

	<p>सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in</p>	
A. File No.	:	GEN/ADJ/COMM/566/2023-Adjn-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-20-24-25
C. Passed by	:	K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	27.08.2024. 27.08.2024.
E. SCN No. & Date	:	SCN F.No. GEN/ADJ/COMM/566/2023-Adjn-O/o Pr. Commr- Cus-Mundra, dated 30.08.2023.
F. Noticee(s) / Party / Importer	:	Shri Dirgesh Dedhia Proprietor of M/s. Exemplar Trading, Plot No. 156, Ghanshyam Park, Baroi Road Mundra (Kutch) and Others.
G. DIN	:	20240871MO0000000CFCB

1. यह अपील आदेश संबंधित को नि:शुल्क प्रदान किया जाता है।

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

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

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लॉर,
बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस,
अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

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

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

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

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

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

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

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

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

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

FACTS OF THE CASE IN BRIEF:

1. The DRI regional unit Gandhidham carried out examination and seizure of the import goods pertaining to 18 import consignments through 08 different importers which has been Tabulated in Table-1 herein below, which revealed that a common set of people have been running the smuggling cartel. These 18 consignments were imported in name of 08 different importers and hence Importer-wise separate investigation has been done by DRI, Gandhidham and separate show cause notices were issued to the importers by the Competent Authorities.

1.1. The present show cause notice deals with only 02 import consignments pertaining to M/s. Exemplar Trading (IEC No. BVIPD3861L) imported through Container Nos. SEGU4114778 and TCNU8506372.

2. A specific intelligence gathered by Directorate of Revenue Intelligence (DRI for short) indicated that a vehicle moving towards Mumbai and 30 Kms from Surat was carrying 823 Cartons of import goods cleared from Mundra Port. The intelligence further indicated that the consignment was containing concealed foreign brand E-cigarettes. Acting upon the intelligence, the officers of DRI Gandhidham analysed the system data and found that the vehicle No. GJ12BV0610 was carrying the import consignment imported through Container No. TLLU4615592. Accordingly, the Vehicle No. GJ12BV0610 was intercepted by the DRI, Surat Regional Unit 01.09.2022 near Palsana Chokdi on the National Highway and on enquiry with the driver incriminating documents were recovered. Therefore, for further examination of goods, the vehicle was moved to ICD Sachin.

3. On reaching ICD Sachin, the officials in the presence of 02 independent arbitrators, requested Shri Alpesh Korat, Assistant Manager, ICD Sachin to arrange mechanical assistance to the laborers for checking the contents of the container. Meanwhile, a person came inside ICD Sachin and introduced himself as **Mr. Parvez Alam**. He stated that he is the representative of **Mr. Mohd. Asif Sathi and Mr. Sarfarajbhai**, the actual purchasers of the said consignment, to whom the goods contained in container TLLU4615592 have been sent. The officials informed Mr. Parvez Alam that container TLLU4615592 loaded on truck/trailer number GJ12 BV0610 needed to be examined as it was suspected to contain e-cigarettes of foreign origin. Thereafter, the examination of the said container was started in the presence of panch Mr. Parvez Alam, ICD Patron Sachin, Customs Officer and DRI officials.

2.3. The goods were examined under Panchnama dated 01/02.09.2022. During the examination of the baggage, **107 cartons of e-cigarettes** were found which were of different flavors and were marked "DK123 XXL" and were of the Yuotto brand. When the 107 cartons were opened there were a total of 85600 e-cigarettes in different flavors such as Strawberry Watermelon, Two Apples, Blueberry Ice, Watermelon Ice, Peach Ice, Mint Ice, Grape Ice, Energy Drink, Mango Ice, Pina Colada, Aloe Black Currant, Passion Fruit, Milk Coffee which were smuggled along with other declared goods.

2.4. Since, the electronic cigarette found concealed in the above import consignment falling under HS code 85434000 and the import thereof is prohibited vide **notification 20/2015-2020 dated 26.09.2019**, used for concealment, the import consignment relating to container number **TLLU4615592** appeared liable to confiscation under the provisions of the Customs Act, 1962. Therefore, the whole consignment pertaining to Container No. TLLU4615592 was detained under

panchanama dated 01/02.09.2022 and subsequently after detailed examination and valuation of the goods, the same was placed under seizure under provisions of Customs Act, 1962.

3. Meanwhile, Statement of Shri Chhaju Ram Proprietor of M/s. Prince Logistics, Mundra, Kutch was recorded on 01/02.09.2022 at the office of DRI, Gandhidham, it was gathered that Shri Baldevsinh had booked 06 trailer with Shri Chhaju Ram for transportation of the import goods to be delivered at Bhiwandi Godown; which were cleared from SEZ Warehouse Unit M/s. Empezar Logistics at Mundra Port. These were **immediately put on hold by the DRI for examination of the goods.**

4. The DRI, Gandhidham further gathered intelligence that a container bearing No. TGBU5160748 has been imported by the aforementioned persons in the name of **M/s. J. H. Enterprises** and suspected to have concealed E-Cigarettes. However, the declared description of the goods of the said container was '**754 carton Floor Clean MOP (Misc. Item non-popular brand HS Code 96039000**'. The intelligence further suggested that as the DRI had initiated action in respect of such import consignments pertaining to the cartel of the persons, the importers in connivance with the shipper have arranged to change the port of discharge of the consignment pertaining to the **Container No. TGBU5160748**. They had arranged to change the name of Shipper, name of the importer from **J. H. Enterprises to Sasco Global Logistics**, port of discharge from Mundra to UAE, they have even changed the declared description of the goods as '**745 cartons Household articles**'. Taking further action on the intelligence, the said container was also put on hold by DRI, Gandhidham for necessary examination of the goods.

5. In view of the above, the officers of DRI conducted examination of the import goods pertaining to **total 18 containers** on different dates in the month of September, 2022 which included the examination of goods pertaining to Container No. NYKU084432 and TLLU4615592 examined at Bhiwandi, Maharashtra and ICD Sachin, Gujarat by DRI officers. The Brief details of the examination of the goods pertaining to all the 18 containers are given as under;

Table-1

Sr No	Contain er No.	Name of the importer	Date of panchnama	Goods declared in the BE/BL/IGM	Description of goods found actually during examination
1	NYKU084432	M/s Nikhat Enterprises	02.09.2022	Floor Clean Mop (Misc Item Non popular Brand) Shippers Desire To State Thaths Code 96039000	12 Carton of E-Cigarettes and other goods
2	TLLU4615592	M/s. M. M. Enterprises	01/02.09.2022 and 19.10.2022	Head Massager (Misc item Non Popular Brand) HS Code 90191020	107 Carton of E-Cigarettes, along with, Head massager, Exercise book, Hair straightener, Silicon Pop up toys
3	DFSU7686560	M/s. Rajyog Enterprises	03.09.2022	Hot water Bag (Misc. item Non Popular Brand)/Water	Fidget Can Cube, Card Early Education Vice,

				Bottle/Plastic cube	Water Bottle, Spinning Cube etc.
4	TEMU66 43503	M/s. Aditi Trading Company	03.09.2022	Vegetable slicer, Foot pump, mobile holder, hair dryer etc.	Dancing cactus (Toys), Vegetable slicer, small water bottle, foot pump etc.
5	TEMU85 05123	M/s Rajyog Enterprises	03/04.09.2022	Exercise Book (Misc item non popular brand)	Exercise Book (Misc item non popular brand), Rabbit piano, Micky mouse twister car and other Toys of different kind
6	YMMU66 20747	M/s. Skyblue International Trading Company	03/04.09.2022	Exercise Book, Back Cover, Tampered glass	Exercise Books, Tempered Glass/Toughened glass, Back Cover, Earphones
7	TCNU850 6372	M/s. Exemplar Trading	06.09.2022	Water Bottle (Misc Item Non Popular Brand) Hs Code 392630	Kinoki Foot Pads, Dancing Cactus, Empty Cartons, Water Proof Tape, Water Bottle
8	SEGU41 14778	M/s. Exemplar Trading	06.09.2022	Hair Straightener 851632 Hair Dryer (851631) Trimmer (851020)	Kemei Hair Trimmer/Clipper, Kemei Hair Dryer and Kemei Hair Straightener.
9	TXGU706 9291	M/s. Rajyog Enterprises	19.09.2022	Massager Misc Item Non Popular Brand Hs Code 90191020 foot Brush Misc Item Non Popular Brand Hs Code 96032900	Bubble sensory fidget toys, pedicure paddle/brush, maxtop massager, body massager, ventilation back rest with lump support, mesh cushion support pad
10	TXGU502 3882	M/s. Rajyog Enterprises	12.09.2022	Hair Clipper (Misc Item Non Popular Brand) Hs Code 851030	Professional Hair clipper adjustable blade maxtop model: MP98
11	BMOU69 23481	Aditi Trading Company	19.09.2022	Egg Poacher (Misc Brand Non Popular Brand) HS Code - 39241090	dancing cactus, Egg poacher/steamer, different types of toys, study book, learning machine,
12	SLSU801 8922	M/s Sky Blue International Trading Co.	08.09.2022	Exercise Book (Misc Item Non Popular Brand) HS Code: 48202000	Exercise book, Tempered glass, Hair Straightener, Earphone
13	TRHU845 5767	M/s Sky Blue International Trading Co.	24.09.2022	Hair Trimmer Misc Item Non Popular Brand HS Code 85103000	Earphone(AK-H/F(B)), Hair Straightener(SK-111), Earphone (SK-786 model HF)
14	SEGU45 96469	M/s Sky Blue International Trading Co.	12.09.2022	Plastic Chocolate Mould (Misc Item Non Popular	Plastic pop up toys, Dancing Cactus Toys

				Brand)HS Code 392690	
15	BMOU59 87877	M/s. Rajyog Enterprises	17.09.202 2	Exercise Book (Misc Item Non Popular Brand) HS Code: 48202000	Sank Magic Practice Copy Book, Mop Scratch Cleaning Mop, Card Early Education Device, Dancing Cactus can Sing and Dance, Xindong Nail Clippers, Nail Clipper kabee Brand & Bell Brand, FUR Star Monkey, I say what you said, Gyrate Octopus Fur Toys Series, Nail Cutter / Clipper Bell Brand
16	TGBU770 9478	M/s Sky Blue Internationa l Trading Co.	23.09.202 2	Hair Trimmer Misc Item Non Popular Brand HS Code 85103000	Earphone of different brand (opp, vivo, realme, boat, samsung etc.), Earphone unbranded, Mobile phone back cover (Assorted), I - phone/Apple mobile phoneback cover, Hair Clipper/straightene r, Magic practice book
17	TEMU76 94450	M/s Jym Global Trading company	12.09.202 2	Plastic Chocolate Mould (Misc Item Non Popular Brand)HS Code 392690	Pop it toys, dancing cactus toys
18	TGBU516 0748	M/s. J. H. Enterprises	16/17.09. 2022	Floor Clean Mop (Misc Item Non popular Brand) HS Code 96039000	E-Cigarettes, silicone pop it toys, LCD writing pad, MOP, wired head/hand massager.

5.1. As mentioned above, Total **295600** (9600 + 85600 + 200400) foreign brand E-Cigarettes were recovered from the goods pertaining to the containers bearing No. NYKU084432, TLLU4615592 and TGBU5160748 during examination conducted at Bhiwandi godown, Mumbai, ICD Sachin, Surat and Mundra Port, respectively. The import of E-Cigarettes falling under HS Code No. 8543 was prohibited in terms of **DGFT Notification No 20/2015-2020 dated 26.09.2019** and the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019.

