹8,29,440
8	Construction Truck (10 pcs in a set)	13	240	Pcs	3120	₹299	₹9,32,880
9	Beach Motorcycle (12 pcs in a set)	5	288	Pcs	1440	₹265	₹3,81,600
10	Police Motorcycle (12 pcs in a set)	5	288	Pcs	1440	₹265	₹3,81,600
11	4 mixed Construction Vehicles (12 pcs in a set)	5	216	Pcs	1080	₹265	₹2,86,200
12	Cartoon Engineering Car (10 pcs in a set)	5	180	Pcs	900	₹58	₹52,200
13	Pressing Engineering Vehicle (12 pcs in a set)	5	240	Pcs	1200	₹345	₹4,14,000
14	Flying Car (12 pcs in a set)	5	264	Pcs	1320	₹354	₹4,67,280
15	1:39 Pull back Die Cast Car	5	288	Pcs	1440	₹299	₹4,30,560
16	Pull back Die cast simulation Car (16 pcs in a set)	5	168	Pcs	840	₹311	₹2,61,240
17	64 hole bubble-machine	10	24	Pcs	240	₹429	₹1,02,960
18	Small Vanity box	18	18	Pcs	324	₹1,595	₹5,16,780
19	Vanity Trolley with Black Cover	17	1	Pcs	17	₹2,030	₹34,510
20	Vanity box	62	1	Pcs	62	₹1,595	₹98,890
21	Makeup Trolley	33	1	Pcs	33	₹1,160	₹38,280
22	Vanity Trolley with Black Cover	22	8	Pcs	176	₹1,885	₹3,31,760
23	Makeup box with door	10	1	Pcs	10	₹1,595	₹15,950
						Total	₹1,16,60,014/-

20.4 It has been further remarked in the CE report that imported goods in cargo consist of plastics toys that require prior permission, certificate of origin, and certificate from Bureau of India Standards (BIS).

21 For the valuation of the goods in the container bearing Container No. TRHU7001060 against Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R. L. Enterprises and description of the goods is declared as Nail Dryer Machine, an empanelled Chartered Engineer cum Valuer was deployed to ascertain the market value of the goods. The empanelled Chartered Engineer cum Valuer, Er. Ajayrajsinh B. Jhala submitted his valuation report bearing report no. ABJ:INSP:SIIB:23-24:MDG:01 dated 01.06.2023. Vide the said report the CE has submitted that on the basis of inspection and examination of goods and telephonic conversations with the various suppliers, general inspection, available on the internet and the market survey of the similar/identical goods the item wise market value of the goods should be as per the following table.

Table-V

Sr No	Mark Name	Mark Number	Products	No of Boxes	Pcs/Box	Total Pcs	Average Per Unit Market Price of the Goods Assessed by CE (in INR) (approx.)	Total Market Value of the Goods Assessed by CE (in INR) (approx.)
1		KAA (Nail Dryer Machine)	LED/UV LAMP	57	24	1368	250	342000
2		TNWX 8090	PUZZEL	2	12	24	850	20400
3		TNWX 0132 N	ONSHINE	2	8	16	950	15200
4	SEORD	120372	FISHING GAME	5	12	60	250	15000
5	VIPUL	JJ (TK 7821)	PUFF COTTON PASTE	5	144	720	250	180000
6	SEORD	120300	ART AND CARTS FOLDABLE EASAL	5	6	30	400	12000
			BUILDING TO					

7	SEORD	120437	YS	3	6	18	450	8100
8	SEORD	120434	MOTOR AND SENSES	5	4	20	1200	24000
9	SEORD	120334	MOTOR AND SENSES	5	6	30	1100	33000
10	SEORD	120314	FAMILY GAMES	5	12	60	350	21000
11	SEORD	TNWX 7383	DOUBLE SED ED KITCHEN	3	2	6	2300	13800
12		168 60B	AGRICLUTUR E VEHICLE	1	192	192	80	15360
13		168 55B	FRICITION TR UCK	5	288	1440	80	115200
14	VIPUL	JJ(TK 5076)	PLASTICENE TOY KITS	4	60	240	250	60000
15	VIPUL	JJ(TK 7871)	JING JING	5	128	640	95	60800
16	SEORD	120390	TOP BRIGHT	4	6	24	200	4800
17	SEORD	120392	TOP BRIGHT	5	12	60	350	21000
18	VIPUL JJ	TK 7865	FOAMING AD HESIVE	5	120	600	90	54000
19	VIPUL JJ	TK7714	FOAMING AD HESIVE	5	96	480	100	48000
20	SEORD	120360	TOP BRIGHT	5	8	40	250	10000
21	SEORD	170004	BEAR MOVES THE BOX LOGIC GAME	5	12	60	400	24000
22	SEORD	TNWX0767	LITTLE BEAR TIME RECOGNITION	5	12	60	250	15000
23	VIPUL JJ	TK 5065	CUTEST INO	5	24	120	200	24000
24	SEORD	TB 150154	WOODEN PACKING GARGAGE	5	4	20	1300	26000
25	SEORD	GB 2225		3	3	9	95	855
26	SEORD	TNWX 0163	FASHION MO DEL	4	12	48	350	16800

27	K AA	49/102	VIP PASTE	2	18	36	130	4680
28	518	A	LOVELY HOUSE	10	24	240	700	168000
29	SEORD	TNWX 1672	RAINBOW COUNTRY BEARS	2	16	32	600	19200
30	SEORD	TNWX 1719	WOODEN TRAIN TRACK TABLE	1	1	1	400	400
31	SEORD	120423	DREAM DOLLHOUSE	2	1	2	2200	4400
32	A4		PATROL PAW	8	24	192	130	24960
33		9704B	ELECTRIC PISTON	4	180	720	200	144000
34	TD	1011-B65H	TARNADO GYRO COMBAT	5	192	960	150	144000
35	SEORD	TNWX 6997	LUXURY LARGE KITCHEN	3	4	12	2000	24000
36	SEORD	TNWX 7758	HOLZKUGEL BAHN	2	4	8	200	1600
37	SEORD	TNWX 7499	UNLOCK GAME CITY ROAD	2	12	24	600	14400
38		9921B	EIGHT SOUND GUN	6	180	1080	150	162000
39		YJ008	TRICYCLE	10	144	1440	85	122400
40	SEORD	TNWX 6980	LUXURY LARGE KITCHEN	3	4	12	2200	26400
41		2256	PUZZEL CATE RPILLAR	3	240	720	85	61200
42		E5863	TITAN HERO SERIES	5	16	80	200	16000
43	TD	1012-B51	TORNADO GYRO COMBAT	3	240	720	100	72000
44	TD	1012-B41	TORNADO GYRO COMBAT	4	144	576	130	74880
45		168-60B	AGRICULTURE VEHICLE	2	192	384	85	32640

46		168-57B	FRICITION TRUCK	7	216	1512	85	128520
47	TD	1012 B48	TORNADO GYRO COMBAT	6	144	864	150	129600
48	TD	1012 B51	TORNADO GYRO COMBAT	2	240	480	200	96000
49		K 15	INVINCIBLE	10	48	480	300	144000
50		5851A-5	METAL CAR	5	432	2160	85	183600
51		5851A-2	METAL CAR	5	432	2160	85	183600
52		A4	PATROL PAW	14	432	6048	100	604800
53		1166	PJ MAKS	10	1728	17280	120	2073600
54		E35679510	SPIDERMAN	10	3	30	750	22500
55		GBF78-9056	BARBIL	1	6	6	900	5400
56		561736XX3 EUC	FURNITURE	2	8	16	350	5600
57	VIPUL	SC-1081101	ROCKEY DELUXE VEHICLE	21	6	126	200	25200
58	VIPUL	1073061	CHASE DELUXE VEHICLE	4	6	24	200	4800
59	VIPUL	SC 217023	3 IN 1 SIT WALK AND RIDE ELEPHANT	2	2	4	2100	8400
60		B9692AW00	SPIDERMAN	2	3	6	250	1500
61	VIPUL	SC 40800	MELISSA DOUD	2	3	6	250	1500
62		GBF789056	BARBIL	4	6	24	200	4800
63		PN00042949	AVENGERS	2	10	20	250	5000
64		E05599510	AVENGERS	5	3	15	250	3750
65	VIPUL	SC E05599510	TURTELS	2	12	24	250	6000
66		E05609510	AVENGERS	3	3	9	250	2250
67		F0231	SPIDERMAN	10	8	80	250	20000

68		B056640000	SPIDERMAN	10	4	40	250	10000
69	VIPUL	SC E05599510	IRON MAN VS THANOS	10	3	30	250	7500
70	SEORD	TNWX 0293 N/B	PIANO	2	1	2	8000	16000
71		TNWX 0170 N	WOODEN MAGNETIC DRESSUP	1	12	12	250	3000
72		2027 1/2/3 /4	REMOTE CONTROL CAR	10	24	240	1100	264000
73		7703B	LEFAN WISDOM	3	144	432	200	86400
74		168 56B	SIMULATOR TRUCK	5	160	800	80	64000
75		168 59B	MANUAL EXAVATOR	5	72	360	80	28800
76	SEORD	120402	CAR RACE TRACK	5	8	40	950	38000
77		B0443E040	HULK GREEN (TITAN HERO)	10	6	60	150	9000
78	SEORD	120478	MATH AND LOGIC BOX TOP BRIGHT	11	10	110	700	77000
79		WK8807	BUILDER SERIES CLASSIC AL VILLE	2	24	48	950	45600
80		120380	BUILDING TOYS	4	8	32	700	22400
81		TK7848	BUBBLE MUD	20	72	1440	100	144000
82		93140	PEPPA PIG FUN RIDE	5	4	20	400	8000
83		7918	LOCK WITH KEY	1	416	416	85	35360
84	SEORD	TNWX 2211	TOOLS FOR DINOSOUR	1	480	480	95	45600
			DINOUSOUR					

