

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b> <b>PHONE : 02838-271426/271163 FAX :02838-271425</b> <b>E-mail id- adj-mundra@gov.in</b></p>	
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<b>A</b>	<b>FILE NO.</b> फ़ाइल संख्या	GEN/ADJ/ADC/2047/2024-Adjn-O/o Pr. Commr-Cus-Mundra
<b>B</b>	<b>OIO NO.</b> आदेश संख्या	MCH/ADC/AKM/320/2024-25
<b>C</b>	<b>PASSED BY</b> जारीकर्ता	Amit Kumar Mishra/ अमित कुमार मिश्रा, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
<b>D</b>	<b>DATE OF ORDER</b> आदेश की तारीख	25.02.2025
<b>E</b>	<b>DATE OF ISSUE</b> जारी करने की तिथि	25.02.2025
<b>F</b>	<b>SCN No. &amp; Date</b> कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/2047/2024-Adjn- dated 30.10.2024
<b>G</b>	<b>NOTICEE/ PARTY/ IMPORTER</b> नोटिसकर्ता/पार्टी/आयातक	(i) M/s Kishan Impex (IEC No. CUPG1799H) (ii) Shri Rajat Garg
<b>H</b>	<b>DIN/दस्तावेज़ पहचान संख्या</b>	20250271MO0000333B63

1. यह 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 आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क 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 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्क आयुक्त (अपील),  
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,  
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
HAVING HIS OFFICE AT 4<sup>TH</sup> 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/- रुपये 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 be 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 सं०-6 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 ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क 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, where penalty alone is in dispute.

### **BRIEF FACTS OF THE CASE**

M/s Kishan Impex (IEC No. CUPG1799H) having address at House No. 1/6, Block-A, Jeevan Jyoti Apartment, Kabir Das Marg, Pitampura, New Delhi, North west Delhi-110034 (hereinafter referred to as 'the Importer') was engaged in import of Key chain, Wrist Watch, Stationery items etc. from China for home consumption. M/s. Kishan Impex used to clear their import goods for DTA clearance through Mundra SEZ Warehouse Unit M/s. Rudraksh Terminal LLP., Mundra.

2. Intelligence gathered that M/s. Kishan Impex indulged in evasion of Customs duty by way of gross mis-declaration of value of the goods. The intelligence

further indicated that M/s. Kishan Impex had imported 01 consignment of Key chain, Wrist Watch, Stationery items etc. from China through Container No. ZCSU6590692 and the values of the subject goods were grossly mis-declared. Examination of the goods was conducted by the officers of DRI under panchanama dated 16.05.2024. The description of the goods as declared for the said import consignments in the B/E and Corresponding Bills of Lading are given as under;

**Table-1**

Container No.	Bill of Lading No. and date	DTA B/E NO. and date	Declared Description and classification in B/E & BL	Quantity of goods	Total Assessable value declared (in Rs.)
ZCSU6590692	GOSUYIW8 21588/24.04.2024	2009693 dated 16.05.2024 (RUD No. 2)	Key Chain (CTH -39269099), Plastic water Bottle (CTH-39241090), Stationery Set 996099090), Wrist Watch (91012100) etc.	4000 Doz., 195 Doz., 2250 Doz., 3130 Doz. Etc..	5,72,480/-

**3.** During examination of the goods, it was noticed that the different type of goods Key chain, Wrist Watch, Stationery items etc. of different size, colour design were packed in brown colour cartons and Light green colour PP bags. The goods were appeared of good quality and prima facie, appeared highly undervalued in respect of value as declared by the importer. During examination, inventory of goods imported was made, which is reproduced in Table-2 below:

**Table-2**

SR NO	TOTAL CTNS	DESCRIPTION on carton/light green colour PP bags	QNTY PER CTN	TOTAL QNTY	UNIT
1	5	KEY CHAIN 103	600	3000	PCS
2	20	KEY CHAIN 101	600	12000	PCS
3	15	KEY CHAIN 102	600	9000	PCS
4	20	KEY CHAN 201	1200	24000	RCS
5	39	PLASTIC COLOUR WATER BOTTLE (1000ml)	60	2340	PCS
6	50	RRG-PVC POUCH 1128	2400	120000	PCS
7	20	GIFT SET 9925	240	4800	PCS
8	15	GIFT SET 9003	360	5400	PCS
9	50	GIFT SET 9005	240	12000	PCS
10	20	GIFT SET506 MIX	240	4800	PCS

11	15	NAIL ART DB	240	3600	PCS
12	20	WATCH-12739	600	12000	PCS
13	20	WATCH-12740	576	11520	PCS
14	12	WATCH-12741	600	7200	PCS
15	15	WATCH-12742	456	6840	PCS
16	60	3D PAINTING PEN-1	40	2400	PCS
17	100	3D PAINTING PEN	40	4000	PCS
18	50	POCKET DIANY E-006	360	18000	PCS

**4.** Further, the Govt. approved Chartered Engineer examined the goods on 16.05.2024 at M/s Rudraksh Terminal LLP, Mundra in respect of the B/E no. 2009693 dated 16.05.2024 and he submitted the valuation report to DRI on 27.05.2024. The appropriate assessable value as per the said report came to Rs. **1,20,41,400** /- (Rs. One Crore Twenty Lakhs forty one thousand four hundred), whereas the declared value of the subject import consignment was Rs. 5,72,480/- and the declared applicable Customs duty payable on the subject importer Consignment was **Rs.1,99,825/-**. Whereas, as per the Valuation Report submitted by the Govt. approval valuer the applicable Customs Duty on the subject import consignment comes to total **Rs. 44,91,096/-**.