5.2. Apart from the E-Cigarettes recovered from the import goods pertaining to the container Nos. NYKU084432, TLLU4615592 and TGBU5160748, gross mis-declaration in respect of description, Classification, value, quantity and other material particulars was noticed during examination of the above import consignments. It was noticed that various import consignments concealing Toys were

required to be classified under HS Code 9503 and import of the same was subject to fulfilment of **Policy Condition 2 of the Chapter 95 of the Customs Tariff**. As per the condition, the import of toys requires mandatory BIs compliance for import of the same into India. However, during investigation, no importer had produced any such compliance for import of the same.

5.3. Further, some of the import consignments were found containing mobile phone accessories such as tempered glass, earphone/headphone/back cover etc. having marking of different companies, such as Samsung, Boat, Vivo, Oppo, realme, apple etc. The said goods *prima facie* appeared to have been imported in violation and infringement of IPR. Further, it was noticed that most of the import goods were found mis-declared with respect of their description, value and quantity etc.

6. During examination of the goods, representative samples were drawn from the import consignments in order to find out exact description, nature and value of the imported goods. The samples so drawn were got examined by a Govt. approved Chartered Engineer Shri Kunal Ajay Kumar and he submitted his reports to DRI.

6.1. The above consignments were found to have been imported in violations of various provisions of the Customs Act, 1962 and other allied Acts. Therefore, having reason to believe that the said import consignments were liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, same were placed under seizure by the DRI under Section 110(1) of the Customs Act, 1962 vide respective Seizure memos.

7. During the course of investigation, in order to collect evidence, statement of persons who were directly/indirectly involved in importation/clearance of goods were recorded by the DRI under the provisions of **Section 108 of Customs Act, 1962**. The statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statement of Shri Parwej Alam, representative of the actual buyer Shri Mohammad Asif Sathi and Shri Sarfaraz Bhai was recorded on 02/03.09.2022, 04.09.2022.
- Statement of Shri Chuna Singh Rawat, Driver of the truck/trailer no GJ12 BV0610 laden with container TLLU4615592 recorded on 02.09.2022.
- Statement of Shri Jubair Ali S/o Shri Halim Shaikh, who was looking after the work of loading/unloading at the godown at Bhiwandi was recorded on 03.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Samir Sharma, G-Card Holder of Custom Broker firm M/s Al Cargo Services, was recorded on 05/06.09.2022, 08.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Akash Desai, General Manager of M/s. Empezar Logistics PVT. LTD., was recorded under Section 108 of Customs Act, 1962 on 08.09.2022.
- Statement of Shri Sushant Biltiwala, was recorded on 14.09.2022 Under Section 108 of the Customs Act, 1962.
- Statement of Shri Chhaju Ram Proprietor of M/s. Prince Logistics, was recorded on 14.09.2022 under Section 108 of the Customs Act, 1962.

- Statement of Mohammad Asif Sathi was recorded under Section 108 of the Customs Act, 1962 on 21.09.2022, 22.09.2022, 24.09.2022, 26.09.2022, 24.11.2022.
- Statement of Shri Mohammad Tahir Menn Proprietor of M/s. M.M. Enterprises, was recorded under Section 108 of the Customs Act, 1962, on 25.09.2022, 25.11.2022
- Statement of Shri Sarfaraj Kamani was recorded under Section 108 of the Customs Act, 1962, Gandhidham on 29.09.2022, 30.09.2022, 25.11.2022.
- Statement of Mrs. Nikhat Baig was recorded by the DRI on 11.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Baldevsinh Vala, Authorised Signatory of M/s. Kalpana Exim, was recorded on 05.09.2022, 06.09.2022, 07.12.2022, 08.12.2022, 09.12.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Mohamed Hanif Ismail Kapadia was recorded on 04.10.2022 under Section 108 of the Customs Act, 1962
- Statement of Shri Dirgesh Dhiraj Dedhiya, Proprietor of M/s. Exemplar Trading, was recorded under Section 108 of the Customs Act, 1962, on 22.11.2022.
- Statement of Mr. Venkat Jagan Peetani, Assistant General Manager Operations of M/s. Yang Ming Line India Pvt. Ltd., recorded on 23.03.2023.
- Statement of Shri Vipin Sharma was, recorded under Section 108 of the Customs Act, 1962 on 10.08.2023.
- Statement of Shri Amit Kumar Mishra was recorded on 16.08.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Suresh Kumar, the then appraiser was recorded on 17.08.2023 under Section 108 of the Customs Act, 1962.

8. On the basis of available evidence/records/details/documents in the present investigation, following persons were arrested during investigation;

Table 2

Sr. No.	Name of the person	Date of arrest
1	Shri Parwej Alam	04.09.2022 (arrested at Surat)
2	Shri Asif Sathi	26.09.2022 (arrested at Gandhidham)
3	Shri Tahir Menn	26.09.2022 (arrested at Gandhidham)
4	Shri Sarfaraz Kamani	30.09.2022 (arrested at Gandhidham)
5	Shri Baldevsinh Vala	08.12.2022 (arrested at Gandhidham)

9. The present Show Cause Notice has been issued to M/s. Exemplar Trading (IEC No. BVIPD3861L) in respect of import consignments listed herein below

Table 3

Sr. No.	Container No.	Warehouse Bill of Entry No. & Date	SEZ to DTA Bill of Entry No. & Date

1	SEGU4114778	1011546 dated 29.08.2022	2013039 dated 30.08.2022
2	TCNU8506372	1011559 dated 29.08.2022	2013040 dated 30.08.2022

9.1. Since the investigation in the present matter could not be completed within 06 months as per provisions of Section 124 of the Customs Act, 1962 due to unavoidable circumstances, the competent authority granted extension for issuance of Show Cause Notice in this matter vide Order dated 27.02.2023.

10. VALUATION OF THE GOODS

10.1. As mentioned in the forgoing paras, **M/s. Exemplar Trading** have imported total 02 import consignments which were examined by the officers of DRI at Mundra Port under different panchnamas. During examination of goods, gross mis-declaration was observed in respect of value, quantity and other material particulars. Further, various goods were found un-declared in the import consignments which were found in violation of the provisions of the Customs Act, 1962 and other allied Acts. M/s. Exemplar Trading had filed Bills of Entry for **02 import consignments** pertaining to said containers mentioned in Table 9 above.

10.2. The inspection of the subject goods was conducted by the Govt. approved Chartered Engineer. During inspection of the goods *prima facie* it appeared that the declared value of the goods was mis-declared to evade the applicable Customs Duty. The report submitted by the Chartered Engineer for the said consignments also indicated that the value of the goods was grossly mis-declared. Therefore, the value declared by the importer in the corresponding Bills of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 (*CVR for short*) and thus the same appeared liable to be rejected in terms of **Rule 12 of CVR, 2007**. The value was required to be re-determined by sequentially proceeding in terms of **Rules 4 to 9 of CVR, 2007**.

10.3. As mentioned above, the transaction value declared by the importer in case of above **02 BEs** was liable to be rejected under **Rule 12 of CVR 2007** as there has been observed significant mis-declaration of goods in parameters such as description, quality, quantity. In absence of credible data of import of similar goods and other constraints the value of these goods could be determined in terms of **Rule 4,5,6,7,8 of CVR 2007**. Hence, the value is to be determined in terms of Rule 9 of said rules.

10.4. Therefore, the value assessment as provided by the Chartered Engineer could be considered as the basis for arriving at assessable value of these goods. Therefore, the declared assessable value of the goods pertaining to **Container No. SEGU4114778 and TCNU8506372** for which they have filed Bill of Entry No. 2013039 and 2013040 both dated 30.08.2022, was required to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007. The Chartered Engineer in his report provided as under;

Table 4

Sr. No	Container No.	DTA Bill of Entry No. and dated	Declared description of Goods as per BE/BL/IGM	Actual Goods found during examination	Quantity found (pcs.)	Market price as per valuation report
1	SEGU4114 778	201303 9 dated 30.08.2 022	Hair Trimmer	KEMEI Hair Clipper(Trimmer)	25440	3083328 0
			Hair Dryer	KEMEI Hair Dryer	2000	1098000
			Hair Straightener	KEMEI Hair Straightener	3000	1497000
2	TCNU8506 372	201304 0 dated 30.08.2 022	Water bottle	Water bottle	2300	1147700
			Empty Carton box	Empty Carton box	24000	140000
			small waterproof adhesive tape	small waterproof adhesive tape	8712	3476088
			Foot pads	Foot pads	60000	720000
				Dancing Cactus Toys	24000	1560000 0

11. Mis-declaration, Misclassification and liability to Confiscation of import goods of M/s. Exemplar Trading: -

11.1.1. Import of Hair Dryer/Straightener/Hair trimmer by way of mis-declaration and undervaluation

During examination of the goods M/s. Exemplar Trading pertaining to following import consignments, total 30440 Hair Straightener/Hair trimmer (HS Code 85102000) were found which were mis-declared in terms of description and quantity by the importer. The same have been Tabulated below:

Table 5

S R N O.	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE)
1	M/s Exemplar Trading	SEGU41 14778	Hair Trimmer	27350	KEMEI Hair Clipper(Trimmer)	851020 00	3044 0	30833 280
2			Hair Dryer		KEMEI Hair Dryer	851020 00		10980 00
3			Hair Straightener		KEMEI Hair Straightener	851020 00		14970 00

11.1.2. Since the total quantity of **30440** pcs Hair Straightener/Hair trimmer having market price of **Rs 3,34,28,280/-** are found mis-declared in respect of description and quantity at the time of filing Bills of Entry for the same before Customs officers thereof, hence these goods appeared to be liable for confiscation

under Section 111(f), 111(m) of the Customs Act, 1962. The above quantity of hair Clipper/Trimmer/hair dryer include the excess quantity total **3090 Pcs.** of hair Straightener not included in the documents, are also liable to confiscation under Section 111(l) of the Customs Act, 1962. It further appeared that the importer and beneficial owners are liable to pay the applicable Customs Duty of **Rs. 1,46,95,072/-** for import of these goods valuing **Rs 3,34,28,280/-** as per **Annexure A to the SCN.**

11.2.1. Import of water bottle/Empty Cartoon box/small waterproof adhesive tape/Foot pad by way of mis-declaration and undervaluation:

During examination of the goods **M/s. Exemplar Trading** pertaining to following import consignments were found which were mis-declared in terms of description and quantity by the importer. The same are Tabulated below: -

Table 6

S R N O.	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE)
1	M/s Exemplar Trading	TCNU8 506372	Water bottle	25380	Water bottle	39269 099	2300	114770 0
2			Empty Carton box	24000	Empty Carton box	48191 010	24000	140000
3			small waterproof adhesive tape	8712	Small waterproof adhesive tape	39199 090	8712	347608 8
4			Foot pads	60000	Foot pads	30059 090	60000	720000

11.2.2. Since the total 25380 pcs of Water Bottle, 24000 pcs of carton box, 8712 pcs of Small Water Proof adhesive tape and 60000 pcs of Foot pads as mentioned above having value of **Rs 54,83,788/-** are found mis-declared in respect of description, quantity and value thereof, hence the said goods appeared liable for confiscation under Section 111(f), 111(m) of the Customs Act, 1962. It further appeared that the importer and beneficial owners are liable to pay the applicable Customs Duty of **Rs. 19,51,009/-** for import of these goods valuing **Rs. 54,83,788/-** as per **Annexure A to this notice.**

11.3.1. Import of Toys by way of mis-declaration and undervaluation

During examination of the goods of **M/s. Exemplar Trading** pertaining to following import consignments, 'Toys' falling under HS Code 95030020 having market price of **Rs.1,56,00,000/-** were found concealed which were not declared by the importer, as tabulated below.

