



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

“सीमाशुल्कभवन ,”पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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PREAMBLE

A	फाइलसंख्या/ File No.	:	VIII/10-11/Pr. Commr/O&A/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-11/Pr. Commr/O&A/2024-25dated 20.02.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	139/ADC/SR/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	03.10.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	03.10.2025
F	द्वारापारित/ Passed By	:	Shravan Ram, Additional Commissioner, Customs Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	M/S. CAPRICE COMMERCE PRIVATE LIMITED 1105-A, 11thFloor Signature Building, Block- 13B Zone-1, GIFT-SEZ, Gandhinagar-382355& 4 others
(1)	यह प्रति उन व्यक्तियों केउपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश सेस्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्रासिकी तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपयेका न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोईप्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिटलगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपीलकरने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्कअदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इसतरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने मेंअसफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दियाजायेगा।		

BRIEF FACTS OF THE CASE:

M/S. CAPRICE COMMERCE PRIVATE LIMITED having their registered address at 1105-A, 11th Floor Signature Building, Block-13B Zone-1, GIFT-SEZ, Gandhinagar-382355 (hereinafter referred to as ‘M/s. Caprice’ or ‘the importer’ or ‘the noticee’ for the sake of brevity) had imported goods by declaring them to be “Micro SD Cards 1

TB” and had filed a warehousing Bill of Entry bearing no. 6712393 dated 04.07.2023 (i.e. Z type) at GIFT-Special Economic Zone, Gandhinagar (“GIFT SEZ”). The imported goods were declared as 8520 nos. of “Micro SD Cards 1 TB” with declared value of US \$298,000 (@ US \$35 per MICRO SD card).

2. The examination of the said consignment was done by the officers of GIFT SEZ wherein they observed that:

- a)** The consignment consisted of packets, each declared to contain one micro SDXC UHS-1 card, 1TB, speed up to 120 MB/s card.
- b)** Some of the packets were found packed in a box (80 in each box) whereas some packets were found loose.
- c)** The front and back side of the packets contained details of the product contained inside them.
- d)** ‘MICRO SDXC UHS-1’ cards were found to be of two kinds i.e. with one type having Leisure Plus mentioned and the other without this description.
- e)** The said consignment was imported by M/s. Caprice Commerce Private Limited, and details mentioned on the packets stated that goods were ‘Made in Taiwan’ imported and marketed by “Sparky Animation” with address at 406 Cosmos Plaza Cts. No. 824 & 834 JP Road, Andheri West Near D N Nagar Metro Station, Mumbai, 400053, Maharashtra, India.

2.1 The SEZ officers found it necessary to ascertain the quality and actual value of ‘MICRO SD 1 TB Cards’ (micro SDXC UHS-1) as declared in their import documents. Accordingly, samples were drawn and forwarded to National Forensic Sciences University, Police Bhavan Road, Sector 9, Gandhinagar, Gujarat- 382007 for conducting tests covering the following aspects:

- i.** Whether the goods declared as “Micro SD Cards 1 TB”, speed up to 120 MB/S are in working condition?
- ii.** Whether the card confirm to the parameters mentioned on the packets?
- iii.** Whether these SD cards are fresh (first hand) or second-hand goods (have been used in past)?
- iv.** What is the difference in “Leisure Plus Micro SD HC” and Micro SD HC”? It was also requested to provide the configurational difference between 2 types of SD cards in aspect of capacity etc.
- v.** Whether the stored data in the cards can be retrieved or re-used?
- vi.** Regarding copyright infringement as the goods were declared to be manufactured for “Sparky Animation”.

2.2 The National Forensic Sciences University (NFSU) tested the samples sent from GIFT SEZ and submitted their report dated 04.10.2023. From the findings of the report, it is noticed that the declared capacity of the disk was 1000GB, however the readable/writable storage size found was just 203.2MB and 224MB. Further, the test report revealed that the memory cards were corrupted in respect of data Storage Size

to the extent of 999.7 GB. The report also explained the trademarks and logos associated with the said product (as mentioned on the packets).

3. The subject matter was forwarded to the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad (‘DRI Ahmedabad’) for further investigation in view of the apparent negligible value of the goods imported against the description “Micro SD Cards 1 TB”. Accordingly, an enquiry was initiated by Directorate of Revenue Intelligence, AZU, in the matter. It was found that the proposal of M/s. Caprice Commerce Private Limited for setting up of a new trading unit in the GIFT SEZ vide application no. 1122-0000-1760 dated 10.04.2022 was accepted on 16.12.2022 , wherein the details of the authorized operations was stated as:

TABLE-01

Sr. No.	Items of Services	ITC/CPC	Projected Annual FOB Value
1	To carry on trading of RAM, Memory Card	84733099/ 85235220	99002.766 lakhs per annum

This approval was subject to certain terms and conditions. Some of the conditions are mentioned as below:

- They shall undertake export of goods as per provisions of the SEZ Act, 2005 and Rules made thereunder.
- They shall achieve positive Net Foreign Exchange (NFE) as prescribed in the Special Economic Zone Rules, 2006 for the period they operate.
- Trading is permitted only for items which are under “free category for imports/exports, as per the extant Foreign Trade Policy.
- No import/trading of mobile phones is permitted, as of now.
- All items being traded would be new. Trading of second hand/refurbished goods is not permitted.
- No DTA sale of such items was permitted.

3.1 Further, the Eligibility Certificate was issued to the said firm on 30.01.2023 . The details of the subject import by M/s. Caprice Commerce Private Limited was extracted from the online portal and is tabulated below:

TABLE-02

Sr. No.	Particular	Details
1.	Name of Importer	M/s. Caprice Commerce Private Limited
2	IEC no.	AAGCA5303F
3	Name of Directors	1. Shri BalKishanGagarani 2. Shri DurgeshParashar
4	Address on IEC	Office no. 215- Orbit Mall, 305-306, PU-4, Scheme No.-54, Vijay Nagar, Indore, Madhya Pradesh, 452010.
5.	GST Reg. No.	24AAGCA5303F1Z8
6.	Bill of Entry No. & date	6712393 dated 04.07.2023

7.	Name of Supplier	M/s. Smart Bright INC Limited
8.	Country of Origin	Malaysia
9.	Item Description	Micro SD 1 TB
10.	CTI	85235220
11.	Total Invoice Value	USD 298,200/- (Rs. 24765510/-)

3.2 The officers of DRI, Ahmedabad Zonal unit visited the address of M/s. Caprice Commerce Private Limited, at 1105-A, 11th Floor Signature Building, Block-13B Zone-1, GIFT-SEZ, Gandhinagar-382355 on 10.10.2023. During the visit it was found that the office was locked and hence the search authorization (DIN: 202310DDZ10000515815 dated 10.10.2023) issued by Assistant Director, DRI Ahmedabad could not be executed .

3.3 Search was attempted at the premises of M/s. Caprice Commerce Pvt. Ltd having address at Office No. 215, Orbit Mall, 305,306, PU-4, Scheme No. 54, Vijayanagar, Indore- 452010 on 11.10.2023 . On the said address neither any sign-board nor any business activity was found in the name of M/s. Caprice Commerce Pvt. Ltd. Further, people from nearby offices stated that no such firm is being operated on this address, instead, sign-boards of M/s. Barsha Trading Private Limited & M/s. Baijyanthi Multi trading private Limited were found.

3.4 A search was attempted at the premises M/s. Caprice Commerce Pvt. Ltd. situated at 523 ChinaiWadi, Rocky Building, 35th road, Khar West, Mumbai on 28.10.2023 . However, the office could not be located and nobody in the vicinity was aware of M/s. Caprice Commerce Pvt. Ltd. Nearby post office was also visited but the postal staff also were unable to trace out the whereabouts of M/s. Caprice Commerce Pvt. Ltd. Further, the DRI officers also visited the home address of Shri BalKishanGagarani, Director of M/s. Caprice Commerce Pvt. Ltd at ward no. 8, Jagetia road, KannoJ, Chittorgarh, Rajasthan-312613 on 15.12.2023 . During this search, the officers didn't find any documents regarding import of Micro SD cards. Shri BasantGagarani, (brother of Shri BalKishanGagarani) reached out to Shri BalKishanGagarani via phone call during the search proceedings. Shri BalKishanGagarani stated that he is a director at M/s. Caprice Commerce Pvt. Ltd and insisted that he has done nothing wrong.

3.5 Lastly, a search was conducted at the home address of Shri DurgeshParashar, Director of M/s. Caprice Commerce Pvt. Ltd at Opp. Shani Temple, GurjarMohalla, Chittorgarh, Rajasthan 312001 on 15.12.2023 . During this search, the officers didn't find any documents regarding M/s. Caprice Commerce Pvt. Ltd or regarding import of Micro SD Card. Shri DurgeshParashar stated before the officers that M/s. Caprice Commerce Pvt. Ltd may belong to Shri J P Jagetia for whom he used to work. He also stated that he has received summons from DRI Ahmedabad about which he informed Shri J P Jagetia and in response Shri J P Jagetia informed him that the said matter is in his knowledge and he (Shri Jagetia) is looking into it.

4. Summons dated 14.12.2023 were issued to **Shri Parag Kumar C. Mandalia**, Authorized Signatory of M/s. Caprice Commerce Pvt. Ltd in connection with import of Micro SD card 1TB vide bill of entry no. 6712393 dated 04.07.2023. He presented himself for statement on 19.12.2023 , wherein he stated that:

- Shri Pradeep bhaiUpadhyay along with his friend Shri Montubhai Gandhi came to Vadodara and informed him that they have taken up a work/venture at Ahmedabad. Further, they asked him if he will be interested in working at Ahmedabad.
- Shri Pradeep bhaiUpadhyay and Shri Montubhai Gandhi took him to GIFT City SEZ and showed him a unit i.e. M/s. Caprice Commerce Pvt. Ltd. and asked him to be ready to go to Ahmedabad, once import consignment arrive.
- Regarding the remunerations, he was informed that the owner of M/s. Caprice Commerce Pvt. Ltd. will take care of the same.
- After some days, Shri Pradeep bhai telephoned him and asked him to go to Ahmedabad as an import consignment had arrived at Ahmedabad airport and was about to arrive at GIFT City SEZ.
- He was asked to complete the inward related formalities and to take the consignment to the unit M/s. Caprice Commerce Pvt. Ltd. He was not aware of the material inside the boxes and came to know that goods are Micro SD card only through documents.
- The Customs officers opened the consignment for examination and tested few SD cards by plugging in a laptop. After that they drew some samples under a Panchnama.
- He informed the same to Shri Pradeep bhaiUpadhyay and Shri Montu Gandhi and both came to Ahmedabad the very next day.
- During this period, he was working on the instructions of Shri Pradeep bhai and Shri Montubhai. Further, he submitted that they gave him 8-10 thousand Rupees for expenses borne during this period.

4.2 Shri Aditya Dharmendra Shukla, voluntarily appeared before DRI on 19.12.2023 to tender his statement in the matter related to import of Micro SD card 1-TB by M/s. Caprice Commerce Pvt. Ltd. at GIFT-SEZ. During his voluntary statement, he stated that:

- Mr. Montu Gandhi approached him on phone and intimated that their offices at 1105A, 1105B, 1106A and 1106B at Hiranandani Signature Tower GIFT-SEZ are to be opened and wished to allot the interior work to him.
- He negotiated the quotation and finally fixed Rs. 19.40 lakhs for carrying out the interior work in the four units. He also got Rs. 4 Lakhs from M/s. Sea Matrix Enterprises Ltd., Rs. 4 Lakhs from M/s. Caprice Commerce Pvt. Ltd., Rs. 4 Lakhs from M/s. Ashtamangal Projects Ltd. and Rs. 3 Lakhs from M/s. Caprice Commerce Pvt. Ltd.
- The project was exclusively approved by Mr. Montu Gandhi, the selection of laminates, sofa, fabrics and office chairs were finalized by Mr. Montu.
- Later Mr. Montu Gandhi gave no. of one Shri AlopChaturvedi, a middle man and requested him to contact Mr. AlopChaturvedi, for final payment.

4.3 Shri MontuHarshadbhai Gandhi, voluntarily appeared before DRI on 19.12.2023 to tender his statement in the matter related to import of Micro SD card 1 TB by M/s. Caprice Commerce Pvt. Ltd. at GIFT-SEZ. During his voluntary statement, he stated that:

- He along with Shri Pradeep Upadhyay, Shri Pavan Sharma and Shri Dilip Singh are partners in the firm M/s. PDP Consultancy. In addition, they are also partners in another firm namely M/s. Rekha Shipping Agency at Diamond Industrial Park, Sachin.
- Shri BalKishanGagarani, Shri AlopChaturvedi, Shri Jagdish Chandra Kabra, Shri JitendraYadav and Shri Narayan LalSoni came to his office in M/s. PDP Consultancy, Surat and sought his assistance in online filing of their unit registration in Surat SEZ. Due to some technical difficulty the project was cancelled and it was decided to apply for registration in GIFT-SEZ and the online registration formalities were done by him.

4.4 Summons dated 19.12.2023 were issued to **Shri MontuHarshadbhai Gandhi** in connection with import of Micro SD card 1TB vide bill of entry no. 6712393 dated 04.07.2023. He presented himself for statement on 22.12.2023 , wherein he stated that:

- He and Shri Pradeep Upadhyay carried out work related to online application for registration for setting up a unit in GIFT-SEZ, in respect of 3 units i.e. M/s. Caprice Commerce Pvt. Ltd., M/s. Ashtamangal Projects Ltd. and M/s. Sea Matrix Enterprises Ltd., and for this work an amount of Rs. 1.5 Lakhs per unit was agreed upon with Shri BalKishanGagarani, Shri AlopChaturvedi, Shri Jagdish Chandra Kabra, Shri JitendraYadav and Shri Narayan LalSoni, (directors/responsible persons of these companies).
- He perused the statement dated 19.12.2023 of Shri Aditya Dharmendra Shukla stating that all the final decisions regarding sofas, fabrics, interior work and even final amount was finalized by Shri Montu. In this regard, he stated that the above statement is true.
- He perused the statement dated 19.12.2023 of Shri Parag Kumar C. Mandalia, and found it to be true.
- Though they have carried out acts on behalf of M/s. Caprice Commerce Pvt. Ltd. they were not authorized to carry out the above work by the importer either by any oral or written order.