85	SEORD	TNWX 2167	ARCHES MOTOR AND SENSES	12	40	480	300	144000
86	SEORD	120315		5	12	60	650	39000
87	SEORD	120312	BUILDING TO YS	5	6	30	700	21000
88	SEORD	ZLF7715	CATERPILLAR LACING BLOC KS	10	12	120	300	36000
89	SEORD	TNWX 0125	FOREST LOG SET	2	12	24	700	16800
90	SEORD	TNWX8106	LINCON LOG HOSPITAL	2	8	16	1300	20800
91	SEORD	150185	SCHOOL BUS	3	8	24	850	20400
92		TNWX6744	UNLOCK GA ME	4	12	48	450	21600
93		TNWX1269	WOODEN TR AIN HOUSE	2	1	2	2000	4000
94		TNWX1696	RAINBOW PE BBLES	1	18	18	250	4500
95		TNWX1719	WOODEN TR AIN TABLE	1	1	1	120	120
96		TNWX 8465	LOGARITH B OARD	3	20	60	250	15000
97	SEORD	120408	BUILDING TO YS	5	6	30	950	28500
98		TK5077	PLAY DOUGH	5	768	3840	180	691200
99	SEORD	130895	PUZZLES PE G CREATIVIT Y GAME	5	12	60	300	18000
100	SEORD	170001	BALL MATCHI NG LOGIC GA ME	5	10	50	800	40000
101	SEORD	120560	YUMMY BEAR MATH & LOGI C	5	9	45	550	24750
102	SEORD	120306	MOTOR AND SENSES LACI NG BLOCK	5	12	60	350	21000
			ACTIVITY CU					

103	SEORD	120384	BE ELEPHANT	4	8	32	1200	38400
104	SEORD	120469	CAT & MOUSE WAR GAME	5	12	60	750	45000
105	SEORD	120272	CAR RACE TRACK	5	8	40	800	32000
106		40800	CAMP COOLER	1	3	3	300	900
<u>TOTAL:</u>								81,45,525/- INR

2.2 As per the Chartered Engineer, the Total Market Value of the goods is Rs.81,45,525/- (Approx.). The Total CIF value of the goods (approx.) has been suggested to be Rs.44,80,039/-

23.1 The importer, M/s. R. L Enterprise has submitted letter dated 27.07.2023 addressed to the Deputy Commissioner of Customs, SIIB, Mundra vide which the importer has shown the reverse calculation from the MRP of the goods to the value of the goods at the time of import. The reverse calculation as demonstrated by the importer in respect of different types of items in the two consignments, subject of this investigation are as follows:

“Detailed breakdown of various value-addition components made at different stages, starting from the basic customs duties and cess to the final retail price in the hands of the retailer and MRP in the hands of retail Customer. The following paragraphs outline each step of the value addition process, separately for each product, as under:

- i. **Customs Duties and Cess:** The basic customs duty applicable to the goods is as follows:
 - Toys: 60% • Vanity Boxes: 15% • Nail Dryer Machine: 20% In addition to the basic customs duty, a cess is levied on the customs duty at the rate of 10% for all three items.
- ii. **Shipping Line Charges, Yard Charges, Transportation Costs, And CHA (Customs House Agent) Charges:** Expenses around 10% of Basic Import Price and applicable Customs duties and Cess, towards shipping line charges, yard charges, transportation costs, and CHA (Customs House Agent) charges.
- iii. **Margins at different stages:** The landed cost (Basic Import Price + Customs Duties & Cess + Shipping line, Yard, Transportation & CHA Charges but net of GST) of the goods at the importer's end is further enhanced by a 30% margin, which represents the profit margin for the importer. Similarly, the wholesaler adds a 30% margin (on the landed cost in the hands of Wholesaler Net of GST), to arrive at the price for the retailer. Lastly, the retailer applies a 100% margin (On landed cost in hand of retailer, Net of GST), representing the profit margin at their

end.

- iv. **Goods and Services Tax (GST):** Finally, the Goods and Services Tax (GST) is calculated at the applicable rate (18%) on the retail price, which includes all the above value additions.
- v. On the basis of the above detailed calculation of MRP (per USD, Exchange rate in INR 84) of each item is as follows:

a) Toys:

- Basic Customs Duty: 60%
- Cess on Customs Duty: 10% of 60% = 6%
- Total Customs Duty: 60% + 6% = 66%
- Value After Customs Duty: USD 1 + 66% = USD 1.66
- Conversion Rate: USD 1.66 * INR 84 = INR 139.44
- Additional Charges (Shipping Line, Transportation, CHA Charges, etc.): INR 139.44 + 10% = INR 153.38 (Landed Cost to Importer)
- Importer's Margin (30%): INR 153.38 + 30% = INR 199.29 (Landed Cost to Wholesaler)
- Wholesaler's Margin (30%): INR 199.29 + 30% = INR 259.08 (Landed Cost to Retailer)
- Retailer's Margin (100%): INR 259.08 + 100% = INR 518.16 (Retail Price)
- GST (18%): 18% of INR 518.16 = INR 93.27
- Maximum Retail Price (MRP): INR 518.16 + INR 93.27 = INR 611.43 (MRP in the hand of the retail customer)

b) Vanity Boxes:

- Basic Customs Duty: 15%
- Cess on Customs Duty: 10% of 15% = 1.5%
- Total Customs Duty: 15% + 1.5% = 16.5%
- Value After Customs Duty: USD 1 + 16.5% = USD 1.165
- Conversion Rate: USD 1.165 * INR 84 = INR 97.86
- Additional Charges (Shipping Line, Transportation, CHA Charges, etc.): INR 97.86 + 10% = INR 107.65 (Landed Cost to Importer)
- Importer's Margin (30%): INR 107.65 + 30% = INR 140.14 (Landed Cost to Wholesaler)
- Wholesaler's Margin (30%): INR 140.14 + 30% = INR 182.18 (Landed Cost to Retailer)
- Retailer's Margin (100%): INR 182.18 + 100% = INR 364.36 (Retail Price)
- GST (18%): 18% of INR 364.36 = INR 65.58
- Maximum Retail Price (MRP): INR 364.36 + INR 65.58 = INR 429.94 (MRP in the hand of the retail customer)

c) Nail Dryer Machine:

- Basic Customs Duty: 20%
- Cess on Customs Duty: 10% of 20% = 2%
- Total Customs Duty: 20% + 2% = 22%
- Value After Customs Duty: USD 1 + 22% = USD 1.22
- Conversion Rate: USD 1.22 * INR 84 = INR 102.48
- Additional Charges (Shipping Line, Transportation, CHA Charges, etc.): INR

$102.48 + 10\% = \text{INR } 112.73$ (*Landed Cost to Importer*)

- *Importer's Margin (30%): $\text{INR } 112.73 + 30\% = \text{INR } 146.64$ (*Landed Cost to Wholesaler*)*
- *Wholesaler's Margin (30%): $\text{INR } 146.64 + 30\% = \text{INR } 190.64$ (*Landed Cost to Retailer*)*
- *Retailer's Margin (100%): $\text{INR } 190.64 + 100\% = \text{INR } 381.28$ (*Retail Price*)*
- *GST (18%): $18\% \text{ of } \text{INR } 381.28 = \text{INR } 68.63$*
- *Maximum Retail Price (MRP): $\text{INR } 381.28 + \text{INR } 68.63 = \text{INR } 449.91$ (*MRP in the hand of the retail customer*)*

Summarized MRP of each item:

- a. *Toys: MRP: $\text{INR } 611.43$ against per USD 1 (@INR 84)*
- b. *Vanity Boxes: MRP: $\text{INR } 429.94$ against per USD 1 (@INR 84)*
- c. *Nail Dryer Machine: MRP: $\text{INR } 449.91$ against per USD 1 (@INR 84)*

Above MRP is calculated against per USD 1 (@INR 84) based on prevailing market practice.

The MRP of each item, determined by the department, based on the market survey needs to be divided by the above MRP against per USD 1 (@INR 84) to calculate the fair assessable value for the purpose of Customs valuation.”

23.2 In this regard a clarification was sought by SIIB, Mundra from the empanelled Chartered Engineer with regards to market value at which the CE had valued the goods in his valuation report and also to provide an opinion on the breakdown and value addition components provided by the importer vide their letter dated 27.06.2023. The Chartered Engineer, M/s. Suvikaa Associates, vide letter dated 31.07.2023 has submitted that the market value of the goods corresponds to the retail price of the goods. It has been further conveyed that the information presented by the importer is comprehensive and satisfactory and it validates the market value stated in the report. Therefore, as per the importer's letter and in light of the Chartered Engineer's clarification, the assessable value of the goods should be as follows :

- a) the assessable value of the toys should be 13.73 % of market value of the toys
- b) the assessable value of vanity boxes should be 19.53% of market value of vanity boxes
- c) the assessable value of nail dryer machines should be 18.67% of the market value of the nail dryer machines.