Table 7

SR NO	IEC Name	No. of container	Declared Goods	Declared	Goods found during	HSN	Quantity	Value (As per CE)

				quant ity	examina tion			
1	M/s Exempla r Trading	TCNU85 06372	---	--	Dancing Cactus Toys	9503 00	2400 0	15600000

11.3.2. Requirement of BIS Certification for import of 'Toys' and violations of provisions of SEZ Act, 2005 and rules made thereunder;

The import of the goods falling under Chapter 950300 of description "*Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced- size ("scale") models and similar recreational models, working or not; puzzles of all kinds*" is allowed subject of fulfilment of Policy Condition 2 of the Chapter. The Policy Condition 2 of the Chapter is reproduced hereunder;

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

- (i) A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS) (a) IS: 9873 (Part 1)-Safety of toys; Part-1 Safety aspects related to mechanical and physical properties (Third Revision)
- (b) IS:9873 (Part 2) - Safety of Toys; Part-2 Flammability (Third Revision)
- (c) IS:9873 (Part 3)-Safety of Toys; Part-3 Migration of certain elements (Second Revision)
- (d) IS: 9873 (Part 4) Safety of Toys; Part-4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic e (e) IS: 9873 (Part 7)-Safety of Toys; Part-7 Requirements and test methods for finger paints.
- (f) IS: 9873 (Part 9)-Safety of Toys; Part-9 Certain phthalates esters in toys and Children's products. (g) IS: 15644-Safety of Electric Toys.
- (ii) A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part-1, Part-2, Part-3, Part-4 Part-2 and 15644:2006.
- [(iii) Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance given by Customs on the condition that the product cannot be sold in the market till successful testing of the sample. Further, if sample drawn fails to meet the required standards; the consignment will be sent back or will be destroyed at the cost of importer.

11.3.3. As mentioned above, M/s. Exemplar Trading have imported total Toys **24000 Pcs.** such as Cactus, having market price of **Rs. 1,56,00,000/-** without mandatory BIS compliance and by way of mis-declaration. Therefore, the said toys and also appear to have been imported in violation of the provisions of Condition 2 of

Chapter 95, being the offending goods, should not be held liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962.

12. ROLE AND CULPABILITY ON THE IMPORTER/PERSON/FIRM INVOLVED:

12.1. Role of Shri Dirgesh Dedhia

- (i) Shri Dirgesh Dedhia is proprietor of firm M/s Exemplar Trading. It appears that in lieu of getting easy money he allowed Shri Asif to import goods in his firm's name. Shri Baldevsinh clearly told him that Shri Asif was going to import slippers, hair straightener, cloth bag, mop, clipper, trimmer, water bottles, etc. at Mundra port through Mundra SEZ and also offered 3% commission of invoice value in lieu of allowing his IEC of M/s. Exemplar Trading for import of the goods and he accepted the proposal.
- (ii) From above it appears that Shri Dirgesh knowingly allowed his firm to be used for import of various mis-declared goods. As per his statement he never enquired about actual description and price of goods. But this does not absolve him of his responsibilities to file correct declarations for goods imported by a firm in his name. In fact there is no provision under Customs Act to lend one's IEC to other person for import. Shri Dirgesh was getting money in exchange for this act and he had already received an amount of Rs 1.5 lakh from Shri Asif for lending of his IEC.
- (iii) Shri Dirgesh also used to supervise the crossing of containers after clearance from Mundra SEZ indicating that he was well aware about the nature of mis declared goods in his consignments. The crossing was apparently done to evade detection and tracking by enforcement agencies as per version of Shri Baldev. Thus, it appears that Shri Dirgesh was fully Aware of the nature of mis-declaration/concealment/undervaluation in consignments imported in name of his firm and thus was a partner in crime with the gang of smugglers led by Shri Asif. He was part of the gang led by Shri Asif and comprising of Shri Tahir, Shri Baldevsinh, Shri Sarfaraj, Shri Hanif, Shri Gaurav Sahay and Shri Samir Sharma. He had also gone on a trip to Dubai with these gang members to explore business opportunities. It appears that he had full knowledge about activities of this smuggling cartel and also about the imports being done in the name of dummy firm Exemplar Trading.
- (iv) From above, it appears that Shri Dirgesh has done an act which rendered the impugned goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with mis- declared goods including prohibited goods i.e. toys being imported in the name of Exemplar Trading which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) and 114A of the Customs Act 1962.
- (v) Further it appears that M/s. Exemplar Trading had lent its IEC to Shri Asif Sathi, Shri Safaraz, Shri Tahir etc. in lieu of monetary consideration. This IEC of M/s. Exemplar Trading was used by Shri Asif for his own import, and they have used KYCs of this firm for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It appears that M/s. Exemplar Trading has knowingly and intentionally made/ signed/used and/or caused to

be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appears that Shri Dirgesh Dedhia, proprietor of M/s. Exemplar Trading is also liable to penalty under Section 114AA of the Customs Act, 1962.

12.2. Role and capability of Shri Asif Sathi

- i Shri Asif was the mastermind behind the entire racket of import of e-cigarettes, toys, and other mis-declared products/concealed products as highlighted vide **Table 1** hereinabove. He had planned the illegal import of the e-cigarettes by using front/benami/fake entities, remained behind curtail and thereby attempted to remain away from the eyes of enforcement agencies.
- ii He arranged IECs of various firms through other persons and planned the import of mis-declared/concealed/prohibited products in these IECs. He did this in partnership with Shri Sarfaraj and Shri Hanif who were also Mumbai based persons, similar to him. **He managed various godowns in Mumbai where the offending goods would be offloaded and sold to domestic buyers. For the customs clearance work, he took help of Shri Baldev whom he approached through Shri Tahir.** He also used IECs of various firms as mentioned vide Table 14 to subject SCN.
- iii He clearly informed Shri Baldevsinh that he wanted to import prohibited goods such as Toys and e-cigarettes, apart from usual mis-declared/undervalued/counterfeit goods. Mr. Asif used to send him Bill of Lading through WhatsApp along with Invoice, Packing List etc., and based on these documents Bills of Entry were filed by Shri Sameer Sharma. Since the goods in the consignments were mis-declared/ prohibited/ restricted/ undervalued, hence depending upon the extent of mis-declarations he used to make payment of Rs. 15000/- to Rs. 50,000/- per IEC per Consignment to Shri Vishal, Shri Tahir and Shri Baldev. For clearance of consignment of e-cigarettes Shri Asif even paid a hefty amount of Rs 17 Lakh per container to Shri Baldevsinh.
- iv For payment of Customs duty for these import consignments and payment to foreign supplier, Shri Asif used to deposit cash or do bank transfer from domestic purchaser firms in accounts of these dummy firms, from where such payments used to be made.
- v Cleared goods were dispatched to his godown in Bhiwandi where Shri Parvez Alam was deputed by him for receipt, loading/unloading, storage, further dispatch work etc. He had indulged in importation of e-cigarettes/Toys multiple times and used to sell the same to various domestic buyers such as Raju bhai, Sohail bhai for e-cigarettes and Imran, Sagar, Rajguru, Sandeep for Toys.
- vi Shri Asif and his cartel had already imported and sold out 265 cartons of e-cigarettes in the month of July, 2022 and August, 2022 out of which left out quantity of 12 cartons containing 9600 pcs of e-cigarettes have been recovered by officers of DRI from the godown of smuggling syndicate at Bhiwandi under Panchnama dated 01/02.09.2022.
- vii From discussions in WhatsApp Group “Mm”, it appears that Shri Asif had planned the import of prohibited items such as Toys and e-cigarettes, undervalued and counterfeit items such as mobile accessories, and multiple mis-declared import consignments as mentioned in Table 3.

viii After interception of various consignments pertaining to him by DRI, Shri Mohammad Asif Sathi insisted the shipper of Container No. TGBU5160748, being imported in name of firm J H Enterprises to attempted to revised the Bill of Lading changing discharge port from Mundra to Jebel Ali, Dubai instead of declared port of discharge i.e. Mundra but while attempting to divert the same, the said consignment was intercepted by the DRI. From this consignment 251 cartons of e-cigarettes were recovered.

ix In view of the above, it appears that Shri Asif has played an active role in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. e- Cigarettes. Mohammad Asif Sathi was aware that the business of e-cigarettes is prohibited in India since 2019 and even though he was running the organized smuggling syndicate, which deals in smuggling and distribution of Prohibited goods i.e. e- Cigarettes. It also appears that Shri Asif was the mastermind behind import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3 to subject SCN.

x **In the present case**, in respect of import of goods in name of **M/s.Exemplar Trading, Shri Asif** has acted as the mastermind of the smuggling cartel and his role remains the same as has been described in above paras. Thus, it appears that Shri Asif has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Asif has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962. Further it appears that Shri Asif had used IECs of dummy firms for his own import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. **He has also forwarded incorrect documents for filing of Bills of Entry for these consignments with false declarations.** He has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appears that **Shri Asif** is also liable to penalty under Section 114AA of the Customs Act, 1962.

12.3. Role and culpability of Shri Mohammed Tahir Menn

i **Shri Mohammed Tahir Menn** is the owner and sole Proprietor of firm **M/s. M.M. Enterprises**, having office at Office No. 2, Ground Floor, Alfa Arcade, Opp. to Shifa/Khojani Hospital, Ashpura Ring Road, Sumra Dairy Char Rasta, Bhuj (Kutch). Shri Tahir was an active member of the smuggling cartel led by Shri Asif. He lent his own IEC i.e. of **M/s.MM Enterprises** to Shri Asif. He further created an IEC of **M/s. J H Enterprises** in name of **Shri Juma Hamir Halepotra**, caretaker of Asif's bungalow in Bhuj and gave it to Shri Asif. The said two IECs were used to import e-cigarettes.

- ii The cartel led by Shri Asif and in which Shri Tahir was an active member had already imported and sold out 265 cartons of e-cigarettes in the month of July, 2022 and August, 2022 out of which left out quantity of 12 cartons containing 9600 pcs of e-cigarettes have been recovered by officers of DRI from the godown of smuggling syndicate at Bhiwandi under Panchnama dated 01/02.09.2022. From various statements, WhatsApp chat conversations, it is crystal clear that Shri Tahir had actively participated in import of e-cigarettes in his firms.
- iii Shri Tahir was the person who had introduced Shri Baldevsinh to Asif for customs clearance and transportation work. Shri Tahir used to coordinate through Shri Baldevsinh for all the firms on behalf of Shri Asif. Along with Shri Baldevsinh, Shri Tahir was looking after crossing of containers/goods after customs clearance to avoid interception by enforcement agencies.
- iv From WhatsApp chat conversations it is crystal clear that he has been deeply involved with import of other goods like toys requiring BIS compliance, mobile phone accessories having mark/ logo of various brands like Boat, Realme, etc. infringing Intellectual Property Rights (IPRs), concealment and mis-declaration of goods with respect to quantity and other material particulars in gross violation of the provisions of Customs Act, 1962 and other allied Acts.
- v Shri Tahir has admittedly received substantial monetary benefits from the mastermind in lieu of facilitating the illegal import in the IEC of firms M/s. M.M. Enterprises & M/s.J H Enterprises and services provided by him for knowingly facilitating the illegal import, clearance, transportation etc. in the IECs of other firms viz. M/s. Rajyog Enterprises, M/s. Exemplar Trading, M/s. Aditi Trading Company, M/s. Skyblue International Trading Co., M/s. Nikhat Enterprises, M/s. Global Impex, M/s. JYM Global Trading Company etc.
- vi In view of the above, it appears that **Shri Tahir** has played an active role in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. e- Cigarettes. Shri Tahir was aware that the business of e-cigarettes is prohibited in India since 2019 and even though he was involved in the organized smuggling syndicate, which deals in smuggling and distribution of Prohibited goods i.e. e- Cigarettes. It also appears that Shri Tahir was deeply involved in the import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3 to subject SCN.
- vii In the present case the role of Shri Tahir remains the same as has been described in above paras in respect of import of goods in name of **M/s.Exemplar Trading**. Thus, it appears that Shri Tahir has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Tahir has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions and by knowingly concerning himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also

rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962. Further it appears that Shri Tahir had used IECs of dummy firms (J H Enterprises) for import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. He has also dealt with incorrect documents for filing of Bills of Entry for these consignments with false declarations. He has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appears that he is also liable to penalty under Section 114AA of the Customs Act, 1962.