4.5 Shri Pradeep Upadhyay, voluntarily appeared before DRI on 22.12.2023 to tender his statement in the matter related to import of Micro SD card 1 TB by M/s. Caprice Commerce Pvt. Ltd. at GIFT-SEZ. During his voluntary statement, he stated that:

- Shri BalKishanGagarani, Shri AlopChaturvedi, Shri Jagdish Chandra Kabra, Shri JitendraYadav and Shri Narayan LalSoni, the directors/responsible persons of M/s. Caprice Commerce Pvt. Ltd. had approached Shri Montu

Gandhi in the month of November 2021 for the work related to registration of the Unit by online application in the SEZ website.

- He has perused the statement dated 19.12.2023 of Shri Aditya Dharmendra Shukla and stated that he finds the contents of the said statement true. He further stated that all the work done by Shri Aditya Dharmendra Shukla was carried in consultation with Shri Montu Gandhi and he was not in the loop regarding any communications made between Shri Montu Gandhi and Shri Aditya Dharmendra Shukla.
- He never contacted any director or any responsible person of the firm and that Shri Montu Gandhi was in regular contact with one Shri JitendraYadav, the responsible person of the importer.
- Though they have carried out acts on behalf of M/s. Caprice Commerce Pvt. Ltd. they were not authorized to carry out the above work by the importer either by any oral or written order.

5. Summons dated 26.10.2023, 13.11.2023 and 07.12.2023 were issued to **Shri Durgesh Kumar Parashar**, Director of M/s. Caprice Commerce Private limited, as per the provisions of Section 108 of the Customs Act, 1962, however he neither appeared before investigation nor intimated any reason for non-appearance. Hence, complaint under Section 174 and 175 of the Indian Penal Code, 1860 read with Section 108 of the Customs Act, 1962 was filed in the Court of Hon'ble Additional Chief Metropolitan Magistrate of Ahmedabad vide registration no. 4111/2024 dated 12.01.2024, which is still pending in the Hon'ble court.

5.1 Summons dated 19.10.2023, 26.10.2023 and 13.11.2023 were issued to **Shri BalkishanGagarani, Director of M/s. Caprice Commerce Private limited**, as per the provisions of Section 108 of the Customs Act, 1962, however he neither appeared before investigation nor intimated any reason for non-appearance. Hence Criminal Case under Section 174 of the Indian Penal Code, 1860 read with Section 108 of the Customs Act, 1962 was filed in the Court of Hon'ble Additional Chief Metropolitan Magistrate of Ahmedabad vide registration no. 4240/2024 dated 12.01.2024, which is still pending in the Hon'ble court. Further, after filing the complaint Shri BalkishanGagarani presented himself for statement on 21.02.2024 and 23.02.2024.

6. Search under Panchama was conducted on 11.01.2024 at the premises of M/s. PDP Consultancy situated at 198, Mahaveer Society, Nr. Sachin Railway Station, Sachin, Dist-Surat and CC-1, Road No. -06, Diamond Industrial Park, Sachin, Dist-Surat. During the search the officers retrieved some incriminating documents like 3 DSC (Digital Signing), Stamp and seal of M/s. Ashtamangal Projects Limited, M/s. Sea Matrix International Limited, M/s. Caprice Commerce Private limited and passport size photograph with details on plastic cover as Jagdish Chandra Sea Matrix, Balkishan Caprice, AlopChaturvediAshtamangal, NatwarlalAshtamangal, Narayan Soni Sea Matrix, RajendraParasar Sea Matrix. In this regard, Shri Montu Gandhi informed that all these documents/goods like DSC, stamp pad and photographs are pertaining to the firms being investigated by DRI officers. The officers enquired about details of work undertaken along with procedure of the documents uploaded by them

in respect of M/s. Caprice Commerce Private Limited to which Shri Montu Gandhi stated that the documents in respect of the said firm were physically brought to their office premises by Shri AlopChaturvedi, Shri BalkishanGagarani and Shri JitendraYadav. He further informed that afterwards only JitendraYadav used to contact him for all work. Thereafter, the officers enquired about the signed blank letter head of M/s. Caprice Commerce Private Limited, to which Shri Montu Gandhi informed that they had taken blank signed letter head of M/s. Caprice Commerce Private Limited to directly complete any legal formalities warranted for completion of registration process/clearance process of the said firms. Further, he stated that he had used letter head of M/s. Caprice Commerce to give authorization to Shri ParagMandalia as authorized person of the said firm to complete the Customs Import process. The officers enquired with Shri Montu Gandhi regarding the use of official email id of M/s. Caprice Commerce Pvt. Ltd (capricecommerce@gmail.com), to which he replied that he used to operate the email id of the company for the purpose of clearance of goods from the SEZ. He further added that apart from him, Shri JitendraYadav also operated the said email.

7. Shri BalkishanGagarani, director of M/s. Caprice Commerce Pvt. Ltd.voluntarily appeared before DRI on 21.02.2024 to tender his statement in the matter related to import of Micro SD card 1 TB by M/s. Caprice Commerce Pvt. Ltd. at GIFT-SEZ. During his voluntary statement, he stated that:

- He met a person named Shri SiddharthMandavia in a marriage where he was asked if he would work as a director of one company on a monthly fee of Rs. 30,000/- per month. After a month Shri SiddharthMandavia visited KannoJ and informed that he (Shri BalkishanGagarani) was to be appointed as a director in a company, i.e. M/s. Caprice Commerce Private limited.
- After 10 days he was called to Indore for signing documents regarding the directorship of the firm M/s. Caprice Commerce Private Limited. Later a person (referred as Bhaiji) called him for opening of new bank account and for changing the name of old directors from the bank accounts. He stated that during these transactions with the bank, he was accompanied by Shri Bhaiji and Shri JitendraYadav.
- He also went to Surat to complete the formalities of setting up a unit in GIFT City.
- Shri JitendraYadav used to carry out the work of M/s. Caprice Commerce Pvt. Ltd. on his behalf and Shri JitendraYadav used to carry out all the financial transaction in the company.
- Shri Narayan LalSoni is a resident of KannoJ and works as an electrician.
- He has never signed on any blank letter heads of the company viz M/s. Caprice Commerce Pvt. Ltd.

8. Panchnama was drawn at the premises of M/s. Caprice Commerce Pvt. Ltd, situated at 11F, 1105A, Hiranandani Signature Tower, Gift-SEZ, Gandhinagar (Gujarat) on 22.02.2024. During the proceedings Shri BalKishanGagarani, Director of M/s. Caprice Commerce pvt. Ltd. and Shri ParagMandalia, Authorized person of M/s.

Caprice Commerce Pvt. Ltd were also present. The officers examined the goods in the presence of panchas and informed the importer that since the Test Report of the Micro SD Card has revealed the goods to be defective/corrupt, the goods were put under Seizure vide Seizure memo dated 22.02.2024 and the seized goods were handed over to the importer for safe custody under supratnama dated 22.02.2024 .

9. Shri BalKishanGagarani, director of M/s. Caprice Commerce Pvt. Ltd. appeared before DRI on 23.02.2024 in response to Summons dated 22.02.2024 to tender his further statement in the matter related to import of Micro SD card 1 TB by M/s. Caprice Commerce Pvt. Ltd. at GIFT-SEZ. During his statement, he stated that:

- In the previous statement he intentionally tried to hide the identity of Shri JitendraYadav by referring Shri JitendraYadav as Bhaiji.
- He stated that Shri JitendraYadav was taking all the important decisions in respect of M/s. Caprice Commerce Pvt. Ltd and other units such as M/s. Ashtamangal Projects ltd. and M/s. Sea Matrix Enterprises Ltd.
- Shri JitendraYadav was handling all the work related to opening of bank account, amending old bank account of the company and setting up of a unit at GIFT-SEZ.
- He only signed on the documents placed before him by Shri JitendraYadav.
- Shri JitendraYadav also used to direct him to carry out work in other companies/firms in which he (Shri Yadav) was working as a director.
- Shri JitendraYadav is aware whether the remittances against the import made by M/s. Caprice Commerce Pvt. Ltd. have been made to the supplier or not.
- He used to meet Shri JitendraYadav in the office of Shri AlopChaturvedi or in the office of Shri Jai Prakash Jagetiya at Indore.

10. Summons dated 01.02.2024 were issued to **Shri Pradeep Upadhyay** in connection with import of Micro SD card 1TB vide bill of entry no. 6712393 dated 04.07.2023. He presented himself for statement on 07.03.2024 , wherein he stated that:

- Regarding the decision taken on behalf of M/s. caprice Commerce Pvt. Ltd., Shri Montu was the one interacting with the people involved in the said firm.
- The work of hiring architecture, choosing furniture and assistance in filling of Bill of entry was taken up by Shri Montu based on requests made by Shri JitendraYadav.
- Shri Montu had informed them that Shri JitendraYadav has requested him to carry out the clearance of the goods in respect of the subject import. They were the one who coordinated for smooth import of goods. Hence the invoice tax no. 738 dated 14.07.2023 for Rs. 88,810.76/- was raised by M/s. Parikh Clearing Agency Pvt. Ltd to M/s. PDP consultancy, Surat.

11. Summons were issued to Shri Jai Prakash Jagetiya on 18.04.2024 and 13.06.2024, Shri JitendraYadav on 18.04.2024, Durgesh Kumar Parashar on 18.04.2024 and 13.06.2024, Shri Siddharth Prakash Mandavia on 26.04.2024, but none of them appeared.

VALUATION OF IMPORTED GOODS:

12. Import consignments declared as micro-SD Card 1 TB by M/s. Caprice Commerce Pvt. Ltd. were taken up for examination and goods were found to be defective with more than 99% of the claimed capacity corrupted. This indicated gross mis-declaration and consequent overvaluation since the stated value was in respect of prime goods. The forensic Science University, Gandhinagar, Gujarat has categorically confirmed that the goods were not as per declaration and memory cards were found to be largely corrupt. Hence it is evident that the importer mis-declared and grossly overvalued the imported micro-SD cards. Since the goods were found to be grossly mis-declared in terms of specifications and value, the value of the imported goods is liable for rejection as per the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

12.1 Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is reproduced below:

“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) themisdeclaration 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.”*

The forensic test report of the samples of the imported goods clearly states that the Micro SD cards were almost 99.9% corrupt and goods were grossly mis-declared in terms of description, quality and specifications. Hence in view of the provisions of Rule 12 of the Customs Valuation Rules, 2007, the value of the goods is liable for rejection.

12.2 From the investigation of this case, it appears that the importer willfully mis-declared the nature and value of the imported goods. The imported micro-SD cards were almost 100% corrupt. In this regard, opinion of Government approved Chartered Engineer was also taken and the sealed sample was examined under Panchnama on 05.02.2025. The Government approved Chartered Engineer in his report Ref: BB/B-05/25/CCPL/DRI dated 08.02.2025 has stated that:

- “1. The Imported SD Card as 1 TB memory has only 203.2 or 224.0 MB read or write memory, balance memory either identified as corrupt or data lost storage.*
- 2. Actual 1 TB card showed speed of 1750 MB/s against the cards inspected showed speed of 120 MB/s (declared) but during test the same was showing reading speed of 12.9 MB/s, 16.0 MB/s and writing speed 6.12 MB/s, 8.07 MB/s which has bulk purchase rate got discounted from 10USD to 8 USD for actual 1 TB SD memory cards. However, the subject memory cards are not of 1TB storage capacity and actual capacity suggests that; practically it is obsolete/junk hence has NO Commercial demand or Commercial value.*
- 3. Very First Micro SD Card by SCAN DISK was introduced in 2014 was for minimum 2 GB storage capacity against the subject card having 1/10 storage Capacity, Therefore the said cards are obsolete in the industry.”*

Further the Government Approved Chartered Engineer stated that the items under import are electronic waste.

12.3 Rule 4 of the Customs Valuation Rules 2007 prescribes as under,

“Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- 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.”

The imported micro-SD cards under the said bill of entry imported by M/s. Caprice Commerce private limited were found to be corrupted as per the report of National Forensic Science University, Gandhinagar, Gujarat and the government approved Chartered engineer reported the goods to be of No Commercial Value. Further no contemporary import of such identical goods was found. Hence, determination of value of imported micro-SD cards cannot be arrived at in terms of the provisions of Rule-4 of the Customs Valuation Rules, 2007.

12.4 Rule 5 of the Customs Valuation Rules 2007 prescribes as under,

“Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- 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.”

The micro-SD cards imported by M/s. Caprice Commerce Pvt. Ltd. under the said bill of entry was found to be corrupted as per the report of National Forensic Science University, Gandhinagar, Gujarat and as per the report of the Government approved Chartered Engineer. Further no contemporary import of such similar goods was

found. Hence, the value of imported micro-SD cards cannot be arrived at in terms of the provisions of Rule-5 of the Customs Valuation Rules, 2007.

12.5 Rule 6 of the Customs Valuation Rules 2007 prescribes as under,

“Rule 6 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- Determination of value where value cannot 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.

12.6 Rule 7 of the Customs Valuation Rules 2007 prescribes as under:

Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- 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).

Utility of micro-SD cards depends on the quality of the product, writing speed and usable storage space. Representative samples of micro-SD cards imported by M/s. Caprice Commerce Pvt. Ltd. under the said bill of entry were tested by the forensic lab and the actual readable/writable storage capacity of the cards were very less. The Representative samples were found to be corrupted and micro-SD cards were found to be not in line with the given specification of Original Equipment Manufacturer (OEM). Since there was no evidence of such micro-SD cards being sold in India or being imported for selling in Indian Market, it appears that the value of the subject imported micro-SD cards cannot be determined in terms of the Rule-7 of the Customs Valuation Rules.