**5.** During investigation, statements of following persons were recorded under Section 108 of the Customs Act, 1962:

- Statement of Shri Rajneesh Kumar Dwivedi, Manager of M/s Rudraksh Terminal LLP was recorded under Section 108 of the Customs Act, 1962, on 21.05.2024.
- Statement of Shri Rajat Garg, S/o Sh. Kishan Garg, Authorized Representative of M/s Kishan Impex was recorded u/s 108 of the Customs Act, 1962, on 27.05.2024 & 28.06.2024.

**6.** During investigation, apart from issuance of Summons to M/s. Kishan Impex Summons dated 19.06.2024 and 26.06.2024 were issued to Shri Aryan Garg of the proprietor of the importer firm to record his statement. However, he intentionally had not appeared before investigating officer and thereby avoided his presence. It had been revealed that his firm was being used by some Shri Rajat Garg who used to visit China for dealing with the overseas suppliers. He used to manage all invoices, packing list and other import documents in connivance with the Chinese supplier.

7. The imported goods were appeared to be mis-declared in terms of value, thus they were appeared to be liable for confiscation under section 111 of the Customs Act and were seized as per Seizure Memo dated 02.07.2024.

## **8. Rejection of transaction value of the imported goods and determination of the value of the import goods**

8.1 As mentioned in the forgoing paras, M/s. Kishan Impex had imported one import consignments at Mundra port which was examined by the officers of DRI at Mundra Port under panchnama dated 16.05.2024. During examination of goods the total 9236 cartons of different types of goods i.e. Key chain, Wrist Watch, Stationery items etc. of high quality were found in the Container no. ZCSU6590692 imported under DTA B/E no. 2009693 dated 16.05.2024. It is noticed that total declared assessable value of the subject goods was **Rs. 5,72,480/-**.

8.2 The importer during investigation could not present any evidence related to payments made for import of this consignment to the supplier. Though the contract with the supplier mentioned that payment should be done under 30 days of shipment, no such payment was done by the importer. The importer did not produce any payment details to determine the value of the goods imported. Further, during recording of statement dated 27.05.2024 of Shri Rajat Garg , Authorized Representative of the importer, stated that he used to go China three to four times every year for import purpose and his tuning with Smt. Dora ,Chinese trader and exporter, is good for import purpose and she made the invoice, packing list, etc. documents related to valuation part. The said statement confirms that rates were decided/manipulated at importer's end. It was stated by representative of importer that price of 'goods i.e. Key chain, Wrist Watch, Stationery items etc mentioned in B/E is lesser assessable value than the actual assessable value, hence it is clear that importer mentioned to suppress the value. Further during examination, the goods appeared highly undervalued.

8.3 In view of the above, the value declared by the importer in the corresponding Bill of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962. As such the declared value appears to be not acceptable as transaction value and merits rejection in terms of Section 14 of Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

9. Efforts were made to find out the correct assessable value of the imported goods. It was observed that the imported goods were found in different variety, description, specification and quality, so, it was not possible to find and compare the same with other goods having identical/similar description, brand, make, model, quantity and Country of Origin. As the import data extracted with respect

to contemporaneous imports was general in nature and contemporaneous data for imports of identical/similar goods was not available/found, therefore, the value could not be determined under Rules 4 and 5 of CVR, 2007. As per Rule 6 *ibid*, if the value cannot be determined under Rules 3, 4 and 5 same shall be determined under the provisions of Rule 7 or when same cannot be determined under that rule then under Rule 8. As the imported goods were found to be non-standard, the sale price of identical or similar goods was not available in the domestic market as the goods are miscellaneous in nature and found in different variety, description, specification, model, brand, make, sizes and quality, therefore, determination of transaction value under Rule 7 of CVR, 2007 was not possible. As substantial data related to the cost or value of materials and fabrication or other processing employed in producing the imported goods required to compute the value under Rule 8 is also not available. Therefore, valuation of the impugned goods could not be ascertained under Rule 8 of CVR, 2007.

Hence the value is to be determined in terms of Rule 9 of CVR, 2007 of said rules. The Chartered Engineer /valuer in its report provided the valuation of the goods as under-

**TABLE-3**

SR NO	ITEM DESCRIPTION	QNTY (PCS)	Evaluated CF Value in INT	
			Unit price	Total Price
1	KEY CHAIN 103	3000	50	150000
2	KEY CHAIN 101	12000	30	360000
3	KEY CHAIN 102	9000	30	270000
4	KEY CHAN 201	24000	50	1200000
5	PLASTIC COLOUR WATER BOTTLE (1000ml)	2340	30	70200
6	RRG-PVC POUCH 1128	120000	20	2400000
7	GIFT SET 9925	4800	50	240000
8	GIFT SET 9003	5400	40	216000
9	GIFT SET 9005	12000	50	600000
10	GIFT SET506 MIX	4800	50	240000
11	NAIL ART DB	3600	75	270000
12	WATCH-12739	12000	150	1800000
13	WATCH-12740	11520	70	806400
14	WATCH-12741	7200	150	1080000
15	WATCH-12742	6840	70	478800
16	3D PAINTING PEN-1	2400	150	360000

17	3D PAINTING PEN	4000	150	600000
18	POCKET DIANY E-006	18000	50	900000
Total (Rs)				<b>1,20,41,400</b>

As mentioned above, the declared assessable value of the goods **Rs. 5,72,480/-** as per invoice No. JSRA20240026 dated 23.04.2024 cannot be considered as correct assessable value of the goods and hence the same is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed mis-declaration of goods in parameters such as descriptions, quality, etc. Therefore, the Assessable value based on report as provided by the Chartered Engineer may be considered as the value of the subject goods. Therefore, the invoice value of the goods is required to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 on basis of report of the Chartered Engineer as **Rs 1,20,41,400/-**.