12.4. Role and culpability of Shri Baldevsinh Vala

- i Shri Baldevsinh Vala is an active associate of cartel of smuggling of prohibited item e-cigarettes and other offending goods imported illegally at Mundra port by way of concealment and mis-declaration like toys requiring mandatory BIS compliance, mobile phone accessories infringing Intellectual Property Rights and/or other goods involving gross undervaluation.
- ii From investigation it appears that Shri Baldevsinh forged the documents provided by foreign supplier for filing Bills of entry for clearance of offending goods and thus manipulated import documents. Bills of entry with incorrect descriptions/value were filed with Customs Authorities at Mundra SEZ by Baldevsinh through Shri Sameer Sharma of Customs Broker firm M/s. Al Cargo Services. After ensuring customs clearance on the basis of fake declarations, Shri Baldevsinh Vala also looked after arrangement of transportation of these goods from Mundra SEZ to the Bhiwandi Godowns of mastermind Shri Mohammad Asif Sathi.
- iii As per statement of Shri Chhaju Ram, Shri Baldevsinh or his associated used to provide details for filing of e-way bills for said movement. Shri Baldevsinh Vala used to inform the vehicle / container number, driver Mb. No. etc. transporting the offending goods to Shri Parvez Alam, associate of said mastermind and supervisor of their Bhiwandi godowns.
- iv In the mobile phone of Shri Parvez Alam, WhatsApp Chat conversations between Shri Parvez Alam and Shri Baldevsinh Vala informing the particulars of vehicle / container number, driver Mb. No., location of vehicle carrying 107 cartons of e-cigarettes in Container No. TLLU4615592 have been found. Further, from the mobile phone of Shri Mohammed Tahir Menn, in the WhatsApp Chat conversations held in a WhatsApp Group namely 'Mm', conversations made by Shri Baldevsinh Vala have been recovered. These conversations include messages from Shri Baldevsinh Vala instructing other group members viz. mastermind Mohammad Asif Sathi and his associates Mohammad Tahir Menn, Shri Sarfaraz Kamani etc. to load counterfeit goods, restricted goods and other offending in the containers. Shri Baldevsinh Vala sent messages vide which he assured the group members that he would take care of valuation of goods to save the Duty etc., vide which he instructed other members to keep the amount of restricted goods to the extent of 30%, vide which he informed the group members to make extra expenses for clearance of restricted/prohibited goods involving BIS, IPR issues etc.

- v That Baldevsinh was an equal partner in entire scam is evident from the fact that he had charged a hefty sum of Rs 17 lakh per container to clear the container of e-cigarettes imported by Shri Asif. He had also suggested to Shri Asif that the crossing of the containers was necessary, after clearance from Customs, and before movement to Bhiwandi, to avoid the interception and tracking of the containers through e-way bill while transporting concealed/prohibited/mis-declared goods from Mundra to Bhiwandi. He had also argued that consignments of e-cigarettes should not be placed near the gate of the containers. He was well aware of import of e-cigarette by M/s. M M Enterprises in the month of July-August also and had suggested that cartons of e-cigarettes should not be placed near the front side of the container.
- vi His knowledge about the undervaluation in import goods is also evident from chats messages in which he is assuring Shri Asif that he will handle the valuation aspects.
- vii As per the well hatched conspiracy, Shri Baldevsinh Vala arranged IECs of M/s. Exemplar Trading to the said mastermind, Shri Asif, in lieu of Rs. 15,000/- per container for import of such offending goods.
- viii Hence it appears that Shri Baldevsinh Vala was admittedly was aware that the business of e-cigarette is prohibited in India and even though he was an associate of the organized smuggling syndicate, which was dealing in smuggling and distribution of Prohibited goods i.e. e- Cigarettes and also in other offending goods. It also appears that Shri Baldevsinh was an active member of the smuggling cartel, led by Shri Asif, behind import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3.
- ix In the present case, the role of Shri Baldevsinh Vala remains the same as has been described in above paras with regards import of goods in name of M/s. Exemplar Trading. Thus, it appears that Shri Baldevsinh Vala done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Baldevsinh Vala willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112(b) of Customs Act 1962. It also appears he has also manipulated the description and values in Bills of Entries (including the Bills of Entry pertaining to M/s. Exemplar Trading) and guided other members of smuggling racket regarding stuffing, and filing wrong declarations in Documents for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It appears that he has knowingly and intentionally made/ signed/ used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Shri Baldevsinh is liable to penalty under Section 114AA of the Customs Act, 1962.

12.5. Role and culpability of M/s Kalpana Exim

- (i) Investigation revealed that all the consignments in this case were forwarded for clearance by one Shri Baldevsinh Vala, Authorised Signatory of M/s. Kalpana Exim, Mundra. Shri Abhalsinh Vala is the Proprietor of the firm M/s. Kalpana Exim, however, due to disturbance in his family life, Shri Baldevsinh was looking after overall business operations in this firm. Shri Abhalsinh Vala was part time assisting in preparing invoices and other related activities.
- (ii) Shri Mohammad Asif Sathi contacted Shri Baldevsinh, working on behalf of Kalpana Exim, who assured him to get clearance of his import consignment from Customs. Shri Baldevsinh also arranged to change/forge/fabricate the documents sent by shipper pertaining to import consignments by showing different description and quantity. Shri Baldevsinh also agreed to provide customs clearance of prohibited items such as e-cigarettes and toys requiring BIS for Asif. Shri Baldevsinh also arranged one IEC (of Exemplar Trading) in lieu of Rs. 15,000/- per import container for Asif whose forwarding was also done by Kalpana Exim.
- (iii) From investigation it appears that Kalpana Exim offered Shri Asif to take care of customs clearance work (through Shri Samir Sharma) of mis-declared, prohibited, restricted, undervalued consignments as listed in Table 3 as the forwarding work of these imported consignments for transport to godowns in Bhiwandi.
- (iv) From investigation it appears that Kalpana Exim actively associated itself with the cartel of smuggling of prohibited item e-cigarettes and other offending goods imported illegally at Mundra port by way of concealment and mis-declaration like toys requiring mandatory BIS compliance, mobile phone accessories infringing Intellectual Property Rights and/or other goods involving gross undervaluation.
- (v) Thus, it appears that Kalpana Exim has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Kalpana Exim has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS and the goods infringing IPR, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and (b) of Customs Act 1962.
- (vi) It also appears that Kalpana Exim was fully aware that the consignments were in name of dummy importers i.e. M/s. Exemplar Trading in this case. Yet they connived with the smuggling cartel and attempted to transport these goods to Bhiwandi. It appears that Kalpana Exim has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Kalpana Exim is liable to penalty under Section 114AA of the Customs Act, 1962.

12.6. Role of Shri Mohamed Hanif Ismail Kapadia

- i Shri Hanif Kapadia was a business associate of Shri Asif. He was running the business of online sell-purchase of mainly trimmers and shavers, massagers etc. in partnership with Shri Mohammad Asif Sathi through their firm M/s. Astrum Trading Pvt. Ltd. Shri Asif was importing these massagers /trimmers/shavers through various dummy firms as highlighted in investigation by way of gross undervaluation and mis-declaration. The same goods were being sold jointly by Shri Asif and Shri Hanif online in domestic market of India.
- ii It also appears that Shri Hanif was partners/business associates of Shri Asif in companies registered in China such as M/s. AH International Trading Co. Limited, in which AH stands for 'Asif' and 'Hanif' and in M/s. HK Longcheng Trade Co. Limited, in which HK stands for Hanif Kapadia as per version of Shri Tahir. They were also going on business tours outside India together and finalising deals of import. Thus, it appears that Shri Hanif, in a pre-planned manner, had connived with Shri Asif for managing companies in China. From these companies in China undervalued goods were routed to India and imported in dummy companies managed by Shri Asif.
- iii In the present case the role of Shri Hanif Kapadia in respect of import of goods in name of M/s. Exemplar Trading, remains same as has been described in above paras. It appears that Shri Hanif has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. Toys and other mis-declared goods imported by M/s Exemplar Trading which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112(b) of Customs Act 1962.
- iv It appears that Shri Hanif was managing the firms M/s. AH International Trading Co. Limited, and M/s. HK Longcheng Trade Co. etc. in China from where mis-declared goods were being sent to India including the imports done in the name of M/s. Exemplar Trading. It further appears that the Bills of Entry filed for goods of these companies did not reflect the correct entries and entries were manipulated by Shri Baldev and/or Shri Asif. Since Shri Hanif was managing these firms, such manipulation of entries cannot occur without his knowledge. Hence it appears that he has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Shri Hanif Kapadia is liable to penalty under Section 114AA of the Customs Act, 1962.

12.7. Role of Shri Samir Sharma

- **Shri Samir Sharma**, G-Card holder in Customs Broker firm M/s. Al Cargo Services (CB License No. ANUPM4678FCH001) hatched a conspiracy with Shri Baldevsinh Vala, Shri Asif and other associated of the smuggling cartel to import mis-declared/ restricted/ prohibited/ undervalued goods as highlighted in Table 3 to the subject SCN.
- Shri Samir Sharma assured Shri Baldevsinh Vala for clearance of import consignments of offending goods from Customs. Neither the importer firm, nor

their authorised representative provided the import documents to Shri Samir Sharma but the same were given to him by Shri Baldevsinh Vala, the forwarder who was not at all authorised by any of the importer firm. During investigation, most of the aforementioned IEC holders were not found or found non-existing. This clearly indicates Shri Samir Sharma has never met the IEC holders and hence verification of genuineness of the IEC holders was not done by him through his reliable sources. It is admitted fact by the mastermind and other concerned key persons that the IEC holders merely allowed their IECs to the mastermind of smuggling racket for getting money from him.

- Being a customs broker Shri Samir Sharma knew that e-way bills were part of the documents required at the time of exiting the consignments from SEZ to DTA while granting Delivery. Yet he connived with the smuggling cartel and submitted E-way Bills with SEZ Customs Authorities having names of unrelated parties such as M/s. Anjali Enterprises, M/s. Nikunj Enterprises, M/s. MD, M/s. Sapna International, M/s. ZU International etc.
- It appears that Shri Samir Sharma was getting Rs. 2.5 lakh to Rs. 3 lakh per consignment in lieu of clearance of offending goods like toys requiring mandatory BIS compliance, mobile phone accessories infringing IPR, by way of mis-declaration.
- From various statements it is evident that Shri Samir Sharma was well aware about mis-declaration in the import consignment pertaining to Shri Mohammad Asif Sathi.
- In view of the above, it appears that Shri Samir Sharma has played an active role in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. e-Cigarettes. It also appears that Shri Samir Sharma was an active part of the cartel led by Shri Asif behind import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 1 to the subject SCN.
- **In the present case, role of Shri Samir Sharma in respect of import of goods in name of M/s. Exemplar Trading**, remains the same as has been described in above paras. Thus, it appears that Shri Samir Sharma has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Samir Sharma has willfully and deliberately indulged into conspiracy of clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.
- Further it appears that Shri Samir Sharma filed Bills of Entry in name of IECs of dummy firms, including M/s. Exemplar Trading in this case, for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. He has also filed incorrect declarations in Bills of Entry for these consignments in return of monetary consideration. He has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related

documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appears that Shri Samir Sharma is also liable to penalty under Section 114AA of the Customs Act, 1962.