12.7 Rule 4 of the Customs Valuation Rules 2007 prescribes as under,

Rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- Computed value. -

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.*

The micro-SD cards imported by M/s. Caprice Commerce Pvt. Ltd. under the said bill of entry were found to be corrupted as per the report of National Forensic Science University, Gandhinagar, Gujarat and as per the report of the Government approved Chartered Engineer. Also, multiple summons were issued to the persons involved in the import of the said goods, to take part in the investigation and to give evidence. Some persons didn't take part in the investigation and the persons who came were not able to provide the details required to arrive at value as per provisions of Rule 8 of the Customs Valuation Rules. Hence the value cannot be arrived at in terms of provisions of Rule 8.

12.8 Rule 9 of the Customs Valuation Rules 2007 prescribes as under,

Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- Residual method. -

(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.

The micro-SD cards imported by M/s. Caprice Commerce Pvt. Ltd. under the said bill of entry was found to be corrupted as per the report of National Forensic Science University, Gandhinagar, Gujarat and as per the report of the Government approved Chartered Engineer. The Government approved Chartered Engineer in his report dated 08.02.2025 has recommended that the said goods are obsolete/ Junk and has no Commercial demand/ Commercial Value. From the investigation, it is evident that the importer targeted SEZ, where the imported goods undergo minimum checks and no duty liability falls on the importer as the importer, being a trading Unit, had to export the same micro-SD cards to third country. It was thus evident that the importer grossly mis-declared and grossly overvalued the imported Micro SD cards. Hence it appears that valuation in this case can only be determined by using reasonable means. Thus, based on the Forensic Test report of the National Forensic Science University, Gandhinagar, Gujarat, which reported goods to be 99.9% corrupt and the report from the Government approved Chartered engineer, it is clear that the said goods are obsolete/ Junk with no Commercial demand/ Commercial Value.

13. The Principal Commissioner of Customs, Ahmedabad Customs was requested to extend the time limit for issuance of Show Cause Notice under Section 124 of the Customs Act, 1962 under the provisions of Section 110(2) of the Customs Act, 1962. The Principal Commissioner of Customs, Ahmedabad vide his order dated 06.08.2024 extended the date of issuance of Show Cause Notice in this case for another six months i.e. 21.02.2025.

14. LEGAL PROVISIONS:

14.1 The Foreign Trade (Development and Regulation) Act, 1992 contains export import policy.

(a) Section 7 of FT (D&R) Act, 1992 describes as:-

Section 7: Importer-exporter Code Number- *No person shall make any import or export except under an Importer-Exporter code number granted by the Director General or the officer authorized by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General:*

(b). Section 11 of FT (D&R) Act, 1992 states that

“Contravention of provisions of this Act, rules, orders and foreign trade policy”:

11.(1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made there under or the foreign trade policy he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person signs or uses, or causes to be made, signed or used, any declaration, statement or document submitted to the Director General or any officer authorised by him under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tempered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.

.....

14.2 Relevant provisions of Foreign Trade (Regulation) Rules 1993 are as under:

(a) Rule 11 - Declaration as to value, quantity and quality of imported goods or services or technology. -

Declaration as to value, quantity and quality of imported goods or services or technology. - On the importation into, or exportation out of, any customs ports of any goods or goods connected with services or technology, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quantity, quality and description of such goods or goods connected with services or technology to the best of his knowledge and belief and in case of exportation of goods or services or technology, certify that the quality and specification of the goods or goods connected with services or technology as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods or goods connected with services or technology

are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

(b) Rule 14 - Prohibition regarding making, signing of any declaration, statement or documents.

(1) No person shall make, sign or use or cause to be made signed or used any declaration, statement or document for the purposes of obtaining a ¹[licence, certificate, scrip or any instrument bestowing financial or fiscal benefits] or importing ²[any goods or services or technology or goods connected with such services or technology] knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any ¹[licence, certificate, scrip or any instrument bestowing financial or fiscal benefits] or importing or exporting ²[any goods or services or technology or goods connected with such services or technology].

14.3 Special Economic Zones Act, 2005

In exercise of the powers conferred by sub-section (1) of section 21 of the Special Economic Zones Act, 2005, the Central Government published notification no. S.O. 2665 (E) dated 05.08.2016, wherein the Central Government notified the offences contained in the concerning Sections as mentioned therein. Offences under the following Sections of the Customs Act, 1962 were notified by the above notification,

1. Section 28, 28AA, 28AAA,
2. Section 111,
3. Section 113,
4. Section 115,
5. Section 124,
6. Section 135,
7. Section 104.

14.4 SEZ Rules, 2006:

(a)Rule 75 of SEZ Rules 2006 states about Self-Declaration as under:

Unless otherwise specified in these rules all inward or outward movement of goods into or from the Zone by the Unit or Developer shall be based on self-declaration made and no routine examination of these goods shall be made unless specific orders of the Development Commissioner or the Specified Officer are obtained.

¹[Provided that all the consignments of Special Economic Zone shall be subject to a risk management system.]

14.5 Letter dated 14th October, 2024 issued by the Under secretary, SEZ Division, Department of Commerce, Ministry of Commerce and Industry, Govt. of India amply clarifies that:-

*“Vide Notification No. S.O. 2666(E) dated 05.08.2016, the Central Government has authorised the ADG, Directorate of Revenue Intelligence for offences under the Customs Act, 1962, to be the enforcement officer in respect of any notified offence committed or likely be committed in a Special Economic Zone. As such, being a notified Agency, DRI is not excluded from investigating notified offences in Special Economic Zones in accordance with extant provisions of SEZ Act/Rules, Foreign Trade Policy 2023 and Customs Act, 1962, **including issues related to valuation**”*

14.6 Section 14 of the Customs Act 1962 states that:

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:

¹[(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.

14.7 Section 46(4) of the Customs Act, 1962 provides that

“the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely: -

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it;

and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

14.8 Section 111 of Customs Act 1962 specifies provisions for Confiscation of improperly imported goods, and reads as-

“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;

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;”

14.9 Section 112 of the Customs Act, 1962.

“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, -

.....

(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 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;”

14.10 Section 114AA of the Customs Act, 1962 provides:

“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.”

15. From the investigation, it appears that M/s. Caprice Commerce Pvt. Ltd. has attempted to use SEZ policy for carrying out fraudulent import and export of micro-SD Cards. It also appears that the syndicate had planned the import and export of micro-SD cards by adopting following modus-

- i. Identification of poor and needy people and luring them with money in exchange of their documents and making them directors of the company and bank accounts opening with the so-called physical presence of the directors. After that, other person starts controlling the businesses of the company and the bank accounts of the company. In this case even the email was also handled by persons other than directors of the firm.
- ii. The companies targeted the SEZ knowing fully well that their goods would be exempted from paying any customs duty.
- iii. The company imported junk/corrupted micro-SD cards which were of practically no Commercial value, by declaring the same as high valued goods
- iv. Director of the company appeared to have no knowledge about the goods being imported by the firm.
- v. Further, people such as Shri Montu Gandhi and Shri Pradeep Upadhyay helped and facilitated Shri JitendraYadav.

16. SUMMARY OF THE INVESTIGATION

16.1 From the investigation it appears that, Shri Jitendra Yadav planned and contacted two people i.e. Shri BalKishan Gagarani and Shri DurgeshParashar, both residents of Chittorgarh, Rajasthan through some common people for initiating the modus elaborated in foregoing paras. He lured them for money in exchange of their documents and offered them a monthly salary (Rs. 30,000/- PM) for working as directors in M/s. Caprice Commerce Pvt. Ltd. Thereafter, he called Shri BalKishanGagarani to Indore for signing documents related to banks and directorship of M/s. Caprice Commerce Pvt. Ltd. Later he contacted two persons i.e. Shri Montu Gandhi and Shri Pradeep Upadhyay of M/s. PDP Consultancy (both from Surat) and requested them for help in starting units in GIFT-SEZ. Later, Shri Montu Gandhi acted on behalf of the company without any authorization and even took decisions in financial matters related to the firm, like

- a. He hired persons to act on behalf of M/s. Caprice Commerce Pvt. Ltd.,
- b. He even issued authorization letter for entering the premises of the firm by using already signed letter pads of the firm.
- c. He replied from the official mail id of M/s. Caprice Commerce Pvt. Ltd.
- d. He booked transport and even customs broker on behalf of M/s. Caprice Commerce Pvt. Ltd.
- e. The bill of customs broker was also paid by him.
- f. He negotiated and finalized the furniture and interior of M/s. Caprice Commerce Pvt. Ltd.

16.2 Shri Montu Gandhi has admitted in his statement that he was not authorized to carry out the above work by the importer either by any oral order or written order. This clearly shows that Shri Montu Gandhi was actively involved in this illicit trade. Further, he has stated that Shri JitendraYadav was the responsible person in this firm. Shri Pradeep Upadhyay in his statement dated 22.12.2023 has stated that Shri Montu Gandhi was in regular contact of Shri Jitendra Yadav, who was the responsible person in this trade. Shri BalKishan Gagarani and Shri Durgesh Kumar Parashar were consciously signing documents provided to them by Shri Jitendra Yadav. As a result, they are also involved in abetment of this offence.

16.3 Accordingly, by using the firm M/s. Caprice Commerce Pvt. Ltd., they imported corrupt memory cards having no market value by declaring them to be "Micro SD Cards 1 TB". Further, even after multiple summons issued to Shri JitendraYadav, he never presented himself.

17. ROLE PLAYED BY THE VARIOUS PERSONS:

17.1 M/S. CAPRICE COMMERCE PVT. LTD. AND ITS DIRECTORS SHRI BAL KISHAN GAGARANI AND SHRI DURGESH KUMAR PARASHAR:

Shri BalKishanGagarani and Shri Durgesh Kumar Parashar, Directors of M/s. Caprice Commerce Pvt. Ltd. appear to have allowed their names and documents to be used for forming the company M/s. Caprice Commerce Pvt. Ltd. and later for obtaining an IEC in the name of the company. They have let themselves be controlled by Shri

JitendraYadav for opening bank accounts and lent out the company IEC to be used by Shri JitendraYadav for effecting fraudulent import of micro-SD cards which were having No Commercial Value by declaring the same to be high value goods. Multiple searches were conducted at the addresses of M/s. Caprice Commerce Pvt. Ltd., however most of the addresses were found to be non-existent. It appears that for earning quick money, the directors of the company wilfully and deliberately lent out their names and IEC created using their name to the above-mentioned persons and thereby contravened the provisions of the FTDR Act, 1992. In view of the above, M/s. Caprice Commerce Pvt. Ltd. and its directors, Shri BalKishanGagarani and Shri Durgesh Kumar Parashar have rendered the imported goods liable to confiscation under Section 111 of the Customs Act, 1962 by allowing the goods to be mis-declared and thus rendering themselves liable for penal action under Section 112(a) and or Section 112(b) Act, 1962 for their act of omission and commission.

17.2 SHRI MONTU GANDHI:-

17.2.1 Shri Montu Gandhi acted on behalf of the company M/s. Caprice Commerce Pvt. Ltd. without any written authorization and even took decisions in financial matters related to the firm. He managed the premises of M/s. Caprice Commerce Pvt. Ltd and hired persons to act on behalf of M/s. Caprice Commerce Pvt. Ltd. He even paid bills of the firm M/s. Caprice Commerce Pvt. Ltd. This clearly shows that Shri Montu Gandhi was actively involved in this illicit trade. Further, he has admitted that he was in touch with Shri JitendraYadav, the responsible person in this firm. In view of the above, Shri Montu Gandhi has rendered the imported goods liable to confiscation under Section 111 of the Customs Act, 1962 by mis-declaring the import goods and thus rendered himself liable for penal action under Section 112(a) and or Section 112(b) Act, 1962 for his act of omission and commission.

17.2.2 Shri Montu Gandhi also oversaw the filing of documents, although without any valid authorisation from M/s. Caprice Commerce Pvt. Ltd, which were false in material particulars about the quality of goods being imported. This act of omission and commission has made him liable for penalty under Section 114AA of the Customs Act, 1962.

17.3 SHRI JITENDRA YADAV:

17.3.1 Shri JitendraYadav planned and contacted two people i.e. Shri BalKishanGagarani and Shri DurgeshParashar, both residents of Chittorgarh, Rajasthan through some common people. He lured them with monetary consideration (Rs. 30,000/- PM) and obtained their credentials to register the firm M/s. Caprice Commerce Pvt. Ltd and further to open/amend the bank accounts in the name of this firm. Thereafter, he contacted two persons i.e. Shri Montu Gandhi and Shri Pradeep Upadhyay of M/s. PDP Consultancy (both from Surat) and requested them for help in starting units in GIFT-SEZ. From the investigation it is clear that Shri JitendraYadav was the brain behind this illicit trade. The same was confirmed by Shri BalKishanGagarani and Shri Montu Gandhi in their statement. In terms of provisions

of Section 2(26) of the Customs Act, it is clear that Shri JitendraYadav was the beneficial owner of the goods. Therefore, it appears that Shri JitendraYadav for attempting to import the goods by misdeclaration has rendered the goods liable to confiscation under Section 111 of the Customs Act, 1962 and rendered himself liable for penal action under Section 112(a) and or Section 112(b) of the Customs Act, 1962 for his acts of omission and commission.

17.3.2 Shri JitendraYadavthrough Shri Montu Gandhi oversaw the filing of documents in respect of M/s. Caprice Commerce Pvt. Ltd, which were false in material particulars about the quality of goods being imported. This act of omission and commission has made him liable for penalty under Section 114AA of the Customs Act, 1962.