24. Relevant Legal Provisions

Foreign Trade (Development and Regulation) Act, 1992

SCHEDULE 1 – IMPORT POLICY

GENERAL NOTES REGARDING IMPORT POLICY

“(D) Import policy for toys/Dolls etc: Import policy for Toys /Dolls and similar other recreational goods under any chapter will be governed by

BIS standards as specified in Policy Conditions 2 of Chapter 95.”

Policy condition 2 of Chapter 95

Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:

- i. A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS):
 - a) IS: 9873 (Part 1) - Safety of toys; Part - 1 Safety aspects related to mechanical and physical properties (Third Revision).
 - b) IS: 9873 (Part 2) - Safety of Toys; Part - 2 Flammability (Third Revision)
 - c) IS : 9873 (Part 3) - Safety of Toys; Part - 3 Migration of certain elements (Second Revision)
 - d) IS: 9873 (Part 4) Safety of Toys; Part - 4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic use.
 - e) IS: 9873 (Part 7) - Safety of Toys; Part - 7 Requirements and test methods for finger paints.
 - f) IS: 9873 (Part 9) - Safety of Toys; Part - 9 Certain phthalates esters in toys and Childrens products.
 - g) IS: 15644 - Safety of Electric Toys.

(ii) A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part - 1, Part - 2, Part - 3, Part - 4, Part - 7, Part - 9 and 15644:2006.

(iii) Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance may be given by Customs on the condition that the product cannot be sold in the market till successful testing of the sample. Further, if the sample drawn fails to meet the required standards, the consignment will be sent back or will be destroyed at the cost of importer.

Customs Act, 1962

Section 2 Definitions

(3A) "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

Section 14. Valuation of goods. -

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export 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, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be

related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, 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:

2/[iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under [section 46](#), or a shipping bill of export, as the case may be, is presented under [section 50](#).

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. - For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

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

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

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under [section 77](#);

(m) 2/[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](#) 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of [section 54](#)];

SECTION 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 ¹ [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

² [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of [section 114A](#), to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher

Provided that where such duty as determined under sub-section (8) of [section 28](#) and the interest payable thereon under [section 28AA](#) is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

³ [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under [section 77](#) (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty ⁴ [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty ⁵ [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty ⁶ [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

¹ [Section 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.]

Section 117. Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not

exceeding 1[four lakh rupees].

Customs Valuation (Determination of value of Imported goods) Rules, 2007

Rule 3. Determination of the method of valuation . -

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

- (i) are imposed or required by law or by the public authorities in India; or
- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods;

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Rule 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.

Rule 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.

Rule 6. Determination of value where value can not be determined under rules 3, 4 and 5 . -

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7. Deductive value . -

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold

at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Rule 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;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

25 Summary of Investigation:

25.1 In the instant case, as per the above investigation, it appears that 02 containers of goods were ordered from Chinese suppliers. The goods ordered were vanity boxes, nail dryers, toys, etc. The Bill of Entry was filed using the IEC of M/s. R. L. Enterprise whose Proprietor is Rajeshkumar Laljibhai Valand. The proprietor, Shri Rajeshkumar Laljibhai Valand, has stated u/s 108 of the Customs Act, 1962 that the goods were imported using his IEC and the beneficial owner of the consignment is Shri Vishvitsinh B. Zala. In his statement recorded u/s 108 of the Customs Act, 1962, Shri Vishvitsinh B Zala has accepted that he had ordered the impugned goods from China. He has further named Shri Ankit Travadi who worked as his accomplice helped him in filing the Bill of Entry through the CB M/s. Continental Shipping Services. Shri V. B. Zala and Ankit Travadi used incorrect invoice to file Bill of Entry and mis-declared the goods. However, the said mis-declaration was detected during Examination by officer of Docks Examination and the file was subsequently transferred to SIIB, Mundra. Shri V B Zala has further admitted that he was not aware that the toys require compliance to the provisions of BIS and resorted to mis-declaration avoid paying customs duty. The beneficial owner, Shri V. B. Zala has named one more person, Shri Ahmad Shaikh, who was summoned u/s 108 of the Customs Act, 1962 through the beneficial owner Shri V. B. Zala, who however, never appeared before SIIB, Mundra. During recording of further statement as well, Shri V. B. Zala, on being asked about the whereabouts of Ahmed Shaikh, has remained elusive and given general statements. As such the identity or existence of Ahmed Shaikh appears doubtful.

25.2 The CB M/s. Continental Shipping Services have submitted that the importer did not give proper response to them after the mis-declared goods were found during examination and that they have co-operated with Customs during the examination.

25.3 Ankit Travadi, who was named as his accomplice by Shri V B Zala when summoned u/s 108 of the Customs Act, 1962, denied any knowledge of mis-declaration and concealment of toys in the containers and averred that he had filed the Bill of Entry through M/s. Continental Shipping Services for whom he worked earlier.

25.4 During the statement of the beneficial owner NAME OF THE PERSON/COMPANY has admitted that he was not aware that the toys require mandatory BIS certificate to be imported into India and that the toys were sought to be imported covertly to avoid customs duty.

25.5 The goods in the instant case were seized under Section 110 of the Customs Act, 1962 on 12.12.2022. The period for issuance of Show Cause Notice u/s 124 of the Customs Act, 1962 would have lapsed on 11.06.2023.

However, as the investigation was ongoing, an extension of additional 03 months was granted by the competent authority for issuance of the Show Cause Notice.

25.6 As the goods corresponding to Bill of Entry No. 9095965 dated 13.06.2022 were found to be mis-declared, their declared transaction value is liable for rejection under Rule 12 of Customs (Determination of value of imported goods) Valuation Rule, 2007. Further, for revaluation, no identical or similar goods were found to be imported during the relevant period in comparable quantities based on which valuation could be done under Rule 4 and Rule 5 of the CVR 2007. The assistance of empanelled Chartered Engineer was taken for deriving the value using the deductive method/ Rule 7 of the CVR, 2007. The commodity wise market value of the goods, as determined in the consignment is as following:

Table-VI

Items covered under Bill of Entry No. 9095965 dated 13.06.2022				
Sl. No.	Item description	Quantity	Avg unit price	Total Market Value (In Rs.)
1	Toys	85952	123.60	1,06,23,844/-
2	Foldable Vanity box	386	1595	6,15,670
3	Foldable Trolley makeup box	226	1790.04	4,04,550
4	Makeup Box	10	1595	15,950
			Total	1,16,60,014/-

Further, applying the deductions as submitted by Chartered Engineer vide his letter dt. 31.07.2023, the assessable value of the goods declared in the Bill of Entry comes to be as following:

Table-VII

Sl. No.	Item description	Quantity	Avg unit price (at market Value)	Avg Unit Price(after applying deduction)	Total CIFValue
1	Foldable Vanity box	386	1595	311.50	1,20,239
2	Foldable Trolley makeup box	226	1790.04	349.59	79007.34
3	Makeup Box	10	1595	311.50	3,115
			Total		2,02,361/-

25.7 With reference to the consignment covered under container bearing

container no. TRHU7001060 against Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R. L. Enterprises and description of the goods is declared as Nail Dryer Machine, the importer has submitted Commercial Invoice No. UAE-7387 dated 25.06.2022 for Container No. TRHU7001060. The total Invoice value of the items is declared to be USD 19,500.50/-, which comes to be around Rs.16,38,042/-. The Chartered Engineer has further determined the market value of the goods to be Rs.81,45,525/- and further they have suggested the CIF value of the goods as Rs. 44,80,039/-

Table-VIII

Bill of lading No. KMTTCSHK7092248 dated 19.06.2022				
Sr.No.	Item description	Quantity	Avg unit price	Total Market Value (In Rs.)
1	Nail dryer machine	1368	250	3,42,000/-
2	Toys	53,295	146.42	78,03,525/-
			Total	81,45,525

26. Recommendation based on above investigation:

26.1 The goods pertaining to Bill of Entry No.9095965 dated 13.06.2022, having market value of Rs.1,16,60,014/- (as per Table-VI) above appear liable for confiscation under section 111(d), 111(f), 111(l),111(m) of the Customs Act, 1962;

26.2 The goods covered under the Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 giving market value of Rs.81,45,525/- appear liable for confiscation under Section 111(d), 111(f) and Section 119 of the Customs Act, 1962;

26.3 For his act of omissions and commission, the IEC holder, Shri Rajesh Kumar Valand, Age 33 years , S/o Rathore Laljibhai Dhanjibhai, R/o 102, Gokul Dham, Vill. Gagodar, Rapar, who permitted the beneficial owner to use his IEC for importing prohibited goods on a profit sharing basis appears liable for penalization under the provisions of Section 112 (a) and Section 114AA of the Customs Act, 1962

26.4 For his acts of omission and commissions, the IEC Holder, Shri Vishvjisinh Bhupendrasinh Zala, R/o Mahakali Road, Vajubhai Vakil No Khacho, Jawahar Road, Limbdi, Surendranagar, Gujarat-363421, who has accepted to be the beneficial owner of the consignments being imported in the name of M/s. R.L. Enterprises, appears to have rendered himself liable for penalty under Section 112(b), Section 114A and Section 114AA of the Customs Act, 1962;

26.5 Shri Ankit Shailaeshbhai Travadi, residing at 31 A, Riddhi Nagar, Mundra, has rendered himself liable to be penalized under Section 117 of the Customs Act, 1962 for his role as an active accomplice to Shri V B Zala in helping him filing Bill of Entry through a CB firm;

26.6 Custom Broker, M/s. Continental Shipping Services, Mundra has rendered himself liable to be penalized under Section 117 of the Customs Act, 1962 for his role in filing Bill of Entry containing mis-declaration of goods and for non-cooperation in the investigation by not honouring the summons;

27. The beneficial owner, Shri V B Zala in his statements dated 26.07.2023 has informed that he does not want any Show Cause Notice in the matter and is ready to pay any fine or penalty that may become applicable. He has further requested for permission to re-export the impugned goods.