12.8. Role of Shri Parvej Alam

- i **Shri Parwej Alam** was working for Shri Asif and Shri Sarfaraj and was in charge of their Godowns in Bhiwandi. He was arranging for unloading of containers arriving from various ports like Mumbai, Mundra etc. to the warehouses/godowns in Bhiwandi. He was also coordinating with Shri Baldevsinh for details of Trucks/containers departing from Mundra to the godowns. Based on instructions of Shri Asif, he was also dispatching imported goods including e-cigarettes and Toys to various domestic customers.
- ii It is evident that he was involved in transportation of e-cigarettes in container bearing number TLLU4615592 which left Mundra on 28.08.2022 in truck number GJ12 BV0610. On instructions of Asif, he reached ICD Sachin, Surat. From this container TLLU4615592 107 cartons of e-cigarettes along with the other items were recovered. He had also involved himself in handling the imported e-cigarettes in the past also i.e. first consignment of 125 carton e-cigarettes in July 2022 and second consignment of 140 cartons of e-cigarettes in August 2022. Out of the second consignment pertaining to August 2022, 12 cartons of e-cigarettes were kept hidden in at Godown No. 6 and 7, Madvi Complex, Anjur Phata, Narayan Talpatri Bhiwandi which was seized under panchnama dated 01/02.09.2022 by DRI, Zonal Unit, Mumbai. It further appears that being incharge of godowns of Shri Asif and Shri Sarfaraj, he was the main person who was aware about all the mis-declared/concealed/restricted and prohibited products being imported by the cartel led by Shri Asif.
- iii Hence, it appears that Shri Parvej has assisted in smuggling of e-cigarettes in violation of provisions of Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019, in as much as he played an active role in removing, depositing, harbouring, keeping and dealing with Prohibited goods i.e. E-Cigarettes in India. It also appears that Shri Parwej was well aware and had handled the unloading, and dispatch of all mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 1.
- iv **In the present case role of Shri Parwej Alam in respect of import of goods in name of M/s. Exemplar Trading**, remains the same as has been described in above paras.
- v Thus, it appears that Shri Parwej has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Parwej has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112(b) of Customs Act 1962.

12.9. Role and culpability of Shri Gaurav Sahay

- Shri Gaurav Sahay was an active member of the smuggling cartel being led by Shri Asif. He was an active member of WhatsApp Group “Mm”. He was also into the business of lending dummy IECs to Shri Asif as is evident from chat conversations in the group. From Chats, it is evident that he had forwarded IEC of “Global Impex” to Shri Asif. He is also seen to be suggesting use of IEC of “Exemplar Trading” in the chats. In chat messages of WhatsApp group “Mm” Gaurav Sahay is actively asking details of BLs of consignments being imported by Asif and about details of “Notify party” that should be mentioned in the documents.
- Being active member of WhatsApp group “Mm”, Gaurav Sahay was also privy to plans regarding import of prohibited goods such as e-cigarettes; restricted goods such as Toys; counterfeit mobile accessories etc. and other undervalued/mis-declared goods. Shri Gaurav Sahay was also receiving monetary benefits from Shri Asif and Shri Tahir had clearly mentioned that he had given Rs 1,00,000/- to Shri Gaurav Sahay for his work in clearing goods pertaining to Asif.
- Hence it appears that Shri Gaurav Sahay is an active associate of cartel of smuggling of prohibited item e-cigarettes and other offending goods imported illegally at Mundra port by way of concealment and mis-declaration like toys requiring mandatory BIS compliance, and/or other goods involving gross undervaluation as mentioned in Table 3.
- **In the present case** role of Shri Gaurav Sahay in case of **import of goods in name of M/s. Exemplar Trading**, remains same as has been described in above paras. All the acts done by him as described above are in contravention to the provisions of Customs Act, 1962 and rules made there under. Thus, it appears that Shri Gaurav Sahay has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping , concealing and dealing with Prohibited goods i.e. Toys and other offending goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and (b) of Customs Act 1962.
- He is also involved in manipulation of documents by mentioning “Notify Party” in name of dummy firms, being managed by Shri Asif one of which was M/s. Exemplar Trading. He is also seen to be actively managing the BLs of the consignments imported by Shri Asif. In these IECs including M/s. Exemplar Trading, Bills of Entries having wrong declarations in Documents for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation have been filed. It appears that he has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Shri Gaurav Sahay is also liable to penalty under Section 114AA of the Customs Act, 1962.

12.11. Role and culpability of Empezar Logistics

- (i) Statement of Shri Akash Desai, General Manager of M/s. Empezar Logistics Pvt. Ltd. was recorded on 08.09.2022. In his statement Shri Akash has stated the entire process of clearance of import goods for DTA sale.
- (ii) Shri Akash Desai explained that M/s. Empezar Logistics had generated Sub-login ID on SEZ Online portal and allotted the same to Shri Samir Sharma, G Card Holder, CHA Firm AL Cargo Logistics for filling of Bill of Entry for warehousing and DTA Clearance for all firms mentioned in Table 3 to subject SCN.
- (iii) However, it is evident that there is no provision under SEZ Act or Rules thereunder regarding creation of sub-id in the name of CHA. It is the responsibility of the SEZ unit to file correct declarations in Bills of Entry. However, it appears that they have used the name of Customs Broker to shift their responsibility and to avoid interception from enforcement agencies. It was noticed that M/s. Empezar Logistics Pvt. Ltd. in connivance with the Customs Broker have arranged for filing the Bills of the Entry not only for the present consignments but also for other import consignments of the present cartel. It was revealed that M/s. Empezar Logistics Pvt. Ltd. had approved the Check list of the imported goods after filing of the same by Shri Samir Sharma. Therefore, M/s. Empezar Logistics cannot escape from their involvement in the name of creating sub-id in the name of CHA. Such a practice is not at all authorised by law.
- (iv) Reference is drawn to Regulation 22 of Special Economic Zones (Customs Procedures) Regulations, 2003:

Regulation 22. Sale of goods by a zone unit in domestic tariff area.-

(1) The zone unit shall be allowed to sell goods manufactured or produced in the zone unit including reject waste, scrap remnants and by-products arising out of such production, in the domestic tariff area on payment of customs duty in terms of clause (b) of section 76F of the Act.

(2) The zone unit engaged in trading activities shall be allowed to sell imported or indigenously procured goods in domestic tariff area on payment of duty under clause (b) of section 76F of the Act subject to the condition that the zone unit has achieved positive Net Foreign Exchange Earning cumulatively at the time of making sale in domestic tariff area and such sale of goods shall be allowed to the extent that Net Foreign Exchange Earning of the unit remain positive.

(3) Domestic tariff area unit intending to buy goods from the zone unit shall be required to file bill of entry for home-consumption giving therein complete description of the goods such as make, model number, serial number, specification, along with invoice and packing list with the customs officers in the zone.

(4) Notwithstanding anything contained in sub-regulation (3), the bill of entry for home consumption may also be filed by the zone unit on the basis of authorization by buyer located in domestic tariff area.

- (v) From above regulations, it is crystal clear that there is no provision to create sub-id in name of CHA. Any such practice is without authority of law. Further the Warehousing Unit cannot shed its own responsibilities while filing correct declarations in Bill of Entry on the pretext that the CHA firm has filed the Bill of Entry. Further Shri Samir Sharma in his statement dtd. 08.09.2022 stated

that the checklist for Bills of Entry filed by him are duly approved by M/s. Empezar Logistics before filing of the same.

- (vi) Hence it appears that M/s. Empezar Logistics is responsible for filing incorrect details in the Bill of Entry filed in name of M/s. M. M. Enterprises pertaining to the said container. Further as per above regulations the Bill of Entry filed for DTA clearance should be having complete description of the goods such as make, model number, serial number, specification. Since in this case the DTA client was not filing the Bill of Entry and because the warehousing unit was getting the Bill of Entry filed using its own id/sub-id, hence the onus for filing correct declarations of the goods in the Bills of Entry falls on the warehousing Unit. It appears that M/s. Empezar Logistics have failed to discharge their responsibility in this regard which had led to clearance of mis-declared/ undervalued/ prohibited goods.
- (vii) Further it was noticed during investigation that some of the import consignments of firms mentioned in Table 1 were being DTA cleared in same Containers without destuffing at the warehouse of M/s. Empezar Logistics Pvt. Ltd. Hence, it appears that M/s. Empezar Logistics Pvt. Ltd. had failed to destuff the entire goods in the said consignment at its warehouse and thus failed to discharge the obligations entrusted on it under SEZ Act and rules thereunder.
- (viii) Further investigation has revealed that large numbers of mis-declared and undervalued consignments having restricted/prohibited/IPR violating goods were cleared into DTA from Empezar Logistics by the cartel led by Shri Asif and other members as mentioned above. In the present case of import of goods in name of M/s. Exemplar Trading, role of M/s. Empezar Logistics remains the same as has been described in above paras.
- (ix) Thus, it appears that Empezar Logistics have done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Empezar Logistics has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a), Section 112 (b) and Section 117 of Customs Act 1962.
- (x) It also appears that **M/s. Empezar Logistics** lent their ID to CHA Shri Samir Sharma for filing of incorrect Bill of Entry No 1011563 dtd.29.08.2022 for Container No. YMMU6620747 without authority of law. Incorrect description and values in Bills of Entries and wrong declarations were accordingly filed for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It appears that M/s. Empezar logistics has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore they are liable to penalty under Section 114AA of the Customs Act, 1962.

12.12. Role and culpability of Shri Vipin Sharma, then Preventive Officer, Mundra SEZ.

During investigation it was noticed that M/s. Exemplar Trading had imported 02 Consignments at Mundra Port for clearance of the same through Mundra SEZ covered under Bills of Entry No. 2013039 and 2013040 both dated 30.08.2022. The said import consignments were imported through Container Nos. SEGU4114778 and TCNU8506372. Both the Bills of Entry were got out of charge from Mundra SEZ and cleared from the warehouse Unit M/s. Empezar Logistics Pvt. Ltd. in the same containers through which the goods were originally imported. During examination of the both the containers, mis-declaration in respect of quantity and value were found including concealment of toys in the container bearing No. TCNU8506372 which required mandatory compliance of BIS as per policy condition 2 of Chapter 95 of the Customs Tariff. Shri Vipin Sharma submitted the examination report for both the import consignments as under;

Examination Order:-

“Check the goods, Inspect the lot. Check description, Qty., w.r.t. Invoice and P/L”

Examination Report

“examined as per SEZ Norms, Examined the goods. Inspected the Lot. Checked description, Qty, w.r.t. Invoice and P/L”

From the above, it appears that Shri Vipin Sharma, the then Preventive officer had not examined the goods in spite of specific directions given by the assessing officer on the system. This indicates that the examination of subject goods was not carried out properly as both the containers were containing offending goods and there was mis-declaration of quantity, value and also concealment of prohibited goods.

From the facts discussed in foregoing paras, it appears that by not carrying out proper examination of subject consignments, Shri Vipin Sharma had submitted the examination report without verifying the actual details/description of the goods whereas, in consequent examination the goods were found mis-declared in respect of quantity, description and value thereof which show his negligence towards his duty. Such act of omissions and commission on the part of Shri Vipin Sharma rendered 30440 pcs of Hair Trimmer/ Hairdryer/ hair Straightener classified under HS Code 85102000 having market price of Rs. 3,34,28,280/-, total 2300 pcs of Water Bottle classified under HS Code 39263099, total 24000 Empty Carton Box classified under HS Code 48191010, total 8712 small waterproof adhesive tape classified under 39199099 and total 60000 pcs. of Foot Pad classified under HS Code 30059090 having total market price collectively to Rs. 54,83,788/- liable to confiscation under Section 111 (f) and 111(m) of the Customs Act, 1962. Further, the “Toys (Dancing Cactus)” (Qty. 24000 pcs. Market Value- Rs. 1,56,00,000/-) were liable to confiscation under section 111(d), 111(f) and 111(m), of the Customs Act, 1962. It therefore appears that Shri Vipin Sharma, then Preventive Officer, Customs House, Mundra have rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962.