**10.1** It appeared that the importer had mis-declared the value of the goods at the time of filing of Warehouse Bill of Entry and DTA Bill of Entry. The present import consignment had been imported from a Chinese Supplier M/s. Yiwu Vanthous Imp & Exp Co. Ltd. Prima facie the declared value of the import goods appeared to be gross undervalued. Examination of the goods revealed that goods had been mis-declared in respect of value thereof in order to evade the applicable Customs Duty. M/s. Kishan Impex also indulged in the evasion of Customs Duty by way of undervaluation of import goods. On calculating the appropriate assessable value of the goods as per the valuation report submitted by the Govt. Charter Engineer is Rs. 1,20,41,400/-. It had been noticed that total declared assessable value of the goods imported under the subject import consignment was **Rs. 5,72,480/-** whereas as per the appropriate Unit price the appropriate assessable value comes to **Rs. 1,20,41,400/-**.

## **10.2 Liability of imported goods for confiscation**

It appeared that Shri Rajat Garg the Authorized Representative of M/s Kishan Impex had imported the high quality goods i.e Key chain, Wrist Watch, Stationery items etc. by mis declaring their description and value. It was well planned that by declaring the goods as Key chain, Wrist Watch, Stationery items , etc. they will import the goods having high quality which were found undeclared in the import consignment.

It further appeared that the price of imported goods mentioned in the Invoice No. JSRA20240026 dated 23.04.2024 was very less in respect of different items. Shri Rajneesh kumar Dwedi , Manager, M/s Rudraksh Terminal LLP and

Shri Rajat Garg of M/s Kishan Impex , in his statement Dt 21.05.2024 and Dt. 27.05.2024 respectively clearly stated that he agreed that the cargo is undervalued in the commercial Invoice issued by overseas supplier. He had further stated that the declared value of the Cargo was lesser in compare to the actual quality of goods. No payment proof for purchase of said consignment could be provided by the importer. Though the terms and conditions of purchase mentioned that payment has to be done within 30 days of shipment, no such payment was done by the importer. The valuation done by Chartered Engineer established that the actual assessable value of the goods is Rs **1,20,41,400/-** in place of declared **Rs. 5,72,480/-**. Hence it appears that the importer has mis-declared the value of the imported goods in order to evade applicable customs duty and hence the subject goods are liable to be confiscated under the 111 (m) of the Customs Act, 1962.

**11. Payment of differential duty during investigation:** M/s Kishan Impex has submitted a letter dated 28.06.2024 wherein it was conveyed that during his statement he had perused the Chartered Engineer cum valuer Certificate which opined the appropriate assessable value of the subject import goods must be Rs.1,20,41,400/-; that they accepted said assessable value and agreed to pay the differential duty on the appropriate assessable value of Rs. 1,20,41,400/- without any litigation.

In response to the said letter, the DRI vide letter dated 04.07.2024 requested Customs Authority, MPSEZ, Mundra for re-assess the warehouse Bill of Entry no. 1008191 dated 13.05.2024 (DTA B/E No. 2009693 dated 16.05.2024) considering the revise assessable value of the subject import consignment. Accordingly, M/s. Kishan Impex paid the applicable Customs duty of **Rs. 44,91,096/-** and submitted E-payment receipt No. 4551000429 dated 12.08.2024. M/s. Kishan Impex also submitted copy of re-assessed B/E through Email on 12.08.2024.

## **12. Role and culpability on the importer/person/firm involved:-**

**12.1. Role of M/s Kishan Impex, House No. 1/6, Block-A, Jeevan Jyoti Apartment, Kabir Das Marg, Pitampura, New Delhi, North west Delhi-110034:-**

- i. As discussed in forgoing paras M/s Kishan Impex was a proprietorship firm under the proprietorship of Shri Aryan Garg. The importer firm was found indulged into evasion of Customs duty on different type of goods by way of gross undervaluation. They used to import goods from China. It was noticed that although Shri Aryan Garg was the proprietor of the firm, but a third person Shri Rajat Garg was handling the import related work of the said firm. Summons dated 19.06.2024 and 26.06.2024 was issued to Shri Aryan Garg to record his statement, however he intentionally did not appeared before