RECORDS OF PERSONAL HEARING & WRITTEN SUBMISSION

28. The Proprietor of M/s. R.L. Enterprises, Shri Rajesh Kumar Valand and the beneficial owner Shri Vishvjisinh Bhupendrasinh Zala (V B Zala hereafter) vide their letter dated 05.08.2024 addressed to Additional Commissioner of Customs (Imports) requested that they do not want any personal hearing in the subject matter and requested to release the goods other than restricted items filed under Bill of Entry no. 9095965 dated 13.06.2022 by adding fine and penalty also stated that they do not want restricted items and want to re-export the same, which found mis-declared/undeclared and Non-BIS compliant in the said Bill of Entry. They have also stated that they want to re-export all item imported by them against Bill of Lading No. KMTCSHK7092248 dated 19.06.2022.

M/s. Continental Shipping Services and Shri Ankit Shailaesh bhai Travadi vide their letter dated 02.08.2024 has requested that they do not want Personal Hearing and SCN in this matter and requested to decide the matter on merit basis.

DISCUSSION AND FINDINGS

29. I have carefully gone through the Investigation Report as well as facts of the case available on records. The Proprietor of M/s. R.L. Enterprises, Shri Rajesh Kumar Valand and the beneficial owner Shri Vishvjisinh Bhupendrasinh Zala (V B Zala hereafter) vide letter dated 05.08.2024 requested for waiver of Personal Hearing and requested to release the goods other than restricted items filed under Bill of Entry no. 9095965 dated 13.06.2022 by adding fine and penalty also stated that they do not want restricted items and

want to re-export the same, which found mis-declared/undeclared and Non-BIS compliant in the said Bill of Entry. They have also stated that they want to re-export all item imported by them against Bill of Lading No. KMTCSHK7092248 dated 19.06.2022. I have also gone through the letter dated 02.08.2024 received by M/s. Continental Shipping Services (Customs Broker) and Shri Ankit Shailaesh bhai Travadi vide their letter they have requested that they do not want Personal Hearing and SCN in this matter and requested to decide the matter on merit basis. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records. The following main issues are involved in Investigation Report, which are required to be decided:

- i. Whether the goods pertaining to Bill of Lading no. NGU295172NSA dated 20.05.2022 against which Bill of Entry No. 9095965 dated 13.06.2022 was filed, having market value of Rs.1,16,60,014/- (as per Table-VI) above are liable for confiscation under section 111(d), 111(f), 111(l), 111(m) of the Customs Act, 1962 as these good were found without mandatory BIS marks, not declared in IGM, B/L and the Bill of entry;
- ii. Whether the goods covered under the Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 giving market value of Rs.81,45,525/- (as per Table-VII) above are liable for confiscation under Section 111(d), 111(f) and Section 119 of the Customs Act, 1962 as the toys were found without BIS Certificate;
- iii. Whether For his act of omissions and commission, the IEC holder, Shri Rajesh Kumar Valand, Age 33 years, S/o Rathore Laljibhai Dhanjibhai, R/o 102, Gokul Dham, Vill. Gagodar, Rapar, who permitted the beneficial owner to use his IEC for importing prohibited goods on a profit sharing basis appears liable for penalization under the provisions of Section 112 (a) and Section 117 of the Customs Act, 1962;
- iv. Whether imposition of penalty on beneficiary owner, Shri Vishvitsinh Bhupendrasinh Zala, R/o Mahakali Road, Vajubhai Vakil No Khacho, Jawahar Road, Limbdi, Surendranagar, Gujarat, under Section 112(b), Section 114A and Section 114AA of the Customs Act, 1962, who has accepted to be the beneficial owner of the consignments being imported in the name of M/s. R.L. Enterprises, is legitimately proposed or otherwise;
- v. Whether imposition of penalty on Shri Ankit Shailaeshbhai Travadi, residing at 31 A, Riddhi Nagar, Mundra, under Section 117 of the Customs Act, 1962 for his role as an active accomplice to Shri V B Zala in helping him filing Bill of Entry through a CB firm, is legitimately proposed or otherwise;
- vi. Whether imposition of penalty on Custom Broker, M/s. Continental Shipping Services, Mundra under Section 117 of the Customs Act, 1962 for his role in filing Bill of Entry containing mis-declaration of goods and for non-cooperation in the investigation by not honouring the summons, is legitimately proposed or otherwise;

30.1. I find that Policy condition no. 2 to Chapter 95 of ITC (HS), 2017 states that-

"Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:

(i) A certificate that the toys being imported conform to the standard prescribed by Bureau of Indian Standard.

(ii) A certificate that the toys being imported conform to the standard prescribed in IS: 9873 Part 1 to 4, Part 7, Part 9 and 15644:2006."

In this regard the relevant portion of Chapter Note 3 of the Chapter 95 of Customs Tariff Act is as under:

"3. Subject to Note 1 above, parts and accessories which are suitable for use solely or principally with articles of this Chapter are to be classified with those articles."

30.2. I further, observe that the relevant DGFT Notification No. 20/2015-20 dated 07.07.2022 is reproduced as under:

ANNEXURE-I

Annexure referred to in DGFT Notification No. 20/2015-20 dated 07/07/2022 regarding 'Indian Trade Classification (Harmonised System) of Import Items, 2022 [ITC (HS), 2022]'

ITC HS	Item Description	Import Policy	Policy Condition
95030091	---Parts: ---- Of electronic toys	Free	Subject to Policy Condition 2 of this Chapter
95030099	---Parts: ---- Other	Free	Subject to Policy Condition 2 of this Chapter

30.3 I further observe that DGFT vide Notification No. 26/2015-2020 dated 01.09.2017 amended the policy condition in respect of import of toy/toys parts. The said notification reads as under;

Notification No.26/2015-2020
 New Delhi, Dated: / September, 2017

Subject: Amendment in Policy condition No.2 to Chapter 95 of ITC (HS), 2017 – Schedule – 1 (Import Policy).

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Policy Condition No.2 to Chapter 95 of ITC (HS), 2017 – Schedule – 1 (Import Policy), as under:

Existing Policy Condition No.2	Revised Policy Condition No.2
<p>Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following two types of certificates:</p> <p>(i) A certificate that the toys being imported conform to the standards prescribed in</p> <ul style="list-style-type: none"> (a) ASTM F963 or (b) ISO 8124 (Parts I-III) or (c) IS 9873 [Parts I -III] or (d) EN 71; <p>and</p> <p>(ii) A Certificate of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory which is accredited under International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) and found to meet the specifications indicated in (i) above (to know more on ILAC MRA visit the website: http://www.ilac.org/). The certificate would also link the toys in the consignment to the period of manufacture indicated in the Certificate of Conformity.</p>	<p>Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:</p> <p>(i) A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS):</p> <ul style="list-style-type: none"> a) IS: 9873 (Part 1) – Safety of toys; Part – 1 Safety aspects related to mechanical and physical properties (Third Revision). b) IS:9873 (Part 2) – Safety of Toys; Part – 2 Flammability (Third Revision) c) IS : 9873 (Part 3) – Safety of Toys; Part – 3 Migration of certain elements (Second Revision) d) IS: 9873 (Part 4) Safety of Toys; Part – 4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic use. e) IS: 9873 (Part 7) – Safety of Toys; Part – 7 Requirements and test methods for finger paints. f) IS: 9873 (Part 9) – Safety of Toys; Part – 9 Certain phthalates esters in toys and Children's products. g) IS: 15644 – Safety of Electric Toys. <p>(ii) A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part – 1, Part – 2, Part – 3, Part – 4, Part – 7, Part – 9 and 15644:2006.</p> <p>(iii) A Certificate of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory which is accredited by NABL, India and found to meet the specifications indicated above. The Certificate would also link the toys in the consignment to the period of manufacture indicated in the Certificate of Conformity.</p>

30.4. Going through the above provisions, I find that toy/toy parts are free to import subject to production of a certificate that the toys being imported conform to the standard prescribed by Bureau of Indian Standards and a certificate that the toys being imported conform to the standard prescribed in IS: 9873 Part 1 to 4, Part 7, Part 9 of 15644:2006.