13.1. In view of above, a Show Cause Notice F.No. GEN/ADJ/COMM/ 566/2023-Adjn dated 30.08.2023 was issued to M/s. Exemplar Trading (IEC No. BVIPD3861L) and others, and the same was made answerable to show cause in writing to the Commissioner of Customs, Customs House, Mundra, wherein it is proposed as to why:-

- (i) The assessable value of total 30440 pcs of Hair Trimmer/Hairdryer/hair Straightener classified under HS Code 85102000, should not be determined as **Rs. 3,34,28,280/-** under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of **Rs. 1,46,95,072/-** should not be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, as given in **Annexure-A** to the notice.
- (ii) The collective assessable value of total 2300 pcs of Water Bottle classified under HS Code 39263099, total 24000 Empty Carton Box classified under HS Code 48191010, total 8712 small waterproof adhesive tape classified under 39199099 and total 60000 pcs. of Foot Pad classified under HS Code 30059090, should not be determined as **Rs. 54,83,788/-** under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of **Rs. 19,51,009/-** should not be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 as given in **Annexure-A** to the notice.
- (iii) Since the goods mentioned at para (i) to (ii) above have been found mis-declared in respect of description, quantity, value thereof hence it appears that these goods are liable for confiscation under Section 111 (f) and 111(m) of the Customs Act, 1962. Further, the excess quantity 3090 Pcs. of hair Straighteners are also liable for confiscation under Section 111(l) of the Customs Act, 1962 as detailed in Annexure A to this notice.
- (iv) Total **24000 Toys** (Dancing Cactus) falling under HS Code 95030010 found concealed in the import consignments pertaining to Container No. TCNU8506372 and having market price of **Rs. 1,56,00,000/-** imported under Bill of Entry No. 2013040 dated 30.08.2022 which appears to be in violation of the provisions of Condition 2 of Chapter 95, being the offending goods, should not be held liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as mentioned in **Annexure-B** to the notice.

13.2. Further, vide the said Show Cause Notice **F.No. GEN/ADJ/COMM/566/2023-Adjn dated 30.08.2023** penalty has also been proposed to impose upon following persons:-

Table-8

Sr. No.	Name	Penal provisions under Customs Act, 1962			
		(3)	(4)	(5)	(6)
1	Shri Dirgesh Dedia, proprietor of M/s. Exemplar Trading	112(a)	112(b)	114A	114(AA)
2	Shri Asif Sathi (Beneficial owner of the import goods)	112(a)	112(b)	114A	114(AA)
3	Shri Tahir Menn (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)
4	Shri Parvej Alam (Associate of beneficial owner)	112(a)	112(b)	-----	-----
5	Shri Baldevsinh Vala (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)

6	Shri Samir Sharma, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment)	112(a)	112(b)	-----	114(AA)
7	Shri Gaurav Sahay (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)
8	Shri Hanif Kapadia (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)
9	M/s Kalpna Exim	112(a)	112(b)	-----	114(AA)
10	M/s. Empezar Logistics Pvt Ltd.	112(a)	112(b)	117	114(AA)
11	Shri Vipin Sharma	112(a)	--	-----	---

14. DEFENSE SUBMISSION:

14.1. Shri Samir Sharma, G Card Holder of the Customs Broker firm M/s AL Cargo Services (Noticee-6), submitted reply dated 11.07.2024, 16.07.2024 and 02.08.2024 against impugned SCN, wherein they interalia submitted as under:

- (i) that the allegations are solely based only on the statements of Sh. Baldevsinh dated 09.12.2022 and Sh. Dirgesh Dedhia dated 22.11.2022.
- (ii) that the Noticee is a G Card Holder since 2014 and has been working at Mundra port since 2015 under Customs House Agent, M/s A.L. Cargo and the primary work of the Noticee was only to provide Forwarder Services and Custom House Agent Services to the importers.
- (iii) That the Noticee acted as a Forwarder for the consignment imported by M/s. Exemplar Trading.
- (iv) That they were informer in the said matter.
- (v) Admittedly, the whole case made out by the DRI is solely on the basis of the information provided by the Noticee on two dates, 01.09.2022 [through WhatsApp call] and 05.09.2022 (through email)
- (vi) The DRI has deliberately tried to hide the pertinent role of Empezar (CFS) and the Custom officials played in the examination and clearance of the said consignments.
- (vii) that the main role regarding the actual physical examination of goods is carried out by the Emepzar and the Customs Officials and not the Noticee. Further, there is no procedure/requirement for the forwarder to physically examine the goods at any point of time.
- (viii) The Bills of Entry were filed under self by the importers and the CFS, i.e., Empezar acted as their CHA, therefore the importer and the CFS were solely responsible for the clearance of the said goods.
- (ix) As per the SEZ Act, 2005, r/w SEZ Rules, 2005, CBLR Rules or Customs Act, 1962, at no point of time the Noticee was supposed to check the goods physically at any stage of clearance. Further, there are admittedly handwritten examination reports of the Custom Officials confirming that the goods in the consignment were as declared in the said B/Es.
- (x) No evidence has been brought on record to show that the Noticee had prior knowledge about the alleged wrong doing except for the statement of one Sh. Baldev which the Noticee is challenging in this reply.

- (xi) that the Noticee was not part of or had any prior knowledge about the alleged smuggling.
- (xii) that the Noticee was admittedly not part of any incriminating whats app group including the alleged "MM group" in which all the master minds including, Shri Baldevsinh Vala were present. Hence, this further re-enforces the fact that the Noticee did not have any prior knowledge about the goods in the said consignments.
- (xiii) Transporter accepts that all documents regarding the eway bill were provided by either, Shri Baldevsinh Vala or one Mr. Apple from his office.
- (xiv) Admittedly, no statement of Mr. Apple has been recorded by the DRI till date.
- (xv) Hence, in absence of any documents being provided by the Noticee with regards to the destination of the alleged goods, it cannot be alleged that the noticee submitted or was even aware of the eway bills and hence under no circumstances could have connived to allegedly connive with the master minds.
- (xvi) that the DRI has failed to bring on record under which provision is the Forwarder/CHA were liable to submit Eway bills and are responsible for the authenticity of the same.
- (xvii) admittedly, as per the DRI's own affidavit, the allegations levied by Shri Baldevsinh Vala are only verbal and the DRI does not have any documentary evidence to prove the same. Hence, no role of the Noticee is made out.
- (xviii) Allegation regarding receipt of Rs. 2.5 lakhs to 3 lakhs per consignment is incorrect
- (xix) That the documents not provided along with the impugned Show Cause Notice and hence are requested to be provided before the adjudication of the said Show Cause Notice
- (xx) that the Noticee on repeated occasions and vide various letters highlighted the fact that incorrect RUD No. 3 has been provided. Further, it is submitted that RUD 12, RUD 30 and RUD 91 has also not been provided till date. Hence, it is submitted that the said RUDs be provided at the earliest before the adjudication of this matter and for which they will be highly obliged.
- (xxi) that the onus of proof was on the DRI to show that the Noticee had mens rea/ prior knowledge about the alleged smuggling. It is re-iterated that notice only acted as a forwarder that too for only 8 consignments. Further, the allegations are solely on the basis of one Shri Vala Baldevsinh and preventive officer Sh. Vipin Sharma, Preventive officer, without bringing any supporting evidence in regards to the same.
- (xxii) it is no longer res-integra that the statement cannot be the sole basis on which penalty can be imposed on the noticee.
- (xxiii) In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not

find any ground to interfere with the findings of the Tribunal vis- à-vis the respondent.

- (xxiv) That no documents/ evidences have been brought on record to show that how the noticee did or omitted to do any act which render the goods liable to confiscation under Section 111 or abetted the doing or omission of such an act. Therefore, penalty cannot be imposed upon him.
- (xxv) Provide Cross Examination or deny the cross examination after passing a detailed speaking order before the final adjudication of this matter.
- (xxvi) Therefore, the impugned SCN dated 30.08.2023 insofar as the noticee is concerned is liable to be set aside.

14.3. M/s. Kalpana Exim, have submitted their reply dated 23.07.2024 against impugned SCN, wherein they interalia submitted as under:

- (i) That the entire investigation was carried out behind the noticee's back inasmuch as DRI never recorded their statement before making allegation qua goods imported by M/s. Exemplar Trading. Hence, no inculpatory statement is relied against them.
- (ii) That they were not involved in any import related activity of the above importer
- (iii) That all the documents were provided by Shri Asif Sathi to Shri Baldevsinh Vala who in turn passed them to Shri Samir Sharma, CB who prepared Bill(s) of entry. Hence, no omission or commission that allegedly rendered goods liable to confiscation under Section 111 can be attributed to them. Therefore they are not liable to penalty under Section 112(a) and/ or 112(b) of Customs Act, 1962.
- (iv) That there is no evidence to show that they had any prior knowledge about the actual nature of goods imported by the importer. Therefore, they are not liable to penalty under Section 114AA of the Customs Act, 1962.
- (v) That they request for cross examination of Shri Asif Sathi, Shri Baldevsinh Vala to establish that they are innocent.

14.4. M/s. BaldevSinh Vala, have submitted reply dated 22.07.2024 against impugned SCN, wherein he interalia submitted as under:

- (i) That they deny allegation levelled in the SCN.
- (ii) That penal action proposed against him not tenable on the grounds that M/s. Exemplar imported e-cigarettes.
- (iii) that to prove his innocence he requested cross examination of Shri Mohd. Asif Sathi.
- (iv) That he has not rendered the goods imported by M/s. Exemplar liable to confiscation under Section 111 of the Customs Act, 1962. Hence, He is not liable for penalty under Section 112 of the Customs Act, 1962.
- (v) That all the documents were provided by Shri Asif Sathi to Shri Samir Sharma, CB who prepared Bill(s) of entry. He had no means to verify whether these were false or incorrect in any material particular. Hence, it is submitted that he is not liable for penalty under Section 114AA of the Customs Act, 1962.

(vi) That WhatsApp chat cannot be read as evidence without mandatory certificate under Section 138C of the Customs Act, 1962. Hence, he is not liable for penalty under Section 112(a), (b) and 114AA of the Customs Act, 1962.

14.5. Shri Asif Sathi and Shri Dirgesh Dedhia, have submitted their reply dated 05.08.2024 against impugned SCN, wherein they interalia submitted as under:

- (i) That the supplier wrongly supplied some of the excess material with the declared goods as well as 'Toys' which were not ordered by the noticee. They came to know about such mistake of the supplier once the DRI initiated inquiry and alleged that the consignment contains Toys.
- (ii) That there is no cogent evidence to prove that the noticee deliberately mis-declared description and quantities of the imported goods.
- (iii) That it is not the case of the department that they were in possession any documents such as letter, fax messages or correspondence exchanged between the foreign supplier and them, therefore, they should not be held liable for mis-declaration of description and quantities of the goods.
- (iv) That they have no power to open to open the containers or packages for examination of the goods without the permission of the Customs department.
- (v) That upon realization of mistake of the suppliers, they filed various letters with the department stating that the supplier wrongly sent the goods/ loaded excess quantity of goods and such goods may be allowed to be re-exported.
- (vi) That the Chartered Engineer possess the degree of B-Tech (Mechanical) and therefore, it is submitted that he is not qualified person for deciding the value of the goods. The value of goods ought to be examined by a valuer who possess due qualification.
- (vii) That the department failed to investigate and examine the correct value of the imported goods, the valuation proposed to be adopted in the SCN is completely baseless and devoid of any merit.
- (viii) That they sought cross examination of Chartered Engineer in the interest of justice.
- (ix) That the SCN fails to bring on record any evidence to show illegal flow back of money to the overseas supplier.
- (x) That the import in the name of IEC holder is not illegal.
- (xi) That the imported goods are to be allowed to be re-export since the imported goods except e-cigarette are not prohibited goods in India.
- (xii) That the examination of the Co-noticees cannot be relied.
- (xiii) That the goods are not liable for confiscation and penalty cannot be imposed.
- (xiv) That the allegations and charges levelled in the SCN may be dropped in the interest of Justice.