- investigating officer. It was revealed that Shri Rajat Garg used to visit China in order to finalized the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Chinese suppliers.
- ii. During investigation, it was revealed that that M/s. Kishan Impex had filed Warehouse Bill of Entry No. 1008191 dated 13.05.2024 and DTA BE No. 2009693 dated 16.05.2024 and declared assessable value of Rs. 5,72,480/- and Customs Duty of Rs. 1,99,825/-, whereas during investigation it was noticed that the appropriate assessable value of the subject goods is Rs. **1,20,41,400/-** and the applicable Customs duty thereon comes to **Rs. 44,91,096/-**. These facts indicate that the importer intentionally indulged into evasion of huge Customs Duty by way of undervaluation.
  - iii. It was revealed although Shri Aryan Garg was proprietor of importer firm M/s. Kishan Impex, however he was not handling the import and sale related work in the said firm. All the import related work was being handled by Shri Rajat Garg. Shri Rajat Garg admittedly frequently visit China and settled the prices of the import goods thereby the subject import consignment resulted into evasion of huge Customs duty. Therefore, it appears that M/s. Kishan Impex deliberately and knowingly allowed their firm to be used by Shri Rajat Garg for import and consequently selling of the subject goods. Therefore, M/s. Kishan Impex appears to be indulged into evasion of applicable Customs Duty and other allied duties/taxes by way of deliberate undervaluation, wilful mis-statement and suppression of facts leading to revenue loss to the government exchequer. By such act of omission and commission M/s. Kishan Impex rendered the subject import consignment covered under DTA Bill of Entry No. 2009693 dated 16.05.2024 having declared value of goods as Rs. 5,72,480/-, however having appropriate assessable value of Rs. 1,20,41,400/- , liable to confiscation under Sections 111(m) of the Customs Act, 1962.
  - iv. From above, it appeared that **M/s Kishan Impex** has done an act rendering the subject goods liable for confiscation and has knowingly concerned themselves in removing, depositing, harbouring, keeping, concealing, selling and dealing with mis-declared goods being imported by them. The said act of omission and commission resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, **M/s Kishan Impex** also rendered themselves liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.

## **12.2. Role of Shri Rajat Garg of M/s Kishan Impex**

- i. M/s. Kishan Impex was a proprietorship firm under the proprietorship of Shri Aryan Garg. The importer firm was found indulged into evasion of Customs duty on different type of goods by way of gross undervaluation. They used to import goods from China. It was noticed that although Shri Aryan Garg was the proprietor of the firm, but a third person Shri Rajat Garg was handling the

import related work of the said firm. In response to the summons issued to M/s. Kishan Impex, Shri Rajat Garg appeared to record statement. It was revealed during investigation that Shri Rajat Garg used to visit China in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Chinese suppliers.

- ii. Shri Rajat Garg was looking after all the work related to M/s Kishan Impex and appears that he was equally responsible for the business activities and import related activities of M/s. Kishan Impex. Shri Rajat Garg admittedly used made conversations with Chinese person Smt. Dora, Employee of their overseas supplier and his tuning with Smt. Dora was good for import purpose. He admittedly received all import related documents from Smt. Dora on behalf of Chinese Supplier and Invoices, packing list and other documents related to import consignment were prepared by her. He has admitted that the actual assessable value of the subject goods is higher as declared by them before Customs authorities. It appeared that the invoice, packing list and other documents were made by Smt. Dora, Chinese Supplier and she adjusted the cost of goods at the request of Shri Rajat Garg, in which value of goods were fixed very low comparatively with the quality of the import goods. Therefore, it appeared that the declared assessable value of the import goods do not represent true transaction value of the goods. No payment proof for purchase of said consignment could be provided by the importer. Though the terms and conditions of purchase mentioned that payment has to be done within 30 days of shipment, no such payment was done by the importer. It appeared that Shri Rajat Garg involved in gross undervaluation of the goods and So that maximum profit can be earned by Shri Rajat Garg through paying less customs duty, by declaring a lower value for the goods, the importer can potentially lower their import duty and tax liabilities.
- iii. By such act of omission and commission Shri Rajat Garg rendered the subject import consignment covered under DTA Bill of Entry No. 2009693 dated 16.05.2024 having declared value of goods as Rs. 5,72,480/-, however having appropriate assessable value of Rs. 1,20,41,400/-, liable to confiscation under Sections 111(m) of the Customs Act, 1962.
- iv. From above, it appeared that Shri Rajat Garg had done an act rendering the subject goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with mis-declared goods being imported by them. Therefore his act resulted into contravention of the provisions of Customs Act, 1962 and rules made there under and thus, Shri Rajat Garg rendered himself liable to penalty under **Section 112(a) and 112 (b) of Customs Act 1962.**

**13.** Accordingly, the Importer **M/s Kishan Impex** was called upon to show cause as to why:

- i. The declared assessable value of **Rs. 5,72,480/-** of the subject goods covered under DTA B/E No. 2009693 dated 16.05.2024, should not be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and the same be re-determined as **Rs. 1,20,41,400/-** under Rule 9 Customs Valuation (Determination of value of imported goods) Rules, 2007.
- ii. Total quantity of 9236 cartoons of goods i.e. Key Chain, Wrtis Watch, Stationery items etc. covered under DTA B/E No. 2009693 dated 16.05.2024, should not be held liable for confiscation under 111(m) of the Customs Act, 1962.
- iii. The amount of **Rs. 44,91,096/** paid by the importer vide Challan no. 4551000429 dated 12.08.2024 in lieu of re-assessment of goods covered under the DTA Bill of Entry No. 2009693 dated 16.05.2024 should not be appropriated against the demand of applicable Customs duty.
- iv. Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 should not be imposed on M/s Kishan Impex, for the reasons mentioned above.
- v. Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 should not be imposed on Shri Rajat Garg (the beneficial owner of M/s. Kishan Impex).