31.1. I find that the importer M/s. R L Enterprises (IEC AMLPV7270L) through their CB M/s. Continental Shipping Services filed Bill of Entry No. 9095965 dated 13.06.2022 for import of Foldable Vanity box, Foldable Trolley

Makeup Box, Makeup Box falling under CTH-42021280 having declared Assessable Value as Rs. 8,25,426/- and duty payable as Rs. 3,09,287/-. The consignment covered under the Bill of Entry No. 9095965 dated 13.06.2022 was examined vide Examination Report dated 09.07.2022 by the officers of SIIB, Mundra in the presence of authorised representative of the CHA M/s. Continental Shipping Services The Bill of Entry was initially examined by Dock Officials and thereafter the investigation was conducted by SIIB and the goods were examined by SIIB vide Examination Report dated 09.07.2022 in presence of representative of the importer and the CFS.

31.2 I find that the importer has declared the following items in the subject Bill of Entry under CTH 42021280:

Table-A

Sl. No.	Item Description	CTH	Qty	Unit price per pcs(USD)	BCD rate	SWS	IGST
1	Foldable Vanity box	4202 1280	2600	1.2	15%	10%	18%
2	Foldable Trolley Makeup Box	4202 1280	2400	1.3	15%	10%	18%
3	Makeup Box	4202 1280	2520	1.65	15%	10%	18%

31.3. Whereas, during the examination, following items were found in container NO. ECNU4010029 covered by the subject consignment:

Table-B

Sl. No.	Description	Total Cartons	Quantity /Carton	UNIT	Total quantity
1	2-pack car	100	540	PCS	54000
2	Die Cast Car	20	544	PCS	10880
3	Police Car	5	180	PCS	900
4	Pressure car (12 pcs in a packet)	5	144	PCS	720
5	1:32 Die-Cast Car (12 pcs in a packet)	11	192	PCS	2112
6	Truck (12 pcs in a packet)	5	288	PCS	1440
7	Construction Truck (12 pcs in a packet)	10	288	PCS	2880
8	Construction Truck (10 pcs in a packet)	13	240	PCS	3120
9	Beach Motorcycle (12 pcs in a packet)	5	288	PCS	1440
10	Police Motorcycles (12 pcs in a packet)	5	288	PCS	1440
	4 Mixed Construction Vehicles				

11	(12 pcs in a packet)	5	216	PCS	1080
12	Cartoon Engineering Car (10 pcs in a packet)	5	180	PCS	900
13	Pressing engineering vehicle (12 pcs in a packet)	5	240	PCS	1200
14	Flying car (12 pcs in a packet)	5	264	PCS	1320
15	1:39 Pull Back Die-Cast (12 pcs in a packet)	5	288	PCS	1440
16	Pull Back Die-Cast Simulation Car (6pcs in a packet)	5	168	PCS	840
17	64 Hole Bubble Machine	10	24	PCS	240
18	Small Vanity Box	18	18	PCS	324
19	Vanity Trolley with Black Cover	17	1	PCS	17
20	Vanity Box	62	1	PCS	62
21	Make up Trolley	33	1	PCS	33
22	Vanity Box with Black Cover	22	8	PCS	176
23	Make up box with Door	10	1	PCS	10
24	Total	381			86574

31.4. Further, another container bearing container no. TRHU7001060 against Bill of Lading No. KMTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R L Enterprises, Address :102, Gokul Dham, Gagodar Village, Rapar, Kachchh, Gujarat-370145 and the name of the exporter as M/s. Hongkong Herin Trading Ltd, Hong Kong, was taken on hold and examined under Panchanma dated 17.09.2022 by the officers of SIIB, Mundra. During the examination, it was noticed that boxes in the front row contain nail dryer machine which was UV based, however the boxes in the other rows were found to be different varieties of toys along with their packing material. The details of the goods fund during the examination in container NO. ECNU4010029 covered by the subject consignment is as under;

Table-C

S1 No	Mark Name	Mark Number	Products	No of Boxes	Pcs/ Box	Total Pcs
1		KAA(Nail Dryer Machine)	LED/UV LAMP	57	24	1368
2		TNWX 8090	PUZZEL	2	12	24
3		TNWX 0132N	ONSHINE	2	8	16
4	SEORD	120372	FISHING GAME	5	12	60
5	VIPUL	JJ (TK 7821)	PUFF COTTON PASTE	5	144	720
6	SEORD	120300	ART AND CARTS FOLDABLE EASAL	5	6	30
7	SEORD	120437	BUILDING TOYS	3	6	18
8	SEORD	120434	MOTOR AND SENSES	5	4	20

9	SEORD	120334	MOTOR AND SENSES	5	6	30
10	SEORD	120314	FAMILY GAMES	5	12	60
11	SEORD	TNWX 7383	DOUBLE SEDED KITCHEN	3	2	6
12		168 60B	AGRICLUTURE VEHICLE	1	192	192
13		168 55B	FRICTION TRUCK	5	288	1440
14	VIPUL	JJ(TK 5076)	PLASTICENE TOY KITS	4	60	240
15	VIPUL	JJ(TK 7871)	JING JING	5	128	640
16	SEORD	120390	TOP BRIGHT	4	6	24
17	SEORD	120392	TOP BRIGHT	5	12	60
18	VIPUL JJ	TK 7865	FOAMING ADHESIVE	5	120	600
19	VIPUL JJ	TK7714	FOAMING ADHESIVE	5	96	480
20	SEORD	120360	TOP BRIGHT	5	8	40
21	SEORD	170004	BEAR MOVES THE BOX LOGIC GAME	5	12	60
22	SEORD	TNWX0767	LITTLE BEAR TIME RECOGNITION	5	12	60
23	VIPUL JJ	TK 5065	CUTEST INO	5	24	120
24	SEORD	TB 150154	WOODEN PACKING GARAGE	5	4	20
25	SEORD	GB 2225		3	3	9
26	SEORD	TNWX 0163N	FASHION MODEL	4	12	48
27	K AA	49/102	VIP PASTE	2	18	36
28	518	A	LOVELY HOUSE	10	24	240
29	SEORD	TNWX 1672	RAINBOW COUNTRY BEARS	2	16	32
30	SEORD	TNWX 1719	WOODEN TRAIN TRACK TABLE	1	1	1
31	SEORD	120423	DREAM DOLL HOUSE	2	1	2
32	A4		PATROL PAW	8	24	192
33		9704B	ELECTRIC PISTON	4	180	720
34	TD	1011-B65H	TARNADO GYRO COMBAT	5	192	960
35	SEORD	TNWX 6997	LUXURY LARGE KITCHEN	3	4	12
36	SEORD	TNWX 7758	HOLZKUGELBAHN	2	4	8
37	SEORD	TNWX 7499	UNLOCK GAME CITY ROAD	2	12	24
38		9921B	EIGHT SOUND GUN	6	180	1080
39		YJ008	TRICYCLE	10	144	1440
40	SEORD	TNWX 6980	LUXURY LARGE KITCHEN	3	4	12

41		2256	PUZZEL CATERPILLAR	3	240	720
42		E5863	TITAN HERO SERIES	5	16	80
43	TD	1012-B51	TORNADO GYRO COMBAT	3	240	720
44	TD	1012-B41	TORNADO GYRO COMBAT	4	144	576
45		168-60B	AGRICULTURE VEHICLE	2	192	384
46		168-57B	FRICTION TRUCK	7	216	1512
47	TD	1012 B48	TORNADO GYRO COMBAT	6	144	864
48	TD	1012 B51	TORNADO GYRO COMBAT	2	240	480
49		K 15	INVINCIBLE	10	48	480
50		5851A-5	METAL CAR	5	432	2160
51		5851A-2	METAL CAR	5	432	2160
52		A4	PATROL PAW	14	432	6048
53		1166	PJ MAKS	10	1728	17280
54		E35679510	SPIDERMAN	10	3	30
55		GBF78-9056	BARBIL	1	6	6
56		561736XX3EUC	FURNITURE	2	8	16
57	VIPUL	SC-1081101	ROCKEY DELUXE VEHICLE	21	6	126
58	VIPUL	1073061	CHASE DELUXE VEHICLE	4	6	24
59	VIPUL	SC 217023	3 IN 1 SIT WALK AND RIDE ELEPHANT	2	2	4
60		B9692AW00	SPIDERMAN	2	3	6
61	VIPUL	SC 40800	MELISSA DOUD	2	3	6
62		GBF789056	BARBIL	4	6	24
63		PN00042949	AVENGERS	2	10	20
64		E05599510	AVENGERS	5	3	15
65	VIPUL	SC E05599510	TURTELS	2	12	24
66		E05609510	AVENGERS	3	3	9
67		F0231	SPIDERMAN	10	8	80
68		B056640000	SPIDERMAN	10	4	40
69	VIPUL	SC E05599510	IRON MAN VS THANOS	10	3	30
70	SEORD	TNWX 0293N/B	PIANO	2	1	2
71		TNWX 0170N	WOODEN MAGNETIC DRESSUP	1	12	12
72		2027 1/2/3/4	REMOTE CONTROL CAR	10	24	240
73		7703B	LEFAN WISDOM	3	144	432
74		168 56B	SIMULATOR TRUCK	5	160	800
75		168 59B	MANUAL EXAVATOR	5	72	360
76	SEORD	120402	CAR RACE TRACK	5	8	40