18. In terms of Notification 30/2022-Customs (N.T.) dated 31.03.2022, “in the case of goods for which entry was made under the Act and assessment has already made but such a case falls outside the purview of Section 110AA of the Customs Act, 1962 by virtue of there being absence of duty having been short levied, not levied, short-paid or not paid, then the officer of customs shall, after causing inquiry or investigation, transfer the relevant documents along with report in writing for further required action, for the purpose of Section 124 of the Customs Act, 1962. In this present matter, the import of the disputed goods viz. Micro SD Card 1TB fall under the jurisdiction of Commissioner of Customs, Ahmedabad. Further, in terms of Customs Act, 1962, the proper officer in the instant case is the Additional Commissioner of Customs, Ahmedabad.

19. In view of above a Show cause notice F.no. VIII/10-11/Pr.Commr/O&A/2024-25 dated 20-02-2025 was issued tothe entities/persons (i) M/s. Caprice Commerce Pvt. Ltd (IEC: AAGCA5303F), (ii) Shri BalkishanGagarani, (iii) Shri DurgeshParashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, (iv) Shri MontuHarshadbhai Gandhi, and (v) Shri JitendraYadavand vide this SCN that is the Show Cause Notice F. No. VIII/10-11/Pr.Commr/ O&A /2024-25 dated 20-02-2025 they were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, having his office located at 1st Floor, ‘Custom House’ Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:-

- i. The said imported goods of Micro SD 1 TB cards imported vide Bill of Entry no. 6712393 dated 04.07.2023 having declared assessable value of Rs. 2,47,65,510/-(Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962.
- ii. The declared assessable value of Rs. 2,47,65,510/-(Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) should not be rejected and the same should not be re-determined as having No Commercial Value in terms of Customs Valuation Rules, 2007 based on Forensic Report of NFSU and the report of the Government approved Chartered Engineer;

- iii. Penalty should not be imposed on (i) M/s. Caprice Commerce Pvt. Ltd, (ii) Shri BalkishanGagarani, (iii) Shri DurgeshParashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, (iv) Shri MontuHarshadbhai Gandhi, and (v) Shri JitendraYadav, under provisions of Section 112 (a) and 112(b) of the Customs Act, 1962;
- iv. Penalty should not be imposed on (i) Shri MontuHarshadbhai Gandhi, and (ii) Shri JitendraYadav, under provisions of Section 114AA of the Customs Act, 1962.

20. DEFENSE SUBMISSION AND PERSONAL HEARING:

The first interim defence reply from M/s Caprice Commerce Pvt Ltd was received through speed post on 16-05-2025. The Summary of Same is as under:

The Noticee denied and disputed the aforesaid allegations terming them incorrect in law as well as on facts. They contested the SCN on following grounds:

20.1 Imported goods were rightly declared as “Micro SD Cards 1 TB” with declared value of US \$298,000 (@ US \$35 per MICRO SD card).

They submitted that they had filed a warehousing Bill of Entry bearing no. 6712393 dated 04.07.2023 (i.e. Z type) at GIFT-Special Economic Zone, Gandhinagar (“GIFT SEZ”) and declared the goods as “Micro SD Cards 1 TB” (Qty. 8520 Pcs.) with declared value of US \$298,200 (@ US \$35 per MICRO SD card)”. There was no infirmity with the said declaration filed by them, as they were un-aware about the quality/defects of the imported goods supplied by their overseas supplier M/s Smart Bright INC Limited.

20.2 They had placed telephonic order to their overseas supplier for supply of “Micro SD Cards 1 TB” in new and operational conditions. They in bonafide belief about the quality of said imported items had filed the bill of entry declaring the said product as “Micro SD Cards 1 TB” and declared the value as per commercial invoice No. SB 3123 dated 08.05.2023 as supplied by their overseas supplier. Further, in the commercial invoice, there was no mention about the imported goods as defective/obsolete/corrupt.

20.3 It was during examination and having suspect during examination of said imported cards by plugging in a laptop, the department had drawn some samples under Panchnama for further examination of quality of said products and as revealed by Shri Parag Kumar C. Mandalia, Authorized Signatory of M/s. Caprice Commerce Pvt. Ltd in his statement dated 19.12.2023. As per sample testing report received from National Forensic Sciences University, Police Bhavan Road, Sector 9, Gandhinagar, Gujarat- 382007, the said goods were found as corrupted/defective to the extent of 99.7%.

20.4 Since, the goods were under the customs authority and the goods has not been cleared by them and the samples were taken during warehousing of goods, therefore they could not ascertain the quality/defect if any, in the imported goods at their end. They had no occasion to check or verify the quality of imported goods. Further, they had no reason to doubt any defect in the quality of goods. They had only come to know about the defect in quality of said imported goods, when the sample of the said imported goods had been tested and found defective/corrupted/obsolete in the test report.

20.5 They submitted that when it had come to their knowledge that the imported goods were defective/obsolete, they had conveyed the overseas supplier about the corrupt/obsolete/defective nature of said imported goods. Further, during this period, they had made talks several times with their overseas supplier but he has not given any satisfactory reply, except that the supplier is also unaware of any such quality defect. Further, they submitted that had sent a mail to their overseas supplier. The contents of the said mail were submitted as under:

“This has reference to our various telephonic communication wherein we informed you that the Micro SD card 1 TB supplied by you vide invoice no. No. SB 3123 dated 08.05.2023 of your firm M/s Smart Bright INC Ltd. were found corrupt.

This was a shock for us. We purchased such a memory card from your firm under the bonafide belief that you will supply us memory card of proper capacity and good quality. Your wrong supply has put us under tremendous trouble including investigation by government department, inspite of the fact that we never knew that you had supplied us poor quality/corrupted memory cards.

We took up the matter with you over phone and also followed up in the past, however, you have not provided us any satisfactory reply. This is the reason we did not make any payment to you against your invoice for supply of such memory cards.

This mail is to convey you that we reserve our right to take suitable action against you for damages for supply of corrupt memory cards.”

20.6 Since, the imported goods were defective/obsolete/corrupted, therefore, they had also not made any payment of said imported goods to their overseas supplier. They submitted that this shows their bona fides and that it was done by supplier without their knowledge. In this connection, they also craves leave to submit a CA certificate that no payment was made to their overseas supplier in respect of import of “Micro SD Cards 1TB”.

Further, they submitted that there was no corroborative documentary evidence showing that they knew about any such defect in the imported goods. Further, there is no motive alleged in the entire proceedings and show cause notice. The entire issue is revenue neutral because at whatever value import is made, whether at higher or lower value, it was duty free and further corresponding exports was also duty free and no export incentive is available and therefore, there was no benefit in any way by any such import of corrupt memory card.

20.7 Further they submitted that , as per the investigation and various statement recorded by the department during investigation including (i) Shri BalKishanGagarani, (ii) Shri DurgeshParashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, (iii) Shri MontuHarshad Bhai Gandhi, (iv) Shri Parag Kumar C. Mandalia, Authorized Signatory (v) Shri Aditya Dharmendra Shukla and (vi) Shri Pradeep Upadhyay, there was nothing that they had intent to import the said goods in corrupt/defective conditions.

20.8 According to them this fact has also been corroborated with the para (15) of the showcause notice wherein it has been mentioned that

“Director of the company appeared to have no knowledge about the goods being imported by the firm. “

20.9 Further they submitted that , as per para (16) of SCN, though Shri Montu Gandhi acted on behalf of the company but there was nothing that he was aware about the importation of defective/obsolete goods.

20.10 Further, they submitted that the SCN has charged that Shri JitendraYadav was the brain behind this illicit trade it has been alleged that Shri JitendraYadav was the beneficial owner of the goods. That though the above serious charges have been made against Shri Jitendra Yadav but no statement of Shri JitendraYadav has been recorded by the department. Only one summon dated 18.04.2024 has been issued against Shri Jitendra Yadav. Thereafter no summon were issued against such an important person though the show cause notice in the case has been issued on 20.02.2025, the department has not made any efforts to know the factual position and version of Shri JitendraYadav, though the sufficient time was available with the department. That the department had failed to make any enquiry during the period 18.04.2024 to 20.02.2025, thus on the basis of single summon, no inference can be drawn. They further submitted that in absence of any documentary evidences and the statement recorded from Shri JitendraYadav, it cannot be charged that M/s Caprice through JitendraYadav was indulged in improper importation or illicit import. Further, the other persons associated with the noticee had also not disclosed in their statement that Shri JitendraYadav was aware with such illicit import of goods.

20.11 That , they had correctly declared the said goods as per Commercial Invoice which reveals their bonafide belief with regards to quality of said product imported by them. There are no corroboratory evidences which shows that the said declaration was made with the malafide intention or illicit motive. The motive behind import is not suspicious, it cannot be recognized as illicit import.

20.12 There is no benefit/gain to the importer/noticee for importation of "Micro SD Cards 1 TB" in defective/corrupt/obsolete conditions instated of fresh and operational condition They submitted that , the department could not bring out any malafide intention of them in respect of import of said "Micro SD Cards 1 TB" in defective/corrupt/obsolete. The department had recorded the statement of various persons during investigation including (i) Shri BalKishanGagarani, (ii) Shri DurgeshParashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, (iii) Shri MontuHarshad Bhai Gandhi, (iv) Shri Parag Kumar C. Mandalia, Authorized Signatory (v) Shri Aditya Dharmendra Shukla and (vi) Shri Pradeep Upadhyay but no one stated having knowledge of importation of corrupted/defective/obsolete "Micro SD Cards 1 TB".

20.13 Further they submitted , that the department had failed to bring out any benefit/gain accrued to them for import of said corrupted/defective/obsolete "Micro SD Cards 1 TB". That there is no duty element involved being imported in SEZ but yet certain expenses which were incurred by the noticee for importation of said goods. That, for import of such corrupted/defective/obsolete "Micro SD Cards 1 TB" there is no gain/benefit/profit to them , rather due to the said imports, they had incurred losses on said consignment, for which they had conveyed to their overseas supplier.

20.14 They submitted that in the show cause notice, it has been charged that Shri JitendraYadav is the beneficial owner from the said transaction of import, however, there is nothing in the investigation report which shows that Shri JitendraYadav has been benefited from the said import of goods and the charge is vague and without any documentary evidences.

20.15 Further they submitted that , in the instant case, there is no allegation that the supplier and the noticees are related firm and the supplier firm has passed any benefit to the noticee by sending the illicit goods.

20.16 Proposed confiscation under the provisions of Section 111(m) of the Customs Act, 1962 is not significant as no commercial value of consignment as ascertained by the department under SCN: They submitted that in the instant case they had filed a warehousing Bill of Entry bearing no. 6712393 dated 04.07.2023 (i.e. Z type) at GIFT-Special Economic Zone, Gandhinagar ("GIFT SEZ") and declared the goods as "Micro SD Cards 1 TB" (Qty. 8520 Pcs.) with declared value of US \$298,200 (@ US \$35 per MICRO SD card)". However, on examination and having suspect, the department had drawn some samples under Panchnama for further examination of quality of said products. As per sample testing report received from National Forensic Sciences University, Police Bhavan Road, Sector 9, Gandhinagar, Gujarat- 382007, the said goods were found as corrupted/defective to the extent of 99.7%.

20.17 That after analyzing the testing report received from National Forensic Sciences University and further examination by Government Approved Chartered Engineer, the department had ascertained the 'Commercial Value' as 'Nil' of the said products in terms of the provisions of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- which provides that 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.

20.18 That from the above, it is apparent that the department on the basis of test reports had ascertained the value as 'Nil' in respect of Micro SD Cards 1 TB" (Qty. 8520 Pcs.) for which they had declared value of US \$298,200 (@ US \$35 per MICRO SD card. Since, the commercial value of the imported goods is 'Nil', therefore proposed confiscation under the provisions of Section 111(m) is not significant and have no bearing on the 'redemption fine'. As the imported goods are obsolete/corrupted having no commercial value, therefore no fine can be imposed.

20.19 Submission with regards to penalty proposed under provisions of Section 112 (a) and 112(b) of the Customs Act, 1962 : They submitted that on perusal of Section 112, it is apparent that the penalty under said section is leviable for importer imports. As per Section 111, goods improperly imported into India from a place outside India are subject to confiscation. The importing or attempting to import prohibited goods, declaring goods wrongly, evading payment of duty, or violating rules relating to the movement, storage, unloading, or use of imported goods makes them liable to confiscation under Section 111. That In their case, none of the act is present as per their submission made in preceding paras. They had not imported the goods improperly. The goods were not prohibited and can be imported in India without any restriction. They had imported the impugned goods under proper documentation and duly declared with the customs authorities. That at the time of filing of BE for warehousing, there is no charge that the goods were declared improperly.

20.20 That they had acted in a bonafide manner and there is no omission on their part which would render such goods liable to confiscation. They were not having any knowledge about the quality of imported goods and therefore they had acted in bonafide manner while declaring the goods and value thereof at the time of filing BE. In view of above, they did not knew or not having any reason to believe that the goods were liable for confiscation. They submitted that in the absence of reasonable belief,

the confiscation proposed under the show cause notice is not sustainable and accordingly the penalty proposed under the said section is also not sustainable. That the penalty can only be imposed, if the noticee has reason to believe that the goods are liable for confiscation.

20.21 They referred to case laws of the decision of the Tribunal in *Sahil Diamonds Pvt. Ltd. v. Commissioner of Customs, Ahmedabad* 2010 (250) ELT 310 , relied upon in *re Lalitpur Power Generation Co. Ltd.*

20.22 They submitted that Section 112 of Customs Act, 1962 in this dispute, a consequence of finding of overvaluation that assigns a proximate value after resorting to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 without any record evincing that the importer was the beneficiary of any money flows except by surmises, are deficient in legal sustenance.

20.23 That in their case, they rely upon the Hon'ble CESTAT decision in the case of M/s S. MuthusamyVs Addl. Director General (DRI) Mumbai 2020 (372) E.L.T. 849 (Tri. - Mumbai) .

20.24 That in view of the above clear verdicts, the redemption of goods and subsequently penalty proposed under Section 122(a) is not sustainable and liable to be dropped.

20.25 They submitted that entire exercise is revenue neutral as they are SEZ unit which does not gain out of any such alleged import and further that there is absence of any ulterior motive. They prayed that Proceedings initiated under impugned SCN may kindly be dropped.