#### **14. DEFENCE SUBMISSIONS:**

Importer through letter dated 19.12.2024 submitted their written submissions wherein they only re-produced the fact of the investigation. Only at para 8.2 of the said reply they stated that *"The SCN relied upon 'Examination Panchanama' which only states about confirms finding of goods with respect to 'Description, Quantity, Model No, etc'."* Further, they stated that "We KISHAN would like to humbly pray the Hon'ble Additional Commissioner of Customs, Mundra to consider foregone legit substantiation and pass the Order to Set Aside entire Show Cause Notice"

#### **15. RECORDS OF PERSONAL HEARING.**

Following the principles of natural justice, opportunities of personal hearings were granted on dated 12.02.2025. Shri Rajat Garg appeared for the personal hearing on behalf of Noticee No. 1 and Noticee No. 2 through virtual mode. He stated that the goods in question remain pending for clearance and that the requisite duty was duly discharged at the time of the investigation. He further contended that the Noticees are incurring substantial detention and demurrage charges due to the delay. Shri Garg stated that a written submission shall be furnished by 17.02.2024 and requested to take a lenient view.

#### **DISCUSSIONS AND FINDINGS**

**16.** I have gone through the facts of the case, Show Cause Notice dated 30.10.2024 and the noticee's submissions both, in written and in person. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the value is liable to be rejected and re-determined or otherwise.
- ii. Whether the goods liable to be confiscated under Section 111(m) of the Customs Act, 1962.
- iii. Whether the amount paid during the investigation against the duty liability is liable to be appropriated against the duty demand consequent upon the re-assessment or otherwise.
- iv. Whether the Importer M/s. Kishan Impex is liable for penalty under Section 112(a)/112(b) of the Customs Act, 1962 or otherwise.
- v. Whether Shri Rajast Garg is liable for penalty under Section 112(a)/112(b) of the Customs Act, 1962 or otherwise

**17.** I find that the Importer M/s Kishan Impex imported various trading goods i.e. Key chain, Wrist Watch, Stationery items etc. declaring it under different Chapter heading and declared total Assessable value of Rs. 5,72,480/-. During examination goods were found as declared, however, value appeared to be at lower side as the condition of the goods. Accordingly, goods were seized and examination of goods was done from the perspective of valuation of the imported goods. Details of the goods already mentioned at TABLE-I above and the same is not repeated here for the sake of brevity.

**18.** Further, I noticed that the goods were examined by the Chartered Engineer on 16.05.2024 at M/s Rudraksh Terminal LLP, Mundra in respect of the B/E no. 2009693 dated 16.05.2024 and valuation report submitted to DRI on 27.05.2024. The total assessable value of the goods was arrived at Rs. **1,20,41,400** /- (Rs. One Crore Twenty Lakhs forty one thousand four hundred), whereas at the time of filing Bill of Entry the same was declared as Rs. 5,72,480/-. As per the said valuation, the duty amount comes to **Rs. 44,91,096/-** from **Rs.1,99,825/-**.

**19.** I observed that the Importer had not disputed the merits of the case and agreed with the valuation proposed by the department. The Importer during the investigation period paid the applicable Customs duty of **Rs. 44,91,096/-** and submitted E-payment receipt No. 4551000429 dated 12.08.2024. M/s. Kishan Impex also submitted copy of re-assessed B/E through Email on 12.08.2024. Thus, there is no doubt that the Importer in principal agreed with the valuation proposed by the department. I also observed that the payment was made voluntarily without any protest. Now, I am going to discuss the valuation aspect.

## **20. VALUATION OF THE IMPORTED GOODS:**

**20.1** I find that DTA Bill of Entry No. 2009693 dated 16.05.2024 was filed by the Importer M/s. Kishan Impex, however, upon examination it has been found that value was not declared correctly by the Importer. Thus, opinion of Govt. approved Valuer was taken who submitted valuation report dated 27.05.2024 for the said consignment.

**20.2** I find that the Importer during the investigation failed to produce any documentary evidences related to payment made the present shipments under import to the foreign supplier. I noticed that as per the condition of the sales contract, the payment should be done under 30 days of shipment; however the importer failed to product any evidence in for in this regard. The importer failed to produce any payment details to determine the value of the goods imported.

**20.3** From the statement dated 27.05.2024 of Shri Rajat Garg, Authorized Representative of the importer, I noticed that he was in contact with the supplier i.e. Smt. Dora (a Chinese trader and exporter) and for this purpose he used to visit China for import purpose. For the present shipment, Smt. Dora prepared the invoice, packing list, etc. documents related to valuation part. Thus, there is not doubt that Shri Rajat Garg with the help of foreign trader decided the value and accordingly manipulated the documents with the clear intention to evade the legitimate Customs Duty by not disclosing true transaction value before the Customs Authority. Further the representative of importer admitted that the unit price of 'goods i.e. Key chain, Wrist Watch, Stationery items etc. mentioned in B/E is lesser than the actual assessable value thereof. Accordingly, the Importer during the investigation period had paid the applicable Customs duty of **Rs. 44,91,096/-** through E-payment receipt No. 4551000429 dated 12.08.2024.

**20.4** I state that "Value" has been defined under Section 2(41) of the Customs Act, 1962 as "Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14".

**20.5** As per Rule 11 of the CVR, 2007, Importer is required to furnish declaration disclosing full and accurate details relating to the value of the imported goods along with other documents & information including the invoice in respect of the actual transaction price. However, the investigation revealed/indicate that the value was not declared truly at the time of filing of Bills of Entry for the purpose of the Customs clearance.