77		B0443E040	HULK GREEN (TITAN)	10	6	60
78	SEORD	120478	MARQ) AND LOGIC BOX TOP BRIGHT	11	10	110
79		WK8807	BUILDER SERIES CLASSICAL VILLE	2	24	48
80		120380	BUILDING TOYS	4	8	32
81		TK7848	BUBBLE MUD	20	72	1440
82		93140	PEPPA PIG FUN RIDE	5	4	20
83		7918	LOCK WITH KEY	1	416	416
84	SEORD	TNWX 2211	TOOLS FOR DINOSOUR	1	480	480
85	SEORD	TNWX 2167	DINOUSOUR ARCHES	12	40	480
86	SEORD	120315	MOTOR AND SENSES	5	12	60
87	SEORD	120312	BUILDING TOYS	5	6	30
88	SEORD	ZLF7715	CATERPILLAR LACING BLOCKS	10	12	120
89	SEORD	TNWX 0125N	FOREST LOG SET	2	12	24
90	SEORD	TNWX8106	LINCON LOGHOSPITAL	2	8	16
91	SEORD	150185	SCHOOL BUS	3	8	24
92		TNWX6744	UNLOCK GAME	4	12	48
93		TNWX1269	WOODEN TRAIN HOUSE	2	1	2
94		TNWX1696	RAINBOW PEBBLES	1	18	18
95		TNWX1719	WOODEN TRAIN TABLE	1	1	1
96		TNWX 8465D	LOGARITH BOARD	3	20	60
97	SEORD	120408	BUILDING TOYS	5	6	30
98		TK5077	PLAY DOUGH	5	768	3840
99	SEORD	130895	PUZZLES PEG CREATIVITY GAME	5	12	60
100	SEORD	170001	BALL MATCHING LOGIC GAME	5	10	50
101	SEORD	120560	YUMMY BEAR MATH & LOGIC	5	9	45
102	SEORD	120306	MOTOR AND SENSES LACING BLOCK	5	12	60
103	SEORD	120384	ACTIVITY CUBE ELEPHANT	4	8	32
104	SEORD	120469	CAT & MOUSE WAR GAME	5	12	60
105	SEORD	120272	CAR RACE TRACK	5	8	40
106		40800	CAMP COOLER	1	3	3

32. In view of the mis-declaration, I find that the goods covered under the Bill of Entry No. 9095965 dated 13.06.2022 and the goods in the container bearing container no. TRHU7001060 against Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R L Enterprises were seized u/s 110 of the Customs Act, 1962 vide Seizure

Memos both dated 12.12.2022.

33.1 I have gone through the statement dated 28.07.2022 of the Proprietor of M/s. R.L. Enterprises, Shri Rajesh Kumar Valand, before SIIB officer, Mundra. Whereas, Shri Rajesh Kumar Valand vide their letter dated 05.08.2024 has stated that they do not want any personal hearing in the subject matter and requested to release the goods other than restricted items filed under Bill of Entry No. 9095965 dated 13.06.2022 by adding fine and penalty and want to re-export the remainng item categorized as 'restricted' and also stated that the want to re-export all items stuffed in container no. TRHU7001060 against Bill of Lading No. KMTCSHK7092248.

33.2. I have gone through the statement dated 29.07.2022, 20.04.2023 26.07.2023 of the beneficial owner Shri Vishvjisinh Bhupendrasinh Zala (V B Zala hereafter) given before SIIB, offocer, Mundra .Whereas, Shri Vishvjisinh Bhupendrasinh Zala Mundra vide their letter dated 05.08.2024 has stated that they do not want any personal hearing in the subject matter and requested to release the goods other than restricted items filed under Bill of Entry No. 9095965 dated 13.06.2022 by adding fine and penalty and want to re-export the remainng item categorized as 'restricted' and also stated that the want to re-export all items stuffed in container no. TRHU7001060 against Bill of Lading No. KMTCSHK7092248

33.3. I have gone through the letter dated 19.04.2023 received from Customs Broker M/s. Continental Shipping Services against summon issued by SIIB, Mundra. Whereas, vide letter dated 02.08.2024 Customs Broker M/s. Continental Shipping Services has requested that they do not want Personal Hearing and SCN in this matter and requested to decide the matter on merit basis.

33.4 I have gone through the statement dated 08.06.2023 of Shri Ankit Shailaesh bhai Travadi before SIIB officer, Mundra. Whereas, vide letter dated 02.08.2024 Shri Ankit Shailaesh bhai Travadi has requested that they do not want Personal Hearing and SCN in this matter and requested to decide the matter on merit basis.

34. Further, I have carefully gone through the importer's letter dated 27.07.2023 to DC/SIIB, Mundra, where importer want to state that the CE report is on the basis of Market value and assessable value cannot be determined on the basis of market value. Therefore, suggested reverse calculation in respect of different types of items in the two consignments, subject of this investigation are as follows:

"Detailed breakdown of various value-addition components made at different stages, starting from the basic customs duties and cess to the final

retail price in the hands of the retailer and MRP in the hands of retail Customer. The following paragraphs outline each step of the value addition process, separately for each product, as under:

- vi. **Customs Duties and Cess:** *The basic customs duty applicable to the goods is as follows:*
 - Toys: 60% • Vanity Boxes: 15% • Nail Dryer Machine: 20% In addition to the basic customs duty, a cess is levied on the customs duty at the rate of 10% for all three items.
- vii. **Shipping Line Charges, Yard Charges, Transportation Costs, And CHA (Customs House Agent) Charges:** *Expenses around 10% of Basic Import Price and applicable Customs duties and Cess, towards shipping line charges, yard charges, transportation costs, and CHA (Customs House Agent) charges.*
- viii. **Margins at different stages:** *The landed cost (Basic Import Price + Customs Duties & Cess + Shipping line, Yard, Transportation & CHA Charges but net of GST) of the goods at the importer's end is further enhanced by a 30% margin, which represents the profit margin for the importer. Similarly, the wholesaler adds a 30% margin (on the landed cost in the hands of Wholesaler Net of GST), to arrive at the price for the retailer. Lastly, the retailer applies a 100% margin (On landed cost in hand of retailer, Net of GST), representing the profit margin at their end.*
- ix. **Goods and Services Tax (GST):** *Finally, the Goods and Services Tax (GST) is calculated at the applicable rate (18%) on the retail price, which includes all the above value additions.*
- x. *On the basis of the above detailed calculation of MRP (per USD, Exchange rate in INR 84) of each item is as follows:*

d) Toys:

- Basic Customs Duty: 60%
- Cess on Customs Duty: 10% of 60% = 6%
- Total Customs Duty: 60% + 6% = 66%
- Value After Customs Duty: $USD\ 1 + 66\% = USD\ 1.66$
- Conversion Rate: $USD\ 1.66 * INR\ 84 = INR\ 139.44$
- Additional Charges (Shipping Line, Transportation, CHA Charges, etc.): $INR\ 139.44 + 10\% = INR\ 153.38$ (Landed Cost to Importer)
- Importer's Margin (30%): $INR\ 153.38 + 30\% = INR\ 199.29$ (Landed Cost to Wholesaler)
- Wholesaler's Margin (30%): $INR\ 199.29 + 30\% = INR\ 259.08$ (Landed Cost to Retailer)
- Retailer's Margin (100%): $INR\ 259.08 + 100\% = INR\ 518.16$ (Retail Price)
- GST (18%): $18\% \text{ of } INR\ 518.16 = INR\ 93.27$
- Maximum Retail Price (MRP): $INR\ 518.16 + INR\ 93.27 = INR\ 611.43$ (MRP in the hand of the retail customer)

e) Vanity Boxes:

- Basic Customs Duty: 15%
- Cess on Customs Duty: 10% of 15% = 1.5%
- Total Customs Duty: 15% + 1.5% = 16.5%
- Value After Customs Duty: $USD\ 1 + 16.5\% = USD\ 1.165$

- *Conversion Rate: USD 1.165 * INR 84 = INR 97.86*
- *Additional Charges (Shipping Line, Transportation, CHA Charges, etc.): INR 97.86*

$$+ 10\% = \text{INR } 107.65 \text{ (Landed Cost to Importer)}$$
- *Importer's Margin (30%): INR 107.65 + 30\% = INR 140.14 (Landed Cost to Wholesaler)*
- *Wholesaler's Margin (30%): INR 140.14 + 30\% = INR 182.18 (Landed Cost to Retailer)*
- *Retailer's Margin (100%): INR 182.18 + 100\% = INR 364.36 (Retail Price)*
- *GST (18%): 18\% of INR 364.36 = INR 65.58*
- *Maximum Retail Price (MRP): INR 364.36 + INR 65.58 = INR 429.94 (MRP in the hand of the retail customer)*

f) Nail Dryer Machine:

- *Basic Customs Duty: 20%*
- *Cess on Customs Duty: 10\% of 20\% = 2\%*
- *Total Customs Duty: 20\% + 2\% = 22\%*
- *Value After Customs Duty: USD 1 + 22\% = USD 1.22*
- *Conversion Rate: USD 1.22 * INR 84 = INR 102.48*
- *Additional Charges (Shipping Line, Transportation, CHA Charges, etc.): INR 102.48 + 10\% = INR 112.73 (Landed Cost to Importer)*
- *Importer's Margin (30%): INR 112.73 + 30\% = INR 146.64 (Landed Cost to Wholesaler)*
- *Wholesaler's Margin (30%): INR 146.64 + 30\% = INR 190.64 (Landed Cost to Retailer)*
- *Retailer's Margin (100%): INR 190.64 + 100\% = INR 381.28 (Retail Price)*
- *GST (18%): 18\% of INR 381.28 = INR 68.63*
- *Maximum Retail Price (MRP): INR 381.28 + INR 68.63 = INR 449.91 (MRP in the hand of the retail customer)*

Summarized MRP of each item:

- d. *Toys: MRP: INR 611.43 against per USD 1 (@INR 84)*
- e. *Vanity Boxes: MRP: INR 429.94 against per USD 1 (@INR 84)*
- f. *Nail Dryer Machine: MRP: INR 449.91 against per USD 1 (@INR 84)*

Above MRP is calculated against per USD 1 (@INR 84) based on prevailing market practice.