20.26 They further submitted Additional Submissions vide their letter dated 28-08-2025 - Additional submissions in the case of SCN dated 20.02.2025 issued to M/s Caprice Commerce Private Limited which are as under : "Penalty proposed under Section 122(a) and or Section 112(b) is vague as it does not allege a specific provision of penalty. They submitted that under the SCN (Refer Para 14.9 of SCN/ para 17.1 of SCN read with para 19(iii) of SCN) the penalty has been proposed under Section 112(a) and or Section 112(b) of Customs Act, 1962 for alleged contravention of provisions of Section 111(m) of Customs Act, 1962. The above proposition clearly shows that the revenue itself is not clear whether they wish to propose penalty under section 112(a) or section 112(b) or both. They submitted that the scope and coverage of section 112(a) and that of section 112(b) is all together different and therefore, by not mentioning the specific section or its sub-clause makes the SCN vague. Further they submitted that , under section 112(a) and 112(b) there are further three sub clauses i.e. (i) to (iii) for quantification of penalty and none of these has been specified as to under which of these three sub clauses the revenue wishes to propose penalty. Therefore they submitted that the present SCN is vague and liable to be set aside on this ground as well.

20.27 They submitted that the SCN, simply alleges that they had imported corrupt memory cards having no market value by declaring them to be "Micro SD Cards 1 TB". In the guise of above allegation, the department came to the conclusion that the declared value in the Bill of Entry is not corresponding to the actual value of goods imported and accordingly contravention has been alleged in Section 111(m)

of the Customs Act, 1962. They submitted that though the contravention has been alleged under Section 111(m) of Customs Act, 1962 but for proposing penalty, there is nothing mentioned about the applicability of specific penalty provisions i.e. either Section 112(a) or Section 112(b) bid. That ,it is not clear whether the penalty has been proposed under Section 112(a) or under Section 112(b) or under both the sections. Thus, they submit that the proposition for penalty is very vague. 20.28 They submitted that present SCN is liable to be set aside for its being vague. That they relied on the following case laws in support of their contention:

- a. R. RAMADAS VERSUS THE JOINT COMMISSIONER OF CENTRAL EXCISE, THE GENERAL MANAGER (FINANCE/TAX), 2020 (11) TMI 84 - MADRAS HIGH COURT.
- b. M/S PEPSI FOOD PRIVATE LIMITED VERSUS C.S. T- DELHI, 2020 (6) TMI 554 - CESTAT CHANDIGARH and (C) M/S. SHUBHAM ELECTRICALS VERSUS CST & ST, ROHTAK, 2015 (6) TMI 786 - CESTAT NEW DELHI,

20.28 That there is no contravention of custom law and regulation in the entire proceedings, rather noticee is suffering on account of default by overseas supplier in sending corrupt memory cards. They submitted that they had the bonafide belief about the quality of said imported items, filed the bill of entry declaring the said product as "Micro SD Cards 1 TB" and its value as per commercial invoice No. SB 3123 dated 08.05.2023 as supplied by their overseas supplier. Further they submitted that , there is nothing in the investigation which shows that they were having any knowledge of the corrupted/defective products supplied by overseas supplier. It is a merely an assumption of revenue that noticee had any such knowledge. They came to know about the defect in quality of said imported goods, when the sample of the said imported goods were tested and found defective/corrupted/obsolete in the test report. There was no occasion for them to know any such bad supply by the supplier.

20.29 Further they submitted that it is relevant to notice that the department did not make any enquiry with overseas supplier which would have made it clear that it was default at the end of overseas supplier in making supply of corrupt memory card. And , when it has come to their knowledge that the imported goods were defective/obsolete, they had conveyed the overseas supplier about the corrupt/obsolete/defective nature of said imported goods and stopped the payment of overseas supplier. That , there is no corroborative documentary evidence showing that noticee knew about any such defect in the imported goods.

20.30 They submitted that there is no motive alleged in the entire proceedings and show cause notice. The entire issue is revenue neutral because at whatever value import was made, whether at higher or lower value, it was duty free being an import made by SEZ unit and further corresponding exports was also duty free and no export incentive was available and therefore, they does not benefit in any way by any such alleged import of corrupt memory card. Further, they submit that as per the investigation and various statement recorded by the department during investigation including (i) Shri BalKishanGagarani, (ii) Shri Durgesh Parashar, Both

Directors of M/s.Caprice Commerce Pvt. Ltd, (iii) Shri MontuHarshad Bhai Gandhi, (iv) Shri Parag Kumar C. Mandalia, Authorized Signatory (v) Shri Aditya Dharmendra Shukla and (vi) Shri Pradeep Upadhyay, there was nothing to support that they had intent to import the said goods in corrupt/defective conditions. They submitted the said fact gets corroborated by para (15) of the show cause notice wherein it has been mentioned that *“Director of the company appeared to have no knowledge about the goods being imported by the firm.”* Further, as per para (16) of SCN, though Shri Montu Gandhi acted on behalf of the company but there is nothing that he was aware about the importation of defective/obsolete goods.

20.31 Further they submitted that, the handling of work by other person on behalf of company or its director does not in any way indicate that any contravention under Customs Act was done specifically when there is no corroborative evidence in SCN to show that any of the person and the director had any knowledge regarding the memory cards under import were corrupt and that inspite of such knowledge the higher value was declared.

20.32 On the basis of above submission, they once again reiterated that they have no malafide intention with regard to declaration of higher value of the subjected goods and its value was declared as per bonafide belief based on invoice. That there are no corroboratory evidences which shows that the said declaration was made with any illicit motive. The motive behind import is not mentioned in the SCN, and the nature of import cannot be recognized as illicit imports. And they requested that the proceedings may please be dropped and further requested “for a lenient approach while deciding the quantum of penalty, if any.”

21.1 DEFENCE REPLY of Shri BalkishanGagarani, Director M/s Caprice Commerce Private Limited, submitted vide e mail / letter dated 25-08-2025.

Shri BalKishan Gagarani denied and disputed the allegations in SCN as the wholly incorrect in law as well as on facts. He submitted that the reply filed in the case of Co-Appellant, M/s. Caprice Commerce Pvt. Ltd.,the defence submissions and the grounds taken in said reply filed by the co-noticee may please be treated as reproduced herein as well. He further submits this reply is with respect to imposition of personal penalty on noticee i.e. Director of the Co-noticee under Section 112(a) of the Customs Act, 1962. He submitted that he was director of the co-noticee firm. For the purpose of carrying out various work, the co-noticee company has taken the services of various person and also taken advice from the persons who was well versed with the business of same line. However, it is pertinent to mention here that there was no connivance of the noticee/co-noticee with regards to illicit import of goods. It is the overseas supplier who has sent the goods which was not as per their order as established from the purchase orders and non-payment of consideration of the said goods to overseas supplier being defective goods. That , the penalty proposed in the SCN on him in personal capacity being director is totally unjustified.

21.2 Penalty under Section 112(a) & (b) of the Customs Act, 1962 cannot be invoked. ; He submitted that as per the Import Policy, import of “Micro SD Cards 1 TB” is permissible by complying with certain conditions and the co-noticee had complied with the prescribed conditions. The allegation regarding defective goods were brought to the notice of the co-noticee only when it was subject to inspection by the proper officer and further examination through laboratory. There is no allegation that the co-noticee had knowledge regarding defective goods as evident from the various statements recorded by the investigation during the long span of time. Immediately when the above fact was brought to the notice of the co-noticee, they have stopped the payment of overseas supplier and not made any payment to them. Moreover, in such imports from overseas sources, co-noticee can only verify the conditions in the Import Policy and there is no opportunity for the co-noticee to verify the content of the goods before its shipment. All other documents like invoice, packing list, etc., also describe the goods as “Micro SD Cards 1 TB”.

21.3 That in the instant case, as per the investigation and various statement recorded by the department during investigation including (i) Shri Bal Kishan Gagarani, (ii) Shri Durgesh Parashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, (iii) Shri Montu Harshad Bhai Gandhi, (iv) Shri Parag Kumar C. Mandalia, Authorized Signatory (v) Shri Aditya Dharmendra Shukla and (vi) Shri Pradeep Upadhyay, there was nothing that the noticee/co-noticee has intent to import the said goods in corrupt/defective conditions.

21.4 That the said fact has also been corroborated with the para (15) of the show cause notice wherein it has been mentioned that “Director of the company appeared to have no knowledge about the goods being imported by the firm.” He further submitted that , as per para (16) of SCN, though Shri Montu Gandhi acted on behalf of the company but there is nothing that he was aware about the importation of defective/obsolete goods. That when the revenue itself has recognized that the directors are not involved, therefore no charge of abatement or omission can be made. Further, there is nothing in their statement which reveals that he has instructed to any person or having connivance of the himself with regards to importation of illicit or improperly goods. That the overseas supplier has sent the goods which was not according to the purchase order that he had no control over the overseas supplier.

21.5 He further submitted that the impugned show cause notice, a penalty has been proposed under Section 112(a) & (b) of the Customs Act, 1962 on him being director of the company and that in the instant case, the co-noticee has not imported the goods improperly. The goods were not prohibited and can be import in India without any restriction. The co-noticee, accordingly has imported the impugned goods under proper documentation and duly declared with the customs authorities. Further, at the time of filing of BE for warehousing, there is

no charge that the goods were declared improperly. As regards the value of the goods, the co-noticee has declared the value as per the invoice received from overseas supplier.

21.6 He further submitted that In the instant case, the co-noticee/noticee was not having any knowledge about the quality of imported goods and therefore the noticee has acted in bonafide manner while declaring the goods and value thereof at the time of filing BE. In view of above, he does not know or not having any reason to believe that the goods are liable for confiscation. In the absence of reasonable belief, the confiscation proposed under the show cause notice is not sustainable and accordingly the penalty proposed under the said section is also not sustainable. That the penalty can only be imposed, if the noticee has reason to believe that the goods are liable for confiscation.

21.7 He further submitted that the noticee/co-noticee has correctly declared the said goods as per Commercial Invoice which reveals their bonafide belief with regards to quality of said product imported by them. There are no corroboratory evidences which shows that the said declaration was made with the malafide intention or illicit motive. That in the instant case, the noticee/co-noticee have tendered a reasonable and justifiable explanation, the Revenue on the contrary, has not made any endeavor to find out the improper importation. That there is virtually no evidence on record, to support the Revenue's investigation that the goods were imported improperly. However, the finding of the investigation is based upon their own assumptive surmises and conjectures and not upon any legal and valid evidence on record. That , in the instant case, there is no connivance of the noticee as per investigation reports which stipulates that "Director of the company appeared to have no knowledge about the goods being imported by the firm. "

21.8 That when the revenue itself has recognized that the directors are not involved, therefore no charge of abatement or omission can be made. The charge of abatement has been made on the sole premises that he has signed the documents as provided by Shri JitendraYadav (Refer para 16.2 of SCN), however at the same time there is nothing in the statement of the noticee that he has signed the documents which were provided by Shri JitendraYadav. Further, there is no corroboratory statement of Shri JitendraYadav in this regards. That the charge of abatement and omission to do an act has been made in vague and nothing to do with the Bonafide belief of the noticee.

21.9 He further submitted that he has not benefited with the said transaction and no charge has been made against the noticee in the personal capacity with regards to beneficitation from the transaction. That there is no mensrea as per SCN which stipulates that the director is not having any knowledge of said import, so no penalty can be imposed.

2.10 That he submits again that the basic ingredient for invoking the provisions of Section 112(a) & (b) of the Customs Act, 1962 is 'mensrea' on the part of the person on whom the penalty is imposed. That the show cause notice has not brought out any evidence on record so as to suggest mensrea on the part of the noticee in his individual capacity; hence, penalty under Section 112(a) is not imposable. Rather as per SCN, it is fact that the noticee was not having any knowledge of the improper import and that the overseas supplier has not supplied the goods as per purchase order, therefore, bonafide intention of the noticee is beyond any doubt. That his contention is supported by the decision of the Hon'ble Tribunal in the case of S.K. & COMPANY (P) LTD. vs. CCE- 2006 (203) ELT 137 (T) approved by the Hon'ble Punjab & Haryana High Court as reported in 2008 (226) ELT 47 (P&H). That further in the case of Ved Prakash Wadhvani Versus Commissioner Of Customs, Ahmedabad 2009 (233) E.L.T. 356 (Tri. - Ahmd.) it was held that there is no finding that the Managing Director personally indulged in commission or omission of rendering the goods liable for confiscation, hence, cannot be penalized - Section 112(a) of Customs Act.

21.11 That no penalty imposable on director of the company, when penal action has been contemplated against the company and director would not have derived any personal benefit. He further submits that that once penal action has been contemplated against the company, no penalty is imposable on director. Further that , without any evidence to prove that noticee as director of the company was involved in evasion of tax or derived any personal benefit, no penalty can be imposed.

21.12 That In the present case penal action has already been contemplated under Section 112(a) & 112(b) of the Customs Act, 1962 on the Company of the noticee. In that case, imposing penalty on director i.e. noticee cannot be sustained. Reliance is placed on the following case laws:

- M/S. BHIWADI ROLLING MILLS PVT. LTD., SURENDER KUMAR JINDAL, ANKIT KERIWAL, MUKUL JINDAL, C/O SH. O.P. GUPTA AND SATISH KUMAR VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX
- SAERTEX INDIA PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE PUNE – I (VICE-VERSA) AND COMMISSIONER OF CENTRAL EXCISE PUNE – I VERSUS PKC BOSE,
- RAKESH KUMAR GARG, SANTOSH KUMAR GARG, DEVI DASS GARG VERSUS COMMISSIONER OF CENTRAL EXCISE, 2015 (12) TMI 592 - DELHI HIGH COURT
- M/S RAMAYNA ISPAT PVT. LIMITED, NITISH RANJAN AND ANSHUL AGARWAL VERSUS COMMISSIONER, CENTRAL EXCISE AND CENTRAL GOODS AND SERVICE TAX 2019 (8) TMI 315 - CESTAT NEW DELHI

- f SUSHMA CHAUDHARY, AJIT INAMDAR, M/S CHAITANYA EMPLOYEES INDUSTRIAL CO-OP SOCIETY LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-I, 2019 (4) TMI 1077 - CESTAT MUMBAI
- M/S SIMPLEX INFRASTRUCTURES LTD., SHRI AMITHABH MUNDHRA VERSUS COMMISSIONER OF CENTRAL EXCISE, BELAPUR, 2019 (5) TMI 1579 - CESTAT MUMBAI,

He lastly submitted that the proceedings initiated under impugned SCN may kindly be dropped and Penalty proposed under the provisions of Customs Act, 1962 may please be dropped.