**20.6** As per Rule 3 of the CVR 2007, the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export. I find that Rule 3(1) of Rules 2007 provides that "*subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10*". Rule 3(4) ibid states that "*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 of Custom Valuation Rules, 2007*". I state that transaction value in terms of Rule 3 of the CVR,

2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. However, in absence of the same criteria in the present case, there was a reasonable doubt regarding the truth and accuracy of the declared value. The Explanation (I)(iii) to Rule 12 of the CVR, 2007 provides that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include (a) significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed, (b) an abnormal discount/ reduction from the ordinary competitive price, (c) 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. In the present case Importer failed to provide the corroborative evidence in support of the value declared before the Customs for the purpose of payment of duty. Without furnishing any documents in support declared value they just choose to pay the applicable Customs Duty. This action clearly show the importer's acceptance that the value declared previously at the time of filing Bill of Entry was not the actual true transaction value of the imported goods. Thus, I find that the declared value is liable to be rejected in terms of Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007. The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced hereunder:-

### **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*

*i. 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.*

#### **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.*

*Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.*

### **Rule 7 of the CVR, 2007, stipulates that:-**

*(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 8 of the CVR, 2007, stipulates that:-**

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

### **Rule 9 of the CVR, 2007, stipulates that:-**

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of –

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;*
- (v) the price of the goods for the export to a country other than India;*
- (vi) minimum customs values; or*
- (vii) arbitrary or fictitious values.*

**20.7** From the investigation, I noticed that there were no specific identifications were mentioned in the import documents based on which comparison of the impugned goods with other goods can be made. I noticed that imported goods were found in different variety, description, specification and quality, so, it was not possible to find and compare the same with other goods having identical/similar description, brand, make, model, quantity and Country of Origin. As the import data extracted with respect to contemporaneous imports was general in nature and contemporaneous data for imports of identical/similar goods was not available/found, therefore, the value could not be determined under Rules 4 and 5 of CVR, 2007. Thus, the vital specifications essential for holding the goods to be identical or similar were not available on the records. I find that the value of the impugned goods could not be determined under Rule 4 and 5 *ibid* since the value of contemporaneous imports of identical and similar goods of same quality and composition was not found. Proceeding sequentially, it is stipulated under Rule 6 *ibid* that where the value is not determinable under Rule 3, 4 and 5, the value is to be determined under Rule 7 or when the value cannot be determined under that Rule, under Rule 8. Whereas, Rule 7 provides for 'Deductive Value' i.e. the value is to be determined on the basis of valuation of identical goods or similar imported goods sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule. As the imported goods were found to be non-standard, the sale price of identical or similar goods was not available in the domestic market as the goods are miscellaneous in nature and found in different variety, description, specification, model, brand, make, sizes and quality, therefore, determination of transaction value under Rule 7 of CVR, 2007 was not possible. Further, computed value, as provided under Rule 8, cannot be calculated in the absence of quantifiable data relating to cost of production, manufacture or processing of import goods. In such scenario, I find it appropriate to invoke the provisions of Rule 9 i.e. residual method for determining the value of the impugned import goods. Rule 9 provides for determination of value using reasonable means consistent with the principles and general provisions of these rules. Thus, I find it appropriate to consider the value arrived after taking opinion of the govt. approved valuer for the valuation of the imported goods. As the procedure followed to arrive at the correct valuation appeared to be fair and also accepted by Importer. Accordingly, I hold that the declared value of the goods is liable to be rejected and assessable value of the impugned goods is liable to be re-determined as **Rs 1,20,41,400** /- (Rs. One Crore Twenty Lakhs forty one thousand four hundred). I hold that item wise value of

the goods will be as per the below Table and the value indicated in the table may be taken basis for valuation at the time of re-assessment of the Bill of Entry:

**TABLE-A**

SR NO	ITEM DESCRIPTION	QNTY (PCS)	Evaluated CF Value in INT	
			Unit price	Total Price
1	KEY CHAIN 103	3000	50	150000
2	KEY CHAIN 101	12000	30	360000
3	KEY CHAIN 102	9000	30	270000
4	KEY CHAN 201	24000	50	1200000
5	PLASTIC COLOUR WATER BOTTLE (1000ml)	2340	30	70200
6	RRG-PVC POUCH 1128	120000	20	2400000
7	GIFT SET 9925	4800	50	240000
8	GIFT SET 9003	5400	40	216000
9	GIFT SET 9005	12000	50	600000
10	GIFT SET506 MIX	4800	50	240000
11	NAIL ART DB	3600	75	270000
12	WATCH-12739	12000	150	1800000
13	WATCH-12740	11520	70	806400
14	WATCH-12741	7200	150	1080000
15	WATCH-12742	6840	70	478800
16	3D PAINTING PEN-1	2400	150	360000
17	3D PAINTING PEN	4000	150	600000
18	POCKET DIANY E-006	18000	50	900000
Total (Rs)				<b>1,20,41,400</b>

## **21. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:**

**21.1** It is alleged in the SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111 of the Customs Act, 1962 are reproduced below: -

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the*

*declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"*

**21.2** I have already discussed in details in previous paras that values had been mis-declared by the Noticee and true transaction value had not been disclosed while filing bills of entry. It had been observed that the offence was of a serious nature involving a substantial loss of revenue to the govt. exchequer. Further, Section 2(39) of Customs Act, 1962 defines "smuggling" in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act, 1962. The impugned undervalued goods were liable to confiscation under section 111(m) of the Customs Act, 1962 and hence, the illegal import of such goods falls under the category of "smuggling" in terms of section 2(39) of the Customs Act, 1962. Which makes the act of importation of impugned goods Smuggling and impugned goods as smuggled goods itself. I find that true transaction value was not declared in the bills of entry before the Customs authorities. Thus, I find that the Noticee have contravened the provisions of Customs Act, 1962, in as much as they had willfully mis-declared the imported goods, in the corresponding import documents. Thus, I find that the said smuggled goods are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

**21.3** As I already held these goods liable for confiscation in previous para under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 *ibid* reads as under:-

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine. I find that goods may be released to the Importer as there is no policy restriction on the imported goods.