14.6. M/s. Empezar have submitted their reply dated 05.08.2024 and 14.08.2024 against impugned SCN, wherein they interalia submitted as under:

- (i) The authorities have wrongly alleged that there was no system of creation of sub-user id-for the CHA. SEZ online system includes a functionality tool for

the "creation of operation users" which includes Customs House Agent / Customs Broker in the SEZ. This creation of sub-ID is available on the NSDL Database Management Ltd.

- (ii) The maintaining authority of the SEZ Online system. It appears that the authority has not been aware of the relevant provisions in the system and the same has also not been confirmed/verified with the concerned department.
- (iii) The notice as warehousing sez unit have taken all necessary precaution expected from it and there has been no breach much less any participation by the noticee to the illegal modus operandi adopted by the CHA.
- (iv) The noticee has only provided storage services as a licensed warehouse.
- (v) The insinuation of breach on part of the notice is entirely premised on the arboreous presumption that creation of user id was in breach of procedure prescribed which as explained is not accurate and correct.
- (vi) The de-stuffing of goods is the necessitated either for commercial reasons by the importer and/or by the Customs Department for statutory scrutiny. There is no provision either under the Act or under the Rules/ Regulations framed thereunder, which require the warehousing SEZ entity to unilaterally/ independently destuff the goods warehoused in its premise: The facts of the case on the contrary, reveals that despite a specific mandate, the Customs Officers had failed to inspect the goods in question.
- (vii) The notice, as a warehousing SEZ entity, had no visibility much less an active role in the import or clearance of the goods. There is not even an iota of evidence on record to suggest that the notice had any knowledge of the modus operandi adopted by the CHA and other persons. The notice has not been implicated in any of the statements recorded by the department. The case of the department against the notice has been entirely on the issue of creation of sub-user ID, which as explained in the other paragraphs has not been accurate. This being the case, the allegation that the notice had knowingly acted in a way to evade payment of Customs duty and/ or import of prohibited goods is not at all tenable.
- (viii) It is to be noted that though the Bill of Entry is forwarded by the Noticee, the same is not only prepared but also uploaded by the concerned CHA. Similarly, Shri Samir Sharma has also confirmed that in capacity of a CHA of M/s Exemplar Trading, he had further prepared and uploaded DTA Bills of Entry for the said goods by using the user id created on the SEZ Online Portal. Though the said fact has been admitted by the CHA itself as noted in the Show Cause Notice;
- (ix) The proviso under Rule 27(10) of SEZ Rules permits examination of the cargo by SEZ Customs Officers. On the basis of the clearance permission granted by the Customs Department, consignments were cleared from the facility of the Noticee upon payment of duty. As indicated in the show cause notice, the said goods were then de-stuffed and were found lying at Vijaylakshmi Warehouse, Godown No.15, Phase-II, Ambaji Park, Mundra (Kutchh).
- (x) The Noticee is not legally obligated to undertake actions beyond holding the goods on behalf of the importer. Therefore, the allegation of failure to de-stuff the goods is unfounded and misplaced.
- (xi) Section 114AA is applicable only when it is proved with the help of cogent evidence that the notice had, knowingly or intentionally made signed or used

or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular with relation to the impugned goods. In the present case, the department has not brought on record any evidence to show a breach on part of the notice as stipulated in the said section. It is even otherwise submitted that the said provision is attracted only in case of export of goods and is not relevant for the purpose of import/ DTA clearance of goods into India.

(xii) It to be noted that there is no responsibility of the Noticee, as a warehouse keeper, to ensure that written orders given to Authorized officers for due compliance by inspecting the goods are followed, such responsibility lies with the supervisory officers of the Authorized Officers deputed for inspection. Any dereliction of duty on their part cannot be attributed to the warehouse keeper, whose sole source of income is derived from renting space and who has no incentive to collaborate in activities such as mis-declaration, undervaluation, or non-compliance with regulatory provisions. It is evident that the warehouse keeper, having no involvement or financial gain from such activities, would not engage in any violation of the law. The warehouse keeper's responsibility is limited to providing access for the filing of documents, while the collective responsibility for acts of commission and omission rests with M/s. Exemplar Trading and SEZ Customs, of which the Noticee has no knowledge. Therefore, the Noticee cannot be held liable to explain or be subjected to penalties. Consequently, the allegations inviting penalties under Sections 172(a), 112(b), and 117 cannot be imposed upon the Noticee, who has no locus standi concerning the goods.

14.7. Shri Vipin Sharma, submitted reply dated 05.08.2024 against impugned SCN, wherein he interalia submitted as under:

(i) It is submitted that no 'specific directions' was provided in the examination order and the order was general in nature. Further, the penalty Imposed under Section 112(a) has been Imposed upon me in the show cause notice for 'act of omissions and commissions. It is humbly submitted that no evidence whatsoever of abetting under Section 112(a) of the Customs Act, 1962 has been relied upon in the show cause notice. Section 112(a) of the Customs Act, 1962 clearly lays down that the person to be charged under the said section should have been involved deliberately in the act of abetting. No evidence either circumstantial or corroborative in support of the allegation to establish the act of abetting or omission on my part has been submitted/mentioned in the show cause notice. The charge has not been made explicit. The Hon'ble Apex Court in the case of J. Ahmed v. UOI has stated that "lack of efficiency or attainment of highest standard in discharge of duty attached to a public office would not ipsofacto constitute misconduct."

(ii) It is submitted that as per the examination order I was directed to "Check the goods, inspect the lot, check description, quantity, w.r.t. Invoice and P/L". No specific instruction to open each and every box and check the consignments to the extent of 100% was given by the appraising officer. Further, after due examination of the goods as per SEZ norms as stipulated under the SEZ Act and the rules made thereunder, I submitted my examination report as under "Examined as per SEZ Norms, examined the goods, inspected the lot, check description, quantity w.r.t. Invoice and P/L.

(iii) It is alleged that that I had not examined the goods, in spite of specific direction given by the assessing officer. In this regard, it is to humbly submit that, as evident, above, the directions were general in nature and such type of order is invariably given in every examination. No specific instruction in the instant examination order to open each and every box/100% check the consignments was given by the appraising officer. It would not be out of place to mention, here that, had my report been deficient and not according to the norms, my assessing officer would have definitely asked me to submit the detailed report again. .

(iv) There is also an allegation that the goods were found to be mis-declared in respect of quantity, description and value thereof. It is to humbly submit here the examination order never asked for valuation of the goods, hence it was never an object of examination, the allegation in this regard is therefore far-fetched and factually incorrect, further, I had categorically reported that the examination was done as per "SEZ norms"

(v) Attention is invited to the provision stipulated under the SEZ Act and the rules made thereunder in respect of examination of the goods. Rule 75 of SEZ Rules, 2006 which governs the inward and outward movement of goods into or from the Zone.

(vi) that in the instant case, the examination order was neither given by the Specified Officer nor by the Development Commissioner as prescribed under Rule 75. A general order was given by the Appraising Officer and no specific directions with respect to examination of the goods were provided in the said examination order.

(vii) Further, neither specific directions with respect to examination nor any intel/information was shared/provided by the Appraising Officer with respect to any supposed mis-declaration/excess quantity in respect of the goods required to be examined in the instant examination order. Your kind attention is invited to last para at page 105 of the notice, where as per the Statement of Shri Suresh Kumar, the then appraiser, Mundra SEZ recorded under Section 108 of the Customs Act, 1962, he has stated that "they had no CCR prompting warning against the safeguards against Chapters prone to mis-declarations, we had not referred to any other Act/Law while assessing the same on self-declarations of the importers."

(viii) From the above, it is amply clear that 100% examination of goods was not provided at all in any examination order till booking of these cases, in absence of which detecting mis-declaration or excess quantity in respect of imported goods becomes impossible on part of preventive officer. Further, in the instant Bill of Entry also, no 100% examination was ordered by the Appraising Officer in his examination order and the entire act of mine was bonafide, done in good faith and in line with my official duty.

(ix) That the examination done by him was completely in line with the procedure as prescribed under the SEZ Act and the rules made thereunder and the same has been reported to assessing officer, therefore, in absence of act or omission which renders the goods liable to confiscation under Section 111 of the Customs Act, 1962; therefore, penal provision cannot be invoked, and there is no allegation of any active connivance on his part.

15. RECORDS OF PERSONAL HEARING:

15.1. 'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to all the noticees on 19.06.2024, on and 02.08.2024. Details of the PH are as under:

(i) **1st PH conducted on 19.06.2024: Following noticees appeared during PH:**

- **Shri Tahir Menn** - Shri Tahir Menn appeared and requested five days' time to submit his written submission.
- **Shri Dirgesh Dedhia**- Shri Dirgesh Dedhia appeared and stated that he would submit his written submission within five days.

(ii) **2nd PH conducted on 16.07.2024: Following persons appeared to attend the PH.**

- **Shri Tahir Menn (Noticee No. 3)**- Shri Tahir Menn appeared and stated that he will submit his written reply within a week.
- **M/s. Empezar Logistics Pvt. Ltd.**- Shri Paritosh Gupta, Advocate appeared on behalf of M/s. Empezar Logistics Pvt. Ltd., and requested to file their final written submission within a week.
- **Shri Vipin Sharma, then Preventive Officer**- Shri Vipin Sharma appeared and reiterated his written submission dated 16.07.2024 and stated that he will submit additional submission in the matter.
- **Shri Samir Sharma**- Shri Chinmaya Seth, Advocate appeared on behalf of the noticee and stated that he would file submission today. He elaborated that there was no role of Shri Samir Sharma in the matter. He requested for cross examination of Shri Baldevsinh Vala and Shri Vipin Sharma.

(iii) **3rd PH conducted on 02.08.2024:** Shri Amit Laddha, Advocate appeared on behalf of Shri Asif Sathi, Shri Parvej Alam, Shri Hanif Kapadia and Shri Dirgesh Dedhia in virtual mode. He raised questions on methodology adopted by the Chartered Engineer for valuation of impugned goods and sought cross-examination of the CEs. He stated that written submission in the matter will be filed by Monday through e-mail.

16. DISCUSSION AND FINDINGS:

16.1. I have carefully gone through the **SCN bearing F.No. GEN/ADJ/COMM/566/2023-Adjn, dated 30.08.2023** issued by the Commissioner of Customs, Custom House, Mundra, facts of the case, the relied upon documents, submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

- Whether the valuation adopted by the importer in respect of Containers Nos. TCNU8506372 and SEGU4114778 for which they have filed Bills of Entry No. 2013039 and 2013040 both dated 30.08.2022, is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; and Whether the same is to be re-determined as per Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962
- Whether the impugned goods as found mis-declared in respect of description, quantity, value thereof are liable for confiscation under Section 111 (f) and 111(m) of the Customs Act, 1962;

- (iii) Whether the impugned items namely Toys falling under HS Code 95030010 found concealed and mis declared are in violation of the provisions of Condition 2 of Chapter 95 ; being offending goods and therefore liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, or otherwise;
- (iv) Whether the duties of Customs as proposed vide impugned SCN are liable to be demanded and recovered from the noticees or otherwise;
- (v) Whether penalties as proposed vide impugned SCN are liable to be imposed on noticees or otherwise;

16.2. I find that the instant case arises out of examination and seizure of the import goods pertaining to 18 import consignments through 08 different importers as tabulated vide Table-4 of impugned SCN. These 18 consignments were imported in name of 08 different importers and hence Importer-wise separate Show Cause Notices have been issued.