22.01 DEFENCE REPLY of ShriDurgeshParashar, Director M/s Caprice Commerce Private Limited, submitted vide e mail / letter dated 25-08-2025.Shri Durgesh Parashar denied and disputed the allegations in SCN as the wholly incorrect in law as well as on facts. He submitted that the reply filed in the case of Co-Appellant, M/s. Caprice Commerce Pvt. Ltd.,the defence submissions and the grounds taken in said reply filed by the co-noticee may please be treated as reproduced herein as well. He further reiterated the exactly similar submissions as made by the other director and as mentioned in earlier part of this order with respect to imposition of personal penalty under Section 112(a) of the Customs Act, 1962. Lastly he submitted and prayed that Proceedings initiated under impugned SCN may kindly be dropped and Penalty proposed under the provisions of Customs Act, 1962 may please be dropped.

23.01 DEFENCE REPLY of Shri Jitendra Yadav, submitted vide e mail / letter dated 25-08-2025: He submitted and denied and disputed the allegations as wholly incorrect in law as well as on facts. That the defence submissions and the grounds taken in reply filed by the co-noticee may please be treated as reproduced herein as well. He further submitted that with respect to imposition of personal penalty on noticee under Section 114AA of the Customs Act, 1962,that he was neither the employee of the co-noticee company nor the beneficiary in the co-noticee company. He being familiar with the Directors of the company has simply advised them with regards to import and export procedure and day to day formalities required for operation of the SEZ unit., that there was no connivance with regards to illicit/improper import of goods as alleged in the show cause notice. That he has not contacted to overseas supplier and not given any order for import of goods and he has not benefited with the transaction made by the co-noticee company. That, the penalty proposed in the SCN on the noticee in personal capacity being beneficiary is totally unjustified.

23.02. He further submitted that SCN has been issued in vague and mechanical on the basis of half investigation made by the DRI: That in the show cause notice, it has been alleged that he has benefited with the co-noticee company. Being beneficiary owner, the penalty has been proposed under Section 114AA of the Customs Act, 1962. The said allegation has been made by the department in vague and mechanical manner on the basis of half investigation. That no concrete enquiry has been made by the department before issuance of SCN to the noticee. That in the SCN, it is simply alleged that he is mastermind of the transaction and actual benefited with the said transactions. That , in the show cause notice, there is nothing mentioned how he could have benefited with the said transactions. That he being familiar with the directors of the co-noticee company had simply advised them to carry out function of import and export and operation of SEZ unit.

23.03 He submitted that in the instant case, he was completely un-aware that he has been made party with the co-noticee company. As per SCN, a summon dated 18.04.2024 was issued to the noticee. That the said summon was not served to the noticee. No other summon was issued to the noticee after 18.04.2024, whereas the

SCN was issued in February 2025 i.e. after almost 10 months later. Thus, the department has not tried to contact with the noticee and not interested in recording of the version of the noticee. The department has made the investigation which suits to them.

23.03 That the department investigation is questionable and that the department has failed to investigate. That , the department has not brought out any reason for non-enquiring with the noticee regarding said improper import. That in the absence of any admission by the noticee, the charge of the beneficiary owner made by the department is in vague and unjustified. That, the department has failed to bring out any benefit/gain accrued to the noticee for import of said corrupted/defective/obsolete "Micro SD Cards 1 TB". That there is no duty element involved being imported in SEZ but yet certain expenses which were incurred by the co-noticee for importation of said goods. Thus, for import of such corrupted/defective/obsolete "Micro SD Cards 1 TB" no profit/gain can be derived.

23.04 he further submits that, the SCN is silent with regards to any enquiry has been made from the overseas supplier with regards to the supply made to the co-noticee and the involvement of the noticee with said transaction. That the SCN issued by the department is not supported with the documents/evidences collected by the DRI and there is nothing in the show cause notice that the transaction was made on behalf of the noticee and the overseas supplier was in contact with noticee.

He relied on the following case laws in support of their contention:

- a. M/s RS WIRES INDUSTRIES 2024 (1) TMI 238 - DELHI HIGH COURT
- b. R. RAMADAS VERSUS THE JOINT COMMISSIONER OF CENTRAL EXCISE, THE GENERAL MANAGER (FINANCE/TAX), 2020 (11) TMI 84 - MADRAS HIGH COURT,
- c. M/S PEPSI FOOD PRIVATE LIMITED VERSUS C.S. T- DELHI, 2020 (6) TMI 554 - CESTAT CHANDIGARH
- d. M/S. SHUBHAM ELECTRICALS VERSUS CST & ST, ROHTAK, 2015 (6) TMI 786 - CESTAT NEW DELHI

23.05 He further submitted that the Penalty under Section 114AA of the Customs Act, 1962 cannot be invoked. That in the instant case, as per the investigation and various statement recorded by the department during investigation including (i) Shri BalKishanGagarani, (ii) Shri DurgeshParashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, (iii) Shri MontuHarshad Bhai Gandhi, (iv) Shri Parag Kumar C. Mandalia, Authorized Signatory (v) Shri Aditya Dharmendra Shukla and (vi) Shri Pradeep Upadhyay, there was nothing that there was any role of the noticee in the co-noticee company. That he being familiar with the directors of the co-noticee's company had simply advised them with regards to import and export procedure and operation of SEZ unit. That he at various occasion accompanied to the directors for complying the procedure formalities but not actively involved in the operation of the co-noticee company. He submitted that the investigation has failed to brought out any evidence with regard to beneficiary owner of the co-noticee's company. How he could have been benefited from the transaction made by the co-noticee's company. That there was no investigation with regards to the books of accounts of the co-noticee's company from which it can be established that he has gained/benefited from the transaction made by co-noticee's company. That the said charge of beneficiary owner has been made in vague and mechanical manner and not corroborated with the documents and statement of various person recorded by the DRI during investigation.

That in this case, he has not signed any declaration, statement or documents. And that in the instant case, none of the act is present as per Section 114AA. He further submits that if the Goods having no commercial value or the value is NIL, no penalty can be imposed

23.06 That in the instant case, it is an admitted fact as mentioned in the show cause notice that the department has rejected the value and re-determined the value as NIL in terms of Rule 9 of Customs Determination of Valuation Rules, 2007. Thus, the actual value of goods is NIL or Zero(o) being obsolete goods. When, the value of goods itself is nil, any penalty in multiplication of the value shall also be NIL.

23.07. That there is no mensrea therefore no penalty can be imposed. He relied on decision of the Hon'ble Tribunal in the case of S.K. & COMPANY (P) LTD. vs. CCE- 2006 (203) ELT 137 (T) approved by the Hon'ble Punjab & Haryana High Court as reported in 2008 (226) ELT 47 (P&H), Ved Prakash Wadhvani Versus Commissioner Of Customs, Ahmedabad 2009 (233) E.L.T. 356 (Tri. - Ahmd.) and

Hon'ble Supreme Court in the case of "HINDUSTAN STEEL LIMITED vs. STATE OF ORISSA" reported in 1978 ELT (J159),

He further following case laws in his support that no penalty should be imposed upon them:

- a. GODREJ SOAPS LTD. vs. COMMISSIONER OF CENTRAL EXCISE, MUMBAI reported in 2004 (170) ELT 102 (T-MUM13AI)
- b. ASIAN PAINTS (INDIA) LTD. vs. COMMISSIONER OF C. EX HYDERABAD-I reported in 2004 (167) E.L.T. 224 (Tri. - Mumbai)
- c. f SUMEET INDUSTRIES LTD. vs. COMMISSIONER OF CENTRAL EXCISE, SURAT reported at 2004 (164) E.L.T. 335 (Tri. – Mumbai)
- d. STEEL AUTHORITY OF INDIA LTD. vs. COMMISSIONER OF CUSTOMS, CALCUTTA reported at 2001 (136) E.L.T. 316 (Tri. - Kolkata)
- e. ORIENT CERAMICS AND INDUSTRIES reported at 1987 (32) ELT 218 (T) PRAYER

23.08 He lastly submits and prays that the Proceedings initiated under impugned SCN may kindly be dropped and Penalty proposed under the provisions of Customs Act, 1962 may please be dropped.

24.01 DEFENCE REPLY of ShriMontu Gandhi , submitted on 24-04-2025 at the time of PresonalHearing He denies all the allegations against him and submitted that ;

(1). He had no official position : He was neither a director, shareholder nor an authorized signatory of M/s Caprice Commerce Pvt. Ltd. He never held any official position or stake in the company.

(2) Limited Assistance : His involvement was limited to assisting in administrative tasks such as setting up the SEZ unit, filing online applications for registration and co-ordinating local logistics.

(3) No Involvement in Import Operations: He had no role in the procurement, valuation or importation process of the goods in question.

(4) No Involvement in hiring person for the company :He had no role for hiring any person in be half of the company.

(5)He had no involvement in payment for office set up.

(6) Absence of Mens Rea.

(7) He had no knowledge of Mis declaration. He was unaware that the imported Micro SD cards were defective or mis declared. He had no reason to suspect any irregularaties in the importation process.

24.02 He further cited judgements of (1)Sea Queen Shipping Services (P).Ltd V Commr of Customs 2019, And (2) Rajeev Khatri vsCommr of Customs 2023.

He had never used company letter heads and communication channels.

He had no financial Gain or Benefit

He cited judicial precedence

1 Amglo resources Pvt ltd V Commr of Customs Appeal No 10770 of 2023 CESTAT A'bad.

2- Dharnidhar Ghosh V Union of India Hon'ble Calcutta High court 2022-3-95.

24.03 He lastly submitted that proceedings initiated against him be dropped. No penalties be imposed and he may be exonerated.

25.01 Personal Hearing: Personal Hearing held on 24.04.2025 was attended by Shri Montu Harshabhai Gandhi wherein he reiterated the contents of his written submission during the Personal Hearing. Further CA Shri Nilesh Asava on behalf of importer M/s. Caprice Commerce Pvt. Ltd. appeared for PH on 13.08.2025 wherein he reiterated their written submission received on 16.05.2025. Further, M/s. Keshav Maloo and Shri Nilesh Asava appeared for PH held on 28.08.2025 on behalf of Shri BalKrishnan Gagarani, and Shri Durgesh Parashar, both Directors of M/s. Caprice Commerce Pvt. Ltd and Shri Jitendra Yadav and reiterated their additional written submission dated 28.08.2025 and also their earlier written submission.

26. Discussion and Findings: I have carefully gone through the Show Cause Notices dated 20.02.2025, all written submissions , replies, and interim Reply dated nil, and additional submission dated 28.02.2025 filed M/s.Keshav Maloo & Associates, CA of M/s. Caprice Commerce Private Ltd. I have also gone through all the PH Records , the Personal Hearing Records of M/s. Keshav Maloo & Associates, CA who appeared for

personal hearing on 28.08.2025 on behalf of M/s. Caprice Commerce Private Ltd., Shri BalKrishnan Gagarani, Director, Shri Durgesh Parashar, Director and Shri Jitendra Yadav wherein said CA has reiterated their submissions.

27. The issues for consideration before me in these proceedings are as under:-

- i. Whether the imported goods of Micro SD 1 TB cards imported vide Bill of Entry no. 6712393 dated 04.07.2023 having declared assessable value of Rs. 2,47,65,510/-(Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) is liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 or otherwise:.
- ii. Whether the declared assessable value of Rs. 2,47,65,510/-(Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) should be rejected and the same should be re-determined as having No Commercial Value in terms of Customs Valuation Rules, 2007 based on Forensic Report of NFSU and the report of the Government approved Chartered Engineer?
- iii. Whether Penalty should be imposed on (i) M/s. Caprice Commerce Pvt. Ltd, (ii) Shri Bal Kishan Gagarani, (iii) Shri Durgesh Parashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, (iv) Shri Montu Harshadbhai Gandhi, and (v) Shri Jitendra Yadav, under provisions of Section 112 (a) and 112(b) of the Customs Act, 1962?
- iv. Whether Penalty should be imposed on (i) Shri Montu Harshadbhai Gandhi, and (ii) Shri Jitendra Yadav, under provisions of Section 114AA of the Customs Act, 1962?

28. Whether imported goods of Micro SD 1 TB cards imported vide Bill of Entry no. 6712393 dated 04.07.2023 having declared assessable value of Rs. 2,47,65,510/-(Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) is liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 or otherwise?

29.1 I find that it would be worth to know the factual matrix of the case which are as under:

29.1.1 M/s. Caprice Commerce Private Limited was set up as Trading unit in the GIFT SEZ vide application no. 1122-0000-1760 dated 10.04.2022 which was accepted on 16.12.2022 , wherein the details of the authorized operations was as under:

Sr. No.	Items of Services	ITC/CPC	Projected Annual FOB Value
1	To carry on trading of RAM, Memory Card	84733099/ 85235220	99002.766 lakhs per annum

This aforesaid authorized operations were approved and Eligibility Certificate was issued to the said firm on 30.01.2023 subject to certain terms and conditions. Relevant conditions to the present issue are mentioned as below:

- They shall undertake export of goods as per provisions of the SEZ Act, 2005 and Rules made thereunder.
- They shall achieve positive Net Foreign Exchange (NFE) as prescribed in the Special Economic Zone Rules, 2006 for the period they operate.
- Trading is permitted only for items which are under “free category for imports/exports, as per the extant Foreign Trade Policy.
- No import/trading of mobile phones is permitted, as of now.
- **All items being traded would be new. Trading of second hand/refurbished goods is not permitted.**
- No DTA sale of such items was permitted.