## **22.1 Role and Liability of penalty of M/s. Kishan Impex:-**

- i. I find that the import firm M/s Kishan Impex is under the proprietorship of Shri Aryan Garg. From the investigation, it is evident that the firm was found to be involved in the undervaluation of the goods with the intention to defraud the government exchequer.

- ii. I find that IEC holder was Shri Aryan Garg, however, Shri Rajat Garg was controlling all transaction done in the name of this firm under the proprietorship of Shri Aryan Garg. I noticed that summons were issued to the IEC holder Shri Aryan Garg, however, he did not responded to the summons issued by the investigating agency.
- iii. From the statement of Shri Rajneesh Kumar Dwivdi, Manager of M/s. Rudraksh Terminal LLP, I find that Shri Rajat Garg who is the uncle of Shri Aryan Garg visited their warehouse to inquire about the import of cargo and he agreed for doing import in the warehouse of M/s. Rudraksh Terminal LLP. Shri Rajat Garg had imported miscellaneous types of stationery goods in warehouse M/s Rudraksh Terminal LLP.
- iv. From the statement of Shri Rajat Garg, I find that he approved the checklist in respect of DTA B/E No. 2009693 Dt. 16.05.2024. From the statement dated 28.06.2024 of Shri Rajat Garg, I noticed that Rajat Garg failed to explain or produce any transaction related details related from the present shipment. He also failed to explain how he was going to make payment for the present shipment to the foreign supplier. Instead of providing any satisfactory reply he just stated that *"he did not pay for any specific consignment, so he couldn't say that when he had paid for the consignment related to container no. ZCSU6590692. Further he stated that he made the payment in advance to the overseas supplier through swift for the import for 4-5 consignments, however sometimes he made lump sum payment after he had accumulated extra credit for few consignments."* This statement shown his indulgence in the undervaluation of the imported goods.
- v. Further, I also find that Shri Rajat Garg agreed with the valuation proposed by the department and accordingly paid the applicable Customs Duty.
- vi. From the above, it may be seen that although Shri Aryan Garg was the IEC Holder however he was not handling the import and sale related work in the said firm. All the import related work was being handled by Shri Rajat Garg. Shri Rajat Garg admittedly frequently visit China and settled the prices of the import goods thereby the subject import consignment resulted into evasion of huge Customs duty.
- vii. I find that M/s. Kishan Impex deliberately and knowingly allowed their firm to be used by Shri Rajat Garg for import and consequently selling of the subject goods. The IEC holder did not bother himself to inquire about the import activity done in their name of his firm. Therefore, I find that M/s. Kishan Impex indulged into evasion of applicable Customs Duty and other allied duties/taxes by way of deliberate undervaluation, wilful mis-statement and suppression of facts leading to revenue loss to the government exchequer. Thus, such acts and omission on part of Shri Aryan Garg through his firm M/s. Kishan Impex have rendered impugned goods liable for confiscation under Section 111 of the Customs Act,

1962 and had also rendered himself liable to penalty under Section 112(a)(ii) of the Customs Act 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is to be imposed.

## **22.2 Role and Liability of penalty of Shri Rajat Garg:-**

- i. I find that the import firm M/s Kishan Impex is under the proprietorship of Shri Aryan Garg. From the above, it is evident that the firm was found to be involved in the undervaluation of the goods with the intention to defraud the government exchequer.
- ii. I find that Shri Rajat Garg was controlling all transaction done in the name of this firm M/s. Kishan Impex. I noticed that in response to the summons issued to M/s. Kishan Impex, Shri Rajat Garg appeared to record statement. The investigation revealed that Shri Rajat Garg used to visit China in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Chinese suppliers. Thus, it is clear that Shri Rajat Garg is the controller and actual beneficial owner of the imported goods.
- iii. From the statement of Shri Rajneesh Kumar Dwivdi, Manager of M/s. Rudraksh Terminal LLP, I find that Shri Rajat Garg is the uncle of Shri Aryan Garg who visited their warehouse to inquire about the import of cargo and he agreed for doing import in the warehouse of M/s. Rudraksh Terminal LLP. Further, Shri Rajat Garg had imported miscellaneous types of stationery goods in warehouse M/s Rudraksh Terminal LLP.
- iv. From the statement of Shri Rajat Garg, I find that he approved the checklist in respect of DTA B/E No. 2009693 Dt. 16.05.2024. From the statement dated 28.06.2024 of Shri Rajat Garg, I noticed that he failed to explain the transaction related detailed for the present shipment. He also failed to explain as to how he going to pay the foreign supplier. Instead of providing any satisfactory reply he just stated that *"he did not pay for any specific consignment, so he couldn't say that when he had paid for the consignment related to container no. ZCSU6590692. Further he stated that he made the payment in advance to the overseas supplier through swift for the import for 4-5 consignments, however sometimes he made lump sum payment after he had accumulated extra credit for few consignments."* This statement shown his indulgence in the undervaluation of the imported goods.
- v. I find that Shri Rajat Garg admittedly made conversations with Chinese person Smt. Dora, Employee of their overseas supplier and his tuning with Smt. Dora was good for import purpose. He admittedly received all import related documents from Smt. Dora on behalf of Chinese Supplier and Invoices, packing list and other documents related to import consignment were prepared by her.