The MRP of each item, determined by the department, based on the market survey needs to be divided by the above MRP against per USD 1 (@INR 84) to calculate the fair assessable value for the purpose of Customs valuation.”

35. I find that a clarification was sought by SIIB, Mundra from the empanelled Chartered Engineer with regards to market level at which the CE had valued the goods in his valuation report and also to provide an opinion on the breakdown and value addition components provided by the importer vide their letter dated 27.06.2023. The Chartered Engineer, M/s. Suvikaa Associates, vide letter dated 31.07.2023 has submitted that the market value of the goods corresponds to the retail price of the goods. It has been further

conveyed that the information presented by the importer is comprehensive and satisfactory and it validates the market value stated in the report.

36. I find that as per the importer's letter and in light of the Chartered Engineer's clarification, SIIB, Mundra has suggested the assessable value of the goods as follows by using the deductive method/ Rule 7 of the CVR, 2007 :

- a) the assessable value of the toys should be 13.73 % of market value of the toys
- b) the assessable value of vanity boxes should be 19.53% of market value of vanity boxes
- c) the assessable value of nail dryer machines should be 18.67% of the market value of the nail dryer machines.

36(i) Based on the importer's letter and the Chartered Engineer's M/s. Suvikaa Associates clarification, the SIIB, Mundra has recommended an assessable value for the goods using the deductive method under Rule 7 of the CVR, 2007. I find the value suggested by the SIIB, considering the opinion provided by the Chartered Engineer and the importer's proposal through reverse calculation, to be satisfactory. Therefore, I accept the proposed value in Bill of Entry No. 9095965 dated 13.06.2022. The empanelled Chartered Engineer cum Valuer, Er. Ajayrajsinh B. Jhala vide his valuation report bearing report no. ABJ:INSP:SIIB:23-24:MDG:01 dated 01.06.2023 has determined the market value of the goods to be Rs.81,45,525/- (Approx), furthermore, he has suggested a CIF (Cost, Insurance, and Freight) value of approximately ₹44,80,039/- for the goods covered in Bill of Lading No. KMTCSHK7092248 Dated 19.06.2022.

37. I find that the commodity wise market value of the goods, as determined in the consignment is as following:

Table-D

Items covered under Bill of Entry No. 9095965 dated 13.06.2022				
S1. No.	Item description	Quantity	Avg unit price	Total Market Value (In Rs.)
1	Toys	85952	123.60	1,06,23,844/-
2	Foldable Vanity box	386	1595	6,15,670
3	Foldable Trolley makeup box	226	1790.04	4,04,550
4	Makeup Box	10	1595	15,950
			Total	1,16,60,014/-

Further, applying the deductions as submitted by the importer vide his letter dated 27.07.2023 and the same recommended by SIIB, Mundra as mentioned at para no. 23.2 of IR dated 25.08.2023, the assessable value of the goods declared in the Bill of Entry comes to be as following by using the

deductive method/ Rule 7 of the CVR, 2007:

Table-E

Items covered under Bill of Entry No. 9095965 dated 13.06.2022						
Sl. No.	Item description	Quantity	Avg unit price (at market Value)	Total Value	Avg Unit Price(after applying deduction)	Total CIF Value (19.53% of market value, after applying deduction)
1	Foldable Vanity box	386	1595	6,15,670	311.50	1,20,240
2	Foldable Trolley makeup box	226	1790.04	4,04,550	349.59	79009
3	Makeup Box	10	1595	15,950	311.50	3,115
			Total			2,02,364/-

Table-F

Prohibited items covered under Bill of Entry No. 9095965 dated 13.06.2022					
Item description	Quantity	Avg unit price (at market Value)	Total Market Value	Avg Unit Price (after applying deductions)	Total CIF Value(13.73% of market value, after applying deduction)
Toys	85952	123.60	1,06,23,844	16.97	14,58,653/-

3 8 With reference to the consignment covered under container bearing container no. TRHU7001060 against Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 where the name of consignee is M/s. R. L. Enterprises and description of the goods is declared as Nail Dryer Machine, the importer has submitted Commercial Invoice No. UAE-7387 dated 25.06.2022 for Container No. TRHU7001060. The total Invoice value of the items is declared to be USD 19,500.50/-, which comes to be around Rs.16,38,042/-. I find that the empanelled Chartered Engineer cum Valuer, Er. Ajayrajsinh B. Jhala vide his valuation report bearing report no. ABJ:INSP:SIIB:23-24:MDG:01 dated 01.06.2023 has determined the market value of the goods to be Rs.81,45,525/- (Approx). Furthermore, he has suggested a CIF (Cost, Insurance, and Freight)

value of approximately ₹44,80,039/- . Therefore, I hold that value ascertained by Chartered Engineer as per Investigation Report, as discussed above, are true, correct and fair value.

Table-G

Bill of lading No. KMTTCSHK7092248 dated 19.06.2022				
Sr.No.	Item description	Quantity	Avg unit price	Total Market Value (In Rs.)
1	Nail dryer machine	1368	250	3,42,000/-
2	Toys	53,295	146.42	78,03,525/-
			Total	81,45,525

Based on the CIF value suggested by the Chartered Engineer cum Valuer, Er. Ajayraisinh B. Jhala, I assume that the proportionate CIF value of the goods, i.e., Nail Dryer Machines (which are freely importable) and Toys (which are prohibited), imported under Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022, can be calculated as follows:

Table-H

Items covered under Bill of lading No. KMTTCSHK7092248 dated 19.06.2022					
Item description	Quantity	Avg unit price (at market Value)	Total Price as per Market Value	Proportionate Avg Unit Price as per CIF suggested by CE	Total Proportionate CIF Value
Nail dryer machine	1368	250	3,42,000/-	137.50	1,88,100/-
Toys (prohibited)	53,295	146.42	78,03,525/-	80.531	42,91,939/-
Total			81,45,525/-		44,80,039/-

39. I find that the value of the goods found undeclared and Non- BIS compliant i.e. prohibited goods (Toys) come to be Rs. 14,58,653/- for items covered under Bill of Entry No. 9095965 dated 13.06.2022 as mentioned in the Table-F and Rs. 42,91,939/- for items covered under Bill of lading No. KMTTCSHK7092248 dated 19.06.2022 as mentioned in the Table-H. The total value of prohibited goods is Rs. 57,50,592/- as suggested in the investigation report issued by the SIIB.

40. I find that the importer is trying to clear the goods i.e. toys without declaring in the Bill of Entry to evade the Customs duty and to flout mandatory BIS Norms. Further, the importer has not submitted mandatory BIS certificate as per Import Policy Condition no. 2 of Chapter 95, in absence of which these items (85952 number of toys covered under Bill of Entry No. 9095965 dated 13.06.2022 and 53295 number of Toys covered under Bill of lading No. KMTTCSHK7092248 dated 19.06.2022) appears to be 'Prohibited'. The Section 111(d) provides for confiscation of goods which are imported /attempted to be imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The Section 111(f) provides for confiscation of any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned. The Section 111(l) provides for confiscation any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act. The Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. The Section 119 provides for confiscation of any goods used for concealing smuggled goods. I therefore, hold that mis-declared/undeclared and Non-BIS compliant goods i.e. "Prohibited Goods" having re-determined value of Rs. 14,58,653/- for items covered under Bill of Entry No. 9095965 dated 13.06.2022 are liable for confiscation under Section 111(d), 111(f), 111(l), 111(m) and 119 of Customs Act, 1962 and Rs. 42,91,939/- for items covered under Bill of lading No. KMTTCSHK7092248 dated 19.06.2022 are liable for confiscation under Section 111(d), 111(f) and 119 of Customs Act, 1962.

41. I find that there are two category of goods found in the subject consignment. Firstly, 622 items (Vanity box, Makeup Box) valued to Rs. 2,02,364/- as mentioned in the Table-E. and 1368 item (Nail dryer machine) valued to Rs. 1,88,100/- as mentioned in the Table-H found as declared and having "Free" import policy total valued to Rs. 3,90,464/- which appears to be released for home consumption purpose.

Secondly, 85952 items of Toys as mentioned in the Table-F and 53,295 items of Toys as mentioned in the Table-H found undeclared and Non-BIS compliant. In this case, the importer has failed to provide the BIS certificate as described in policy condition 2 of the chapter 95 of Customs Tariff. Therefore, it appears that these 139247 items of Toys valued to Rs. 57,50,592/- (Rs. 14,58,653/- for items covered under Bill of Entry No. 9095965 dated 13.06.2022 and Rs. 42,91,939/- for items covered under Bill of lading No. KMTTCSHK7092248 dated 19.06.2022). The total value of the goods is Rs. 57,50,592/- are prohibited as per provisions of FTP. In as much as penalty under Section 112(a)(i) of Customs Act, 1962 is concerned as goods of this

category are prohibited goods, I find that by the acts of omission and commission, the importer had rendered himself liable for penalty.