29.1.2 The said importer had imported 8520 nos. of “Micro SD Cards 1 TB” declaring total assessable value of US \$298,000 (@ US \$35 per MICRO SD card) vide a warehousing Bill of Entry No. 6712393 dated 04.07.2023 (i.e. Z type) at GIFT-Special Economic Zone, Gandhinagar (“GIFT SEZ”). During the examination of the aforesaid said import consignment, it was observed as under by the officers of GIFT SEZ

- a) The consignment consisted of packets, each declared to contain one micro SDXC UHS-1 card, 1TB, speed up to 120 MB/s card.
- b) Some of the packets were found packed in a box (80 in each box) **whereas some packets were found loose.**
- c) The front and back side of the packets contained details of the product contained inside them.
- d) **‘MICRO SDXC UHS-1’ cards were found to be of two kinds i.e. with one type having leisure Plus mentioned and the other without this description.**
- e) The said consignment was imported by M/s. Caprice Commerce Private Limited, and details mentioned on the packets stated that goods were ‘Made in Taiwan’ imported and marketed by “Sparky Animation” with address at 406 Cosmos Plaza Cts. No. 824 & 834 JP Road, Andheri West Near D N Nagar Metro Station, Mumbai, 400053, Maharashtra, India.

29.1.3 Further, to ascertain the quality and actual value of ‘MICRO SD 1 TB Cards’ (micro SDXC UHS-1) as declared in their import documents, samples were drawn and forwarded to National Forensic Sciences University, Police Bhavan Road, Sector 9, Gandhinagar, Gujarat- 382007 by the officer of GIFT SEZ, Officer for conducting tests covering the following aspects:

- i. Whether the goods declared as “Micro SD Cards 1 TB”, speed up to 120 MB/S are in working condition?
- ii. Whether the card confirm to the parameters mentioned on the packets?
- iii. Whether these SD cards are fresh (first hand) or second-hand goods (have been used in past)?
- iv. What is the difference in “Leisure Plus Micro SD HC” and Micro SD HC”? It was also requested to provide the configurational difference between 2 types of SD cards in aspect of capacity etc.
- v. Whether the stored data in the cards can be retrieved or re-used?

- vi. Regarding copyright infringement as the goods were declared to be manufactured for “Sparky Animation”.

29.1.4 Accordingly, the National Forensic Sciences University (NFSU) submitted their report dated 04.10.2023 wherein stated that declared capacity of the disk was 1000GB, however the readable/writable storage size found was just 203.2MB and 224MB. Further, the test report revealed that the memory cards were corrupted in respect of data Storage Size to the extent of 999.7 GB. The report also explained the trademarks and logos associated with the said product (as mentioned on the packets).

29.1.5 I find that Import consignments declared as ‘Micro-SD Card 1 TB’ by the importer were taken up for examination and goods were found to be defective with more than 99% of the claimed capacity corrupted. This indicated gross mis-declaration and consequent overvaluation since the stated value was in respect of prime goods. Therefore, opinion of Government approved Chartered Engineer was also taken and the sealed sample was examined under Panchnama on 05.02.2025. The Government approved Chartered Engineer in his report Ref: BB/B-05/25/CCPL/DRI dated 08.02.2025 has stated as under:

*“1. The Imported SD Card as 1 TB memory has only 203.2 or 224.0 MB read or write memory, balance memory either identified **as corrupt or data lost storage.***

2. Actual 1 TB card showed speed of 1750 MB/s against the cards inspected showed speed of 120 MB/s (declared) but during test the same was showing reading speed of 12.9 MB/s, 16.0 MB/s and writing speed 6.12 MB/s, 8.07 MB/s which has bulk purchase rate got discounted from 10USD to 8 USD for actual 1 TB SD memory cards. However, the subject memory cards are not of 1TB storage capacity and actual capacity suggests that; practically it is obsolete/junk hence has NO Commercial demand or Commercial value.

3. Very First Micro SD Card by SCAN DISK was introduced in 2014 was for minimum 2 GB storage capacity against the subject card having 1/10 storage Capacity, Therefore the said cards are obsolete in the industry.”

Further the Government Approved Chartered Engineer stated that the items under import are electronic waste.

29.1.6 From the above discussion, I find that the said importer had mis declared the value in terms of his quality as well as value, the impugned goods is liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further I find that since the it is impugned goods is obsolete/junk hence has there is no Commercial value of the impugned goods and therefore, Redemption Fine cannot be imposed as imposing Redemption Fine would not serve any meaning.

30.1.1. Whether the declared assessable value of Rs. 2,47,65,510/-(Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) should be rejected and the same should be re-determined as having No Commercial Value

in terms of Customs Valuation Rules, 2007 based on Forensic Report of NFSU and the report of the Government approved Chartered Engineer?

30.1.2 As I have already discussed in foregoing paras and it is needless to mentioned the Customs Valuation Rules, 2007 as it has already been mentioned hereinabove, I find that the impugned goods though declared as of prime quality, on examination by the National Forensic Sciences University (NFSU), the memory cards were corrupted in respect of data Storage Size to the extent of 999.7 GB and further, the Government approved Chartered Engineer in his report Ref: BB/B-05/25/CCPL/DRI dated 08.02.2025 have specifically mentioned that the subject memory cards are not of 1TB storage capacity practically it is obsolete/junk hence has NO Commercial demand or Commercial value. Very First Micro SD Card by SCAN DISK was introduced in 2014 was for minimum 2 GB storage capacity against the subject card having 1/10 storage Capacity, Therefore the said cards are obsolete in the industry.”

30.1.3 I view of the above, I find that declared assessable value of Rs. 2,47,65,510/- (Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) requires to be rejected and the same should be re-determined as having No Commercial Value in terms of Customs Valuation Rules, 2007 based on Forensic Report of NFSU and the report of the Government approved Chartered Engineer.

31. Whether Penalty should be imposed on (i) M/s. Caprice Commerce Pvt. Ltd, (ii) Shri Bal Kishan Gagarani, and Shri Durgesh Parashar, both Directors of M/s. Caprice Commerce Pvt. Ltd, (iii) Shri Montu Harshadbhai Gandhi, and (iv) Shri Jitendra Yadav, under Section 112 of the Customs Act, 1962?

31.1.1 I find that during the investigation, Shri Jitendra Yadav planned and contacted two people i.e. Shri Bal Kishan Gagarani and Shri DurgeshParashar, both residents of Chittorgarh, Rajasthan through some common people for initiating the modus elaborated in foregoing paras. He lured them for money in exchange of their documents and offered them a monthly salary (Rs. 30,000/- PM) for working as directors in M/s. Caprice Commerce Pvt. Ltd. Thereafter, he called Shri Bal Kishan Gagarani to Indore for signing documents related to banks and directorship of M/s. Caprice Commerce Pvt. Ltd. Later he contacted two persons i.e. Shri Montu Gandhi and Shri Pradeep Upadhyay of M/s. PDP Consultancy (both from Surat) and requested them for help in starting units in GIFT-SEZ. Later, Shri Montu Gandhi acted on behalf of the company without any authorization and even took decisions in financial matters related to the firm. Further, Shri Montu Gandhi admitted in his statement that he was not authorized to carry out the above work by the importer either by any oral order or written order.

31.1.2 Subsequent to the report dated 04.10.2023 of National Forensic Sciences University (NFSU), investigation was handed over to the DRI, Ahmedabad for further

investigation. The officers of DRI, Ahmedabad Zonal unit visited the address of M/s. Caprice Commerce Private Limited, at 1105-A, 11th Floor Signature Building, Block-13B Zone-1, GIFT-SEZ, Gandhinagar-382355 on 10.10.2023 and during the visit it was found that the office was locked. Further search was attempted at the premises of M/s. Caprice Commerce Pvt. Ltd having address at Office No. 215, Orbit Mall, 305,306, PU-4, Scheme No. 54, Vijayanagar, Indore- 452010 on 11.10.2023 wherein it was noticed that neither any sign-board nor any business activity was found in the name of M/s. Caprice Commerce Pvt. Ltd at given address. Further, people from nearby offices stated that no such firm was operated on this address, instead, sign-boards of M/s. Barsha Trading Private Limited & M/s. Baijyanthi Multi trading private Limited were found. Further search was attempted at the premises M/s. Caprice Commerce Pvt. Ltd. situated at 523 Chinai Wadi, Rocky Building, 35th road, Khar West, Mumbai on 28.10.2023, the office could not be located and nobody in the vicinity was aware of M/s. Caprice Commerce Pvt. Ltd. Further, nearby post office was also visited but the postal staff also were unable to trace out the whereabouts of M/s. Caprice Commerce Pvt. Ltd.

31.1.3 Thus, I find that with pre-meditated plan to defraud the Government Exchequer and to wrongly avail the benefit of SEZ, the said importer, created the firm in the name of M/s. Caprice Commerce Private Limited, at 1105-A, 11th Floor Signature Building, Block-13B Zone-1, GIFT-SEZ, Gandhinagar-382355 and after obtaining the LOP for the authorised operation, filed Warehouse Bill of Entry no. 6712393 dated 04.07.2023 in GIFT-SEZ for 'Micro SD 1 TB cards' having declared assessable value of Rs. 2,47,65,510/-. on examination by the National Forensic Sciences University (NFSU), the memory cards were corrupted in respect of data Storage Size to the extent of 999.7 GB and further, the Government approved Chartered Engineer in his report Ref: BB/B-05/25/CCPL/DRI dated 08.02.2025 have specifically mentioned that *the subject memory cards are not of 1TB storage capacity practically it is obsolete/junk hence has NO Commercial demand or Commercial value. Very First Micro SD Card by SCAN DISK was introduced in 2014 was for minimum 2 GB storage capacity against the subject card having 1/10 storage Capacity, Therefore the said cards are obsolete in the industry.*"

31.1.4 I find that Government approved Chartered Engineer in his report Ref: BB/B-05/25/CCPL/DRI dated 08.02.2025 have specifically mentioned that *the subject memory cards are not of 1TB storage capacity practically it is obsolete/junk hence has commercial value.* Further the Government Approved Chartered Engineer stated that the items under import are **electronic waste**. Further, proposal of M/s. Caprice Commerce Private Limited for setting up of a new trading unit in the GIFT SEZ made vide application no. 1122-0000-1760 dated 10.04.2022 was accepted on 16.12.2022 , with certain condition including Trading was permitted only for items which were under "free category for imports/exports, as per the extant Foreign Trade Policy and all items being traded would be new and Trading of second hand/refurbished goods was not permitted. Thus, I find that imported goods viz. 'Micro SD 1 TB cards' were the prohibited goods as per the DFGT Policy and SEZ Act, 2005.

31.1.5 I find that Shri BalKishan Gagarani and Shri Durgesh Kumar Parashar, Directors of M/s. Caprice Commerce Pvt. Ltd. have allowed their names and documents to be used for forming the company M/s. Caprice Commerce Pvt. Ltd. and later for obtaining an IEC in the name of the company. They have let themselves be controlled by Shri Jitendra Yadav for opening bank accounts and lent out the company IEC to be used by Shri Jitendra Yadav for effecting fraudulent import of micro-SD cards which were having No Commercial Value by declaring the same to be high value goods. Multiple searches were conducted at the addresses of M/s. Caprice Commerce Pvt. Ltd., however most of the addresses were found to be non-existent. I find that to defraud the Government Exchequer and wrong availment of benefit if SEZ Policy, the Directors of the company wilfully and deliberately lent out their names and IEC created using their name to the above-mentioned persons and thereby contravened the provisions of the FTDR Act, 1992. Therefore, I find that said Importer M/s. Caprice Commerce Pvt. Ltd. and its both Directors, Shri Bal Kishan Gagarani and Shri Durgesh Kumar Parashar have rendered the imported goods liable to confiscation under Section 111 of the Customs Act, 1962 by allowing the goods to be mis-declared and thus rendering themselves liable for penal action under Section 112 of the Customs Act, 1962.

31.1.6 Further, I find that Shri Montu Gandhi acted on behalf of the importer M/s. Caprice Commerce Pvt. Ltd. without any written authorization and even took decisions in financial matters related to the firm. He managed the premises of M/s. Caprice Commerce Pvt. Ltd and hired persons to act on behalf of M/s. Caprice Commerce Pvt. Ltd. He even paid bills of the firm M/s. Caprice Commerce Pvt. Ltd. This clearly shows that Shri Montu Gandhi was actively involved in this illicit trade. Further, he has admitted that he was in touch with Shri Jitendra Yadav, the responsible person in this firm. In view of the above, act of Shri Montu Gandhi has rendered the imported goods liable to confiscation under Section 111 of the Customs Act, 1962 and thus rendered himself liable for penal action under Section 112 of the Customs Act, 1962.

31.1.7 I find that Shri Jitendra Yadav planned and contacted two people i.e. Shri BalKishan Gagarani and Shri Durgesh Parashar, both residents of Chittorgarh, Rajasthan through some common people. He lured them with monitory consideration (Rs. 30,000/- PM) and obtained their credentials to register the firm M/s. Caprice Commerce Pvt. Ltd and further to open/amend the bank accounts in the name of this firm. Thereafter, he contacted two persons i.e. Shri Montu Gandhi and Shri Pradeep Upadhyay of M/s. PDP Consultancy (both from Surat) and requested them for help in starting units in GIFT-SEZ. From the investigation it is clear that Shri Jitendra Yadav was the brain behind this illicit trade. Further, this facts were was confirmed by Shri Bal Kishan Gagarani and Shri Montu Gandhi in their respective statement. I find that in terms of Section 2(26) of the Customs Act, 1962, it is evident that Shri Jitendra Yadav was the beneficial owner of the goods. Therefore, act of Shri Jitendra Yadav

has rendered the goods liable to confiscation under Section 111 of the Customs Act, 1962 and thereby rendered himself liable for penal action under Section 112 of the Customs Act, 1962.