He has admitted that the actual assessable value of the subject goods is higher as declared by them before Customs authorities. Further, investigation revealed that the invoice, packing list and other documents were made by Smt. Dora, Chinese Supplier and she adjusted the cost of goods at the request of Shri Rajat Garg, in which value of goods were fixed very low comparatively with the quality of the import goods.

- vi. I find that Shri Rajat Garg failed to produce any documentary evidence as a payment proof against the purchase/order of said consignment. Though the terms and conditions of purchase mentioned that payment has to be done within 30 days of shipment, no such payment was done by the importer. Upon objection raised by the DRI, Shri Rajat Garg agreed with the valuation proposed by the department and accordingly paid the applicable Customs Duty. Thus, it is evident that Shri Rajat Garg involved in gross undervaluation of the goods with the intention to defraud the government exchequer.
- vii. From the above, it may be seen that although Shri Aryan Garg was the IEC Holder however all the import related work was being handled by Shri Rajat Garg. Shri Rajat Garg admittedly frequently visit China and settled the prices of the import goods thereby the subject import consignment resulted into evasion of huge Customs duty.
- viii. In view of above, I find that Shri Rajat Garg knowingly concerned himself dealing with goods which were mis- declared in respect of valuation. I find that Shri Rajat Garg has willfully and deliberately indulged into conspiracy of importing and clearance of goods by way of mis-declaration and undervaluation with the intention to defraud the government exchequer. Therefore, such acts of omissions and commission on part of Shri Rajat Garg resulted in contravention of the provisions of Customs Act, 1962 and rules made there under; thus he has made the impugned goods liable for confiscation under Section 111 of the Customs Act, 1962. I find that Shri Rajat Garg has also rendered himself liable to penalty under Section **112(a)(ii)** of Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(a) of the Act where ever, penalty under Section 112(a) of Act, is imposed

**23. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:**

**ORDER**

- i) I order to reject the declared value of the goods imported vide Bill of Entry No. 2009693 dated 16.05.2024 and order to re-determine the same at **Rs. 1,20,41,400/- (Rupees One Crore Twenty Lakhs Forty One Thousand Four Hundred only)** in terms of Rule 9 of the Customs Valuation(Determination of

Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

- ii) I order to confiscate the impugned goods having re-determined value of Rs. 1,20,41,400/- under Section 111(m) of the Customs Act, 1962. However, I give an option to the Importer to redeem the goods on payment of a redemption fine of **Rs. 18,00,000/- (Rupees Eighteen Lakhs only)** under Section 125 of Customs Act, 1962 in lieu of confiscation of the goods for the reasons state in foregoing paras.
- iii) I order to appropriate the amount of Rs. 44,91,096/- paid by the importer vide Challan no. 4551000429 dated 12.08.2024 in lieu of re-assessment of goods covered under the DTA Bill of Entry No. 2009693 dated 16.05.2024 against the demand of applicable Customs duty.
- iv) I impose a penalty of **Rs. 4,00,000/- (Rupees Four Lakhs only)** upon the Importer M/s. Kishan Impex through its proprietor Shri Aryan Garg under Section 112(a)(ii) of the Customs Act, 1962.
- v) I impose a penalty of **Rs. 4,00,000/- (Rupees Four Lakhs only)** upon Shri Rajat Garg (Controller and beneficial owner of the goods) under Section 112(a)(ii) of the Customs Act, 1962.
- vi) I do not impose penalty upon M/s. Kishan Impex and Shri Rajat Garg under Section 112(b) of the Customs Act, 1962.

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

**25.** The Show Cause Notice bearing No. GEN/ADJ/ADC/2047/2024-Adjn dated 30.10.2024 stands disposed off in above terms.

अपर आयुक्त सीमा शुल्क,  
(अधिनिर्णयन अनुभाग)  
कस्टम हाउस, मुंद्रा।

फाइल संख्या: GEN/ADJ/ADC/2047/2024-Adjn.

**DIN/दस्तावेज पहचान संख्या:** 20250271MO0000333B63

**By Speed Post/Regd. Post/E-mail/Hand Delivery**

- (i) M/s Kishan Impex (IEC No. CUPG1799H),  
House No. 1/6, Block-A, Jeevan Jyoti Apartment,  
Kabir Das Marg, Pitampura, New Delhi-110034  
(email- [kishanimpex2022@gmail.com](mailto:kishanimpex2022@gmail.com) ).



- (ii) Shri Rajat Garg, beneficial owner M/s Kishan Impex,  
House No. 1/6, Block-A, Jeevan Jyoti Apartment,  
Kabir Das Marg, Pitampura,  
New Delhi, North west Delhi-110034  
(email- [kishanimpex2022@gmail.com](mailto:kishanimpex2022@gmail.com)).

**Copy to:**

1. The Deputy Director, DRI, Gandhidham Zonal Unit. ([driganru@nic.in](mailto:driganru@nic.in) )
2. The Dy./Asstt. Commissioner (Review Cell), Customs House, Mundra
3. The Dy./Asstt. Commissioner (RRA/TRC), CH, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately in terms of Section 153 of the Customs Act, 1962)*
5. Guard File.