42(i). The proposition of penalty under Section 112(a)(i) of Customs Act, 1962 on importer IEC holder Shri Rajesh Kumar Valand, Age 33 years , S/o Rathore Laljibhai Dhanjibhai, R/o 102, Gokul Dham, Vill. Gagodar, Rapar, who permitted the beneficial owner to use his IEC for importing prohibited goods on a profit sharing basis appears liable for penalization under the provisions of Section 112 (a)(i) and Section 114AA of the Customs Act, 1962, is legitimate and thus, the same is confirmed.

42.(ii) For his acts of omission and commissions, Shri Vishvjisinh Bhupendrasinh Zala, R/o Mahakali Road, Vajubhai Vakil No Khacho, Jawahar Road, Limbdi, Surendranagar, Gujarat-363421, who has accepted to be the beneficial owner of the consignments being imported in the name of M/s. R.L. Enterprises, appears to have rendered himself liable for penalty under Section 112(b)(i), and Section 114AA of the Customs Act, 1962, is legitimate and thus, the same is confirmed.

Section 114A deal with Penalty for short-levy or non-levy of duty in certain cases. The subject Bill of Entry is under assessment and out of charge has not been given yet, duty has not arisen in this matter. Therefore, I refrain from imposing Penalty on importer under section 114A of Customs Act 1962 as proposed in IR dated 25.08.2023 issued by SIIB, Mundra.

42.(iii) Further, Shri Ankit Shailaeshbhai Travadi, residing at 31 A, Riddhi Nagar, Mundra, has rendered himself liable to be penalized under Section 117 of the Customs Act, 1962 for his role as an active accomplice to Shri V B Zala in helping him filing Bill of Entry through a CB firm, is legitimate and thus, the same is confirmed.

42.(iv) Custom Broker, M/s. Continental Shipping Services, Mundra has rendered himself liable to be penalized under Section 117 of the Customs Act, 1962 for his role in filing Bill of Entry containing mis-declaration of goods and for non-cooperation in the investigation by not honouring the summons, is legitimate and thus, the same is confirmed.

43 . I find that the IEC holder and beneficial owner, Shri V B Zala clearly stated in their letter dated 05.08.2023 to release the goods other than restricted items filed under Bill of Entry no. 9095965 dated 13.06.2022 also stated that they do not want restricted items and want to re-export the same, which found mis-declared/undeclared and Non-BIS compliant in the said Bill of Entry. They have also stated that they want to re-export all item imported by them against Bill of Lading No. KMTCSHK7092248 dated 19.06.2022. Therefore, I find that as per policy condition No. 2 of chapter 95, the Non-BIS compliant goods i.e.

Prohibited goods will be sent back or will be destroyed at the cost of importer and I also allow to re-export the goods other than prohibited goods i.e. Nail Dryer stuffed in Bill of Lading No. KMTCSHK7092248 dated 19.06.2022 as requested by Importer.

44 Section 125 of the Customs Act, 1962 provides that 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 an option to pay in lieu of confiscation such fine as the said officers thinks fit. Considering these facts, I find it appropriate to grant an option to pay fine under Section 125 of the Customs Act, 1962 in lieu of confiscation of the prohibited goods for re-export purpose.

45. In view of the above discussion and findings, I pass the following order:-

ORDER

- i. I order for rejection of the declared value of Rs. 8,25,426/- imported under Bill of Entry No. 9095965 dated 13.06.2022, as per Rule 12 of the Customs Valuation Rules, 2007. The value is to be re-determined at Rs. 16,61,017/- (Rs. 2,02,364/- for freely importable goods + Rs. 14,58,653/- for prohibited goods) in accordance with the provisions of the Customs Valuation Rules, 2007, using the deductive method under Rule 7 of the CVR, 2007, for the goods imported by M/s. R L Enterprises. I also order the re-assessment of the Bill of Entry accordingly.
- ii. I order for absolute confiscation of the goods i.e. Toys, imported vide Bill of Entry No. 9095965 dated 13.06.2022 found undeclared and Non-BIS compliant i.e. "Prohibited Goods" having re-determined value of Rs. 14,58,653/- under Section 111(d), 111(f), 111(l), 111(m) and 119 of the Customs Act, 1962. I order for destruction of the goods at the cost of importer following due procedure.
- iii. I order for confiscation of the goods found declared in Bill of Entry No. 9095965 dated 13.06.2022 having re-determined value of Rs. 2,02,364/- (Rupees Two Lakhs Two Thousands Three Hundred and sixty-Four only) by using the deductive method/ Rule 7 of the CVR, 2007 as mentioned at para 37, under Section 111(m) of the Customs Act, 1962. However, I give the importer the option to redeem the goods upon payment of a redemption fine of Rs.30,000/- (Rs. Thirty Thousand Only) under Section 125 of the Customs Act, 1962.
- iv. I order for rejection of invoice value of Rs. 16,38,042/- for the goods listed in Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022, under Rule 12 of the Customs Valuation Rules, 2007. The value is to be re-determined at Rs. 44,80,039 /- (Rs 1,88,100/- for freely importable goods +Rs 42,91,939/- for prohibited goods) in accordance with the provisions of the Customs Valuation

Rules, 2007, using the deductive method under Rule 7 of the CVR, 2007, for the goods imported by M/s. R L Enterprises. I also order the re-assessment of the Bill of Entry accordingly once filed.

- v. I order for confiscation of the goods i.e. Toys, imported vide Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 found undeclared and Non-BIS compliant i.e. "Prohibited Goods" having re-determined value of Rs. 42,91,939/- under Section 111(d), 111(f) and 119 of the Customs Act, 1962. However, I give an option to the importer to re-export the goods on payment of redemption fine of Rs. 7,00,000/- (Rs. Seven lakh Only) under Section 125 of Customs Act, 1962 for re-export purpose only.
- vi. I order for confiscation of the goods found declared in Bill of Lading No. KMTTCSHK7092248 dated 19.06.2022 having re-determined value of Rs. Rs 1,88,100/- by using the deductive method/ Rule 7 of the CVR, 2007 as mentioned at para 38, under Section 111(l) and 111(m) of the Customs Act, 1962. However, I give the importer the option to re-export the goods upon payment of a redemption fine of Rs. 25,000/- (Rs. Twenty Five Thousand Only) under Section 125 of the Customs Act, 1962.
- vii. The re-export to be made within a period of 120 days from the date of receipt of this order. However, if the importer does not submit any documents/ willingness to send back/ re-export the impugned goods within 120 days from receipt of this order, the said impugned goods would be liable for destruction as per the instructions and guidelines contained in CBIC disposal Manual, 2019.
- viii. I impose a penalty of Rs. 1,50,000/- (Rs. One lakh Fifty Thousand Only) under Section 112(a)(i) and Rs. 2,50,000/- (Rs. Two lakh Fifty Thousand Only) under section 114AA of the Customs Act, 1962 on importer IEC holder Shri Rajesh Kumar Valand who is proprietor of M/s R L Enterprises also, for the reasons as stated above.
- ix. I impose penalty of Rs. 10,000/- (Rs. Ten Thousand Only) under Section 112(b)(i) and Rs. 2,50,000/- (Rs. Two lakh Fifty Thousand Only) under section 114(AA) of the Customs Act, 1962 on Shri Vishvjisinh Bhupendrasinh Zala for the reasons as stated above. I refrain from imposing of penalty under section 114A of Customs Act 1962.
- x. I impose penalty of Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand Only) under Section 117 of the Customs Act, 1962 on Shri Ankit Shailaeshbhai Travadi for the reasons as stated above.
- xi. I impose penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) under Section 117 of the Customs Act, 1962 on Custom Broker, M/s. Continental Shipping Services for the reasons as stated above.

46. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Signed by
Arun Kumar
Date: 04-09-2024 16:41:26

(Arun Kumar)
Additional Commissioner of
Customs

Customs House, Mundra

F.No.

By RPAD/ By Hand Delivery

To,

- (1) M/s. R L Enterprises (IEC – AMLPV7270L),
Address :102, Gokul Dham,
Gagodar Village, Rapar, Kachchh,
Gujarat-370145
- (2) Ankit Shailaeshbhai Travadi, S/o Shailaeshbhai Travadi, , residing at
31A, Opposite Ganesh Temple, Riddhi Nagar 2, Mundra, 370421
- (3) V B Zala, Mahakali Rd, Vajubhai Vakil No Khacho, jawahar Road,
Limbdi, Surendranagar, 363421. Gujarat
- (4) Continental Shipping Services. Office nO. 17, first floor, Ghanshyam
Complex, Near bridge, New Adani Port Road, Survey No. 72/1, P2,
Village-Dhrub, Mundra, Kutch, Gujarat. 370421

Copy to:

1. The Dy. Commissioner of Customs, SIIB, Mundra Customs.
2. The Dy. Commissioner of Customs, RRA/TRC, Mundra Customs.
3. The Dy. Commissioner of Customs, EDI, Mundra Customs.
4. Office Copy.