I find that the instant show cause notice deals with only **02 import consignments pertaining to M/s. Exemplar Trading (IEC No. BVIPD3861L)**. I find that DTA Bills of Entry 2013039 and 2013040 both dated 30.08.2022 were filed by the importer in case of **two containers i.e. TCNU8506372 and SEGU4114778** respectively. I find that below mentioned two containers were put on hold by the DRI. The details of the containers are as under:

Table 9

Sr. No.	Container No.	DTA Bill of Entry No. and date	Status of the Goods
1	TCNU8506372	2013040 dated 30.08.2022	Panchnama dtd.06.09.2022 drawn at M/s. Vijaylakshmi Warehouse, Mundra, and detained by detention memo dated 06.09.2022 and seized on 01.11.2022
2	SEGU4114778	2013039 dated 30.08.2022	Panchnama dtd.06.09.2022 drawn at M/s. Vijaylakshmi Warehouse, Mundra, and detained by detention memo dated 06.09.2022 and seized on 01.11.2022

16.3. I find that M/s. Exemplar trading have imported total **02 import consignments** which were examined by the officers of DRI at Mundra Port under different panchnamas. During examination of goods, gross mis-declaration were observed in respect of value, quantity and other material particulars. Further, various goods were found un-declared in the import consignments, which were found in violation of the provisions of the Customs Act, 1962 and other allied Acts. M/s. Exemplar trading had filed Bills of Entry for **02 import consignment pertaining to Container Nos. TCNU8506372 and SEGU4114778**.

16.4. I find that representative samples of impugned goods were drawn from the import consignments in order to find out exact description, nature and value of the imported goods. The samples so drawn were got examined by the Govt. approved Chartered Engineer **Shri Kunal Ajay Kumar of M/s. Suvikaa Associates** and he submitted his Reports dated 22.09.2022 in this regard to DRI. Brief details of the goods and value assessments thereof as submitted by the Chartered Engineer are given as under:-

Table 10

Sr. No.	Container No.	Name of the importer	Description	Total Market price of the goods (in Rs.)	Valuation Report dated
1	TCNU8506 372	M/s. Exemplar trading	Kinoki Foot Pads, Dancing Cactus, Empty Cartons, Water Proof Tape, Water Bottle	2,10,83,788/-	22.09.2022
2	SEGU4114 778	M/s Exemplar trading	Kemei Hair Trimmer/clipper, Kemei Hair Dryer, Kemei Hair Straightener	3,34,28,280/-	22.09.2022

16.5. I find that the report submitted by the Chartered Engineer for the subject consignments indicated that the value of the goods was grossly mis-declared. Therefore, the value declared by the importer in the corresponding Bills of Entry and invoices did not qualify to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007. The relevant Rules of CVR, 2007 are reproduced hereunder:-

3. Determination of the method of valuation.-

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

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

Provided that -

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

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

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

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

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

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

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

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

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

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

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

4. Transaction value of identical goods. -

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

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

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

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

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

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

Rule 5 (Transaction value of similar goods):-

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

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

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

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

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

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in

the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

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

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

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

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

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

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

Rule 8 of the CVR, 2007, stipulates that.-

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

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

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

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

Rule 9 of the CVR stipulated that.-

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

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

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

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

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

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

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

16.5.1. I find that as mentioned above, the transaction value declared by the importer in case of BE No. **2013039 and 2013040** both dated 30.08.2022 are liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed significant misdeclaration of goods in parameters such as description, quality, quantity etc. Further, in absence of credible data of import of similar goods and other constraints, the value of these goods cannot be determined in terms of **Rule 4, 5, 6, 7, 8 of Customs Valuation Rules 2007**. Hence, the value is to be determined in terms of Rule 9 of said rules.

16.6. I find that the transaction value declared by the importer in case of **BE No. 2013039 and 2013040 both dated 30.08.2022** is liable to be rejected under **Rule 12 of Customs Valuation Rules 2007** as there has been observed significant misdeclaration of goods in parameters such as description, quantity and value etc. Therefore, I hold that the declared value of the goods pertaining to container Nos. **TCNU8506372 and SEGU4114778** for which they have filed Bills of Entry No. 2013039 and 2013040 both dated 30.08.2022, is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and merits to be re-determined under Section 14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007.

The report of the Chartered Engineer is reproduced as under;

Table 11

Sr. No	Container Number	DTA Bill of Entry No. and dated	Declared description of Goods as per BE/BL/IGM	Goods found during examination	Quantity	Value (As per CE) (INR)
1	SEGU4114778	2013039 dated 30.08.2022	Hair Trimmer,	KEMEI Hair Trimmer	25440	30833280
			Hair Dryer,	KEMEI Hair Dryer	2000	1098000
			Hair Straightener	KEMEI Hair Straightener	3000	1497000
2	TCNU8506372	2013040 dated 30.08.2022	Water Bottle	Water bottle	2300	1147700
			Empty Carton Box	Empty Carton Box	24000	140000
			Small Waterproof Adhesive Tape	Small Waterproof Adhesive Tape	8712	3476088
			Foot Pads	Foot Pads	60000	720000
				Dancing Cactus Toys	24000	15600000

16.7. Mis-declaration and Misclassification of dutiable goods liable to Confiscation of import goods of M/s. Exemplar Trading: -

(i) M/s. Exemplar trading have imported Hair Trimmer, Hair Dryer and Hair Straightener vide BE no. **2013039 dated 30.08.2022** having total quantity 30,440, against declared quantity of 27,350 ; is re-determined by Chartered Engineer and value of the goods arrived at **Rs.3,34,28,280/-**. Further importer has imported water

bottle, Empty Carton Box, Small Waterproof Adhesive Tape, Foot Pads (except Toys) in BE no. **2013040** dated **30.08.2022**, and the value of the goods is re-determined by CE of the goods to be **Rs.54,83,788/-**. Accordingly, the Chartered Engineer has arrived at value of **Rs.3,89,12,068/-** for these goods. Therefore, the same are liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962. Accordingly, the importer and beneficial owners are liable to pay the applicable **Customs Duty of Rs.1,46,95,072/-** for goods valuing at **Rs. 3,34,28,280/- and Customs Duty of Rs.19,51,009/-** for goods valuing at **Rs. 54,83,788/-** as per Annexure A attached to impugned SCN.

(v) I find that the importer and beneficial owners are liable to pay the applicable Customs Duty of **Rs.1,66,46,081/- (Rs.1,46,95,072/- + Rs.19,51,009/-)** for import of total **dutiable goods** pertaining to BE no. 2013039 and 2013040 both dated 30.08.2022.

16.8. IMPORT OF TOYS BY WAY OF MIS-DECLARATION AND UNDERVALUATION:

(i) I find that during examination of the goods of **M/s. Exemplar trading** pertaining to following import consignments, Toys' falling under HS Code 95030010 were found concealed which were not declared by the importer, as Tabulated below.

Table 12

Sr. No	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE)
1	M/s. Exemplar trading	TCNU8506372	-	-	Dancing Cactus	950300	24000	15600000

16.9. Requirement of BIS Certification for import of 'Toys' and violations of provisions of SEZ Act, 2005 and rules made thereunder;

The import of the goods falling under Chapter 950300 of description "*Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced- size ("scale") models and similar recreational models, working or not; puzzles of all kinds*" is allowed subject of fulfillment of Policy Condition 2 of the Chapter. The Policy Condition 2 of the Chapter is reproduced hereunder;

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

(i) A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS) (a) IS: 9873 (Part 1)-Safety of toys; Part-1 Safety aspects related to mechanical and physical properties (Third Revision)

(b) IS:9873 (Part 2) - Safety of Toys; Part-2 Flammability (Third Revision)

(c) IS:9873 (Part 3)-Safety of Toys; Part-3 Migration of certain elements (Second Revision)

(d) IS: 9873 (Part 4) Safety of Toys; Part-4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic e (e) IS: 9873 (Part 7)-Safety of Toys; Part-7 Requirements and test methods for finger paints.

(f) IS: 9873 (Part 9)-Safety of Toys; Part-9 Certain phthalates esters in toys and Children's products. (g) IS: 15644-Safety of Electric Toys.

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

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

16.10. In view of above, I find that **M/s. Exemplar trading** have imported total **24000 toys**, having market price of **Rs. 1,56,00,000/-** without mandatory BIS compliance and by way of mis-declaration. Therefore, the said toys have been imported in violation of the provisions of Condition 2 of Chapter 95; being offending goods, should be held liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962.

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

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

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

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

- (a) collusion; or*
- (b) any willful mis-statement; or*
- (c) suppression of facts.”*

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

Explanation- For the purposes of this section, “relevant date” means, -

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund
- (d) in any other case, the date of payment of duty or interest.

17.2. I find that the importer had mis-declared the value of the goods at the time of filing of Bills of Entry. The subject import consignments have been imported and it has been observed during the investigation that the declared value of the import goods appeared to be gross undervalued. Investigation carried out by the DRI showed that the subject import consignments have been mis-declared in respect of value thereof in order to evade the applicable Customs Duty. Therefore, the importer by way of resorting to mis-declaration and undervaluation of subject goods as mentioned in Annexure-A to the impugned SCN evaded total **Customs Duty of Rs. 1,66,46,081/- (Customs Duty of Rs. 1,46,95,072/- against impugned goods i.e. total 30,440 pcs of Hair Trimmer, Dryer and Hair Straightener vide BE no. 2013039 dated 30.08.2022, having assessable value of Rs. 3,34,28,280/- (+) Customs Duty of Rs. 19,51,009/- against impugned goods i.e. water bottle, empty carton, waterproof tape etc. (Except Toys) vide BE no. 2013040 dated 30.08.2022 having assessable value of Rs. 54,83,788/- and the same is liable to be demanded under Section 28(4) of the Customs Act, 1962.**

17.3. I find that the investigation carried out by the DRI also revealed that total **24000 Toys** i.e. Dancing Cactus falling under **HS Code 950300** were found concealed in the import consignments pertaining to **Container No. TCNU8506372** and was found concealed having market price of **Rs. 1,56,00,000/-** ; imported evidently in violation of the provisions of Condition 2 of Chapter 95 and being offending goods, are liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as detailed vide.

18. IMPOSITION OF REDEMPTION FINE IN LIEU OF CONFISCATION OF THE GOODS UNDER SECTION 111(d), Section 111(f), and Section (m) OF THE CUSTOMS ACT, 1962:

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

-
-
-
- (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;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

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

(ii). On plain reading of the above provisions of the Section 111(d), Section 111(f) and Section 111(m) of the Customs Act, 1962 it is clear that the impugned goods have been improperly imported to the extent that such goods were concealed, misdeclared and grossly undervalued and, therefore, shall be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately concealed/ misdeclared/ undervalued the imported goods with a malafide intention to evade duty. Therefore, I hold that the impugned imported goods are liable for confiscation as per the provisions of Section 111(d), Section 111(f) and Section 111(m) of Customs Act, 1962.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(d), Section 111(f) and Section (m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

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

(iv) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods where there is no restriction on policy provision for domestic clearance, by paying redemption fine. I find that in the instant case option to pay the redemption fine can be given to the noticee for clearance of the goods for home consumption. The permission of clearance of the goods for home consumption is limited to the goods where there is no policy restriction. The importer has also sought for re-export of the goods. A fundamental requirement in considering requests for re-export is whether the importer has made a truthful at the time of import. In the instant case there has been gross misdeclaration of quantity and value. It cannot be the