31.1.8 In the Show Cause Notice, penalty under Section 112 (a) and 112 (b) has been proposed on the importer. Therefore, I find that it would be worth to reproduce the provisions of Section 112 of the Customs Act, 1962 which read as under:

SECTION 112: Penalty for improper importation of goods, etc. . — Any person

who, in relation to any goods, does or omits to do any act (a) 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

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

shall be liable, -

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

[(ii) in the case of dutiable goods, other than prohibited goods, 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;]

[(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 [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 [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 [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.]

31.1.9 I find that importer had filed warehouse Bill of Entry No. 6712393 dated 04.07.2023 in GIFT-SEZ for imported goods viz. 'Micro SD 1 TB cards' which was on examination by the Chartered Engineer was found Electronic waste and further as per the LOP granted under SEZ Act, 2005, the importer was not allowed to import second hand/refurbished. Further, the said importer has declared value in said the

warehouse Bill of Entry no. 6712393 dated 04.07.2023 for the imported goods viz. 'Micro SD 1 TB cards' as Rs. 2,47,65,510/-. on examination by the National Forensic Sciences University (NFSU), the memory cards were corrupted in respect of data Storage Size and further, the Govt. Approved Chartered Engineer vide his report dated 08.02.2025 has stated that the impugned goods is Electronic Waste having no commercial value.

In view of the above, I find that said importer M/s. Caprice Commerce Pvt. Ltd, alongwith Shri Bal Kishan Gagarani, and Shri Durgesh Parashar, both Directors of M/s. Caprice Commerce Pvt. Ltd, and abettor Shri Montu Harshadbhai Gandhi, and Shri Jitendra Yadav whose role have already been discussed herein above are each liable for penalty under Section 112 (a) (iv) of the Customs Act, 1962.

31.1.10 I find that Shri Montu Harshadbhai Gandhi in his defence reply have contested that he had no involvement in payment for office set up and he had no knowledge of mis declaration and further there is absence of mens rea and relied on the some decision and stated that the cannot be penalized. I find that said contention are nothing but after thought. I have already discussed the role of Shri Montu Harshadbhai Gandhi. I find that Hon'ble Mumbai Tribunal in the case of Whet-HCIL (JV) Ltd. Vs. Commissioner of Customs (Imports), Mumbai reported in 2014 (313) E.L.T. 497 (Tri. - Mumbai) has held that "For imposition of penalty under Section 112(a) of the Customs Act, 1962, no *mens rea* is required". Further, I find that Hon'ble Madras High Court in the case of Comex Co. Vs. Collector of Customs, madras-I reported in 1997 (96) E.L.T. 526 (Mad.) has held that for imposition of penalty under Section 112 9a) no mens rea required. Relevant para of the said decision are re-produced as under:

"11. On a careful reading of the provisions contained in Section 111 or 112(a), we are unable to come to the conclusion that there was hardly any scope or need to import into adjudicatory proceedings for breach of civil obligations, the principle of mens rea in the conventional sense of common law usage, as having been inbuilt as an ingredient to be established as a condition precedent before indicating any violator under any of those provisions with personal penalty. The establishment of blameworthy conduct, which stands proved from the very proof of contravention of the civil obligation, would in our view, suffice to justify the imposition of personal penalty in adjudicatory proceedings before the statutory departmental Authorities. The need for insisting upon further proof of the mental attitude of the violator concerned, may assume some significance in any prosecution initiated before the Criminal Court for the very contravention or violation concerned. But, in our view, as held by the Apex Court in M/s. M.C.T.M. Corporation Private Ltd. case (AIR 1996 SC 1100) (supra); Gujarat Travancore Agency's case [1989 (42) E.L.T. 350 (S.C.) = AIR 1989 SC 1671] (supra) and the two Division Bench judgments of this Court in Vijaya Electricals's case (82 STC 268) (supra) and Lakshmi & Co.'s case (87 STC 345) (supra), the penalty contemplated under Section 112(a) of the Act for the violation in question is of a civil obligation, remedial and corrective in its

nature and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the criminal or penal laws. The regulation which is sought to be provided for, and the violation of which is to be dealt with under Sections 111 and 112 of the Act, are in respect of the laws of great and serious importance in conserving the economy of the Nation and have to be, therefore, viewed in their proper perspective so as not to result in abnegation or abrogation of the avowed object and purpose of the Legislation, which is not only regulatory, but prohibitory in nature, the mandate contained therein being in the larger interests and general welfare of the Nation.

13. *We will now take up for consideration the submission made by the learned Senior Counsel appearing for the applicant that the importer - applicant cannot be accused of, or for that matter, there are not sufficient materials to prove any abetment on its part or of any positive role in the violation alleged as such, warranting the levy of personal penalty. The Collector of Customs in his order dated 28-4-1980, particularly in paragraph 14, has dealt with this aspect and has chosen to find that the applicant was also guilty of the violation on account of the obvious facts on record and the circumstance that the importer unquestionably had a vital interest in the relevant date of bill of lading in view of the sudden clamping down of licensing on the import of edible oils from 2-12-1978 and they stood to gain far more by fraudulent manipulation of the date of bill of lading, than the supplier. The very import depends upon the entitlement of the applicants only and the exporter in the Country outside could not by himself bring those goods into this Country without the involvement of the Importer. Even that apart, we find that but for the clearance of the goods, which the applicant was able to secure in this case, they could not have escaped an order of confiscation and imposition of consequent redemption fine and it is only on account of the fact that the clearance has been made even before the Department came to know of the fraudulent act of ante-dating the bill of lading by which it was able to get the goods imported and cleared, the Department had no other go, but to impose only a personal penalty. Viewing this case and the facts in this context also, we are of the view that no exception could be taken to the imposition of personal penalty in question or the quantum thereof upon the applicant.*

14. *For all the reasons stated above, we answer the question referred to us for our consideration by holding that the Tribunal was correct in holding that **no mens rea as such was required as a condition precedent for levying a personal penalty under Section 112(a) of the Customs Act, 1962.** There will be no order as to costs."*

31.2 Penalty on Shri Montu Harshadbhai Gandhi, and Shri Jitendra Yadav, under provisions of Section 114AA of the Customs Act, 1962:

31.2.1 I find that Shri Montu Gandhi acted on behalf of the importer M/s. Caprice Commerce Pvt. Ltd. without any written authorization and even took decisions in financial matters related to the firm. He managed the premises of M/s. Caprice Commerce Pvt. Ltd and hired persons to act on behalf of M/s. Caprice Commerce Pvt. Ltd. He even paid bills of the firm M/s. Caprice Commerce Pvt. Ltd. This clearly shows that Shri Montu Gandhi was actively involved in this illicit trade. Further, he has admitted that he was in touch with Shri JitendraYadav, the responsible person in this

firm. I find that he also oversaw the filing of documents, although without any valid authorisation from M/s. Caprice Commerce Pvt. Ltd, which were false in material particulars about the quality and value of goods being imported. This act of omission and commission has made him liable for penalty under Section 114AA of the Customs Act, 1962.

31.2.3 I find that Shri Jitendra Yadav planned and contacted two people i.e. Shri BalKishan Gagarani and Shri Durgesh Parashar, both residents of Chittorgarh, Rajasthan through some common people. He lured them with monitory consideration (Rs. 30,000/- PM) and obtained their credentials to register the firm M/s. Caprice Commerce Pvt. Ltd and further to open/amend the bank accounts in the name of this firm. Thereafter, he contacted two persons i.e. Shri Montu Gandhi and Shri Pradeep Upadhyay of M/s. PDP Consultancy (both from Surat) and requested them for help in starting units in GIFT-SEZ. From the investigation it is evident that Shri Jitendra Yadav was the brain behind this illicit trade. Further, this facts were was confirmed by Shri Bal Kishan Gagarani and Shri Montu Gandhi in their respective statement. I find that in terms of Section 2(26) of the Customs Act, 1962, it is evident that Shri Jitendra Yadav was the beneficial owner of the goods. Shri Jitendra Yadav through Shri Montu Gandhi oversaw the filing of documents in respect of M/s. Caprice Commerce Pvt. Ltd, which were false in material particulars about the quality and value of goods being imported. This act of omission and commission has made Shri Jitendra Yadav liable for penalty under Section 114AA of the Customs Act, 1962.

32. I find that the said Importer M/s. Caprice Commerce Pvt. Ltd, alongwith Shri Bal Kishan Gagarani, and Shri Durgesh Parashar, both Directors of M/s. Caprice Commerce Pvt. Ltd, and abettor Shri Montu Harshadbhai Gandhi, in their concerned written submission have placed reliance on various case laws/judgments in support of their contention on issues raised in the Show Cause Notice. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same can not be extended to other case(s) without looking to the hard realities and specific facts of each case. Thus decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of the one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Produced reported in 2004 (170) ELT 135 (SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs. CCE, Delhi reported in 2004 (173) ELT 113(SC) wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again, in the case of Commissioner of Customs(Port), Chennai Vs. Toyato Kirloskar Motor P. Ltd. reported in 2007 (213) ELT 4 (SC), it has been observed by the Hon'ble

Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

33. In view of my findings in the paras *supra*, I pass the following order:

ORDER

33.1 I order confiscation of said imported goods of Micro SD 1 TB cards imported vide Bill of Entry no. 6712393 dated 04.07.2023 having declared assessable value of Rs. 2,47,65,510/- (Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) under the provisions of Section 111(m) of the Customs Act, 1962. Since the impugned goods have no commercial value, I refrain from extending the option for redemption under Section 125 of the Customs Act, 1962, and imposing redemption fine.

33.2 I reject the declared assessable value of Rs. 2,47,65,510/- (Two Crore forty-seven lakhs sixty-five thousand five hundred and ten only) and re-determined as having No Commercial Value in terms of Customs Valuation Rules, 2007 based on Forensic Report of NFSU and the report of the Government approved Chartered Engineer.

33.3 I impose a penalty of **Rs.200,00,000/- (Rupees Two Crores only)** on M/s. Caprice Commerce Pvt. Ltd, under Section 112 (a) (iv) of the Customs Act, 1962.

33.4 I impose a penalty of **Rs.25,00,000/- (Rupees Twenty Five Lacs only)** on Shri Bal Kishan Gagarani, under Section 112 (a) (iv) of the Customs Act, 1962

33.5 I impose a penalty of **Rs.25,00,000/- (Rupees Twenty Five Lacs only)** on Shri Durgesh Parashar, Both Directors of M/s. Caprice Commerce Pvt. Ltd, under Section 112 (a) (iv) of the Customs Act, 1962

33.6 I impose a penalty of **Rs.25,00,000/- (Rupees Twenty Five Lacs only)** on Shri Montu Harshadbhai Gandhi, under Section 112 (a) (iv) of the Customs Act, 1962

33.7 I impose a penalty of **Rs.25,00,000/- (Rupees Twenty Five Lacs only)** on Shri Montu Harshadbhai Gandhi, under Section 114AA of the Customs Act, 1962

33.8 I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lacs only)** on Shri Jitendra Yadav, under, under Section 112 (a) (iv) of the Customs Act, 1962

33.9 I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lacs only)** on Shri Jitendra Yadav, under Section 114AA of the Customs Act, 1962

34. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

35. The Show Cause Notice No. VIII/10-11/Pr.Commr/O&A/2024-25 dated 20.02.2025 is disposed off in above terms.

(Shravan Ram)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-11/Pr. Commr/O&A/2024-25

Date:03.10.2025

DIN-20251071MN000000A04A

BY SPEED POST:

To,

M/S. CAPRICE COMMERCE PVT. LTD.

Address-1: 105-A, 11TH FLOOR SIGNATURE BUILDING,
BLOCK-13B ZONE-1, GIFT-SEZ,
GANDHINAGAR-382355

M/S. CAPRICE COMMERCE PVT. LTD.

Address-2: OFFICE NO. 215, ORBIT MALL, 305,306,
PU-4, SCHEME NO. 54, VIJAY NAGAR,
INDORE- 452010

M/S. CAPRICE COMMERCE PVT. LTD.

Address-3: 523 CHINAI WADI, ROCKY BUILDING,
35TH ROAD, KHAR WEST,
MUMBAI

SHRI BAL KISHAN GAGARANI,

DIRECTOR OF M/S. CAPRICE COMMERCE PVT. LTD,
S/O NETRAM GAGARANI, WARD NO. 8,
JAGETIYA ROAD, KANNOJ, CHITTORGARH,
RAJASTHAN-312613

SHRI DURGESH PARASHAR,

DIRECTOR OF M/S. CAPRICE COMMERCE PVT. LTD,
OPP. SHANI TEMPLE, GURJAR MOHALLA, CHITTORGARH,
RAJASTHAN 312001

SHRI MONTU HARSHAD BHAI GANDHI,

Address-1: S/O HARSHAD BHAI GANDHI,
A/103, SIVALAY FLAT, TIGHRA WADI ROAD,
TIGHRA JAKAT NAKA, NAVSARI
GUJARAT-396445

SHRI MONTU HARSHAD BHAI GANDHI,

Address-2: C/o M/S. PDP CONSULTANCY, CC-1, ROAD NO. -06,
DIAMOND INDUSTRIAL PARK, SACHIN, DIST-SURAT

SHRI JITENDRA YADAV,

Address-1: 404, NAVNEET PLAZA, 5/2 OLD PALASIA,
INDORE, MADHYA PRADESH-452009

SHRI JITENDRA YADAV,

Address-2: 117, DH SCHEME NO. 74, INDORE,
MADHYA PRADESH

Copy To :

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 2. ADG, DRI, Ahmedabad
 3. The Specified Officer, GIFT, SEZ, Gandhinagar
 4. The System In Charge, Customs HQ, Ahmedabad for uploading on the official website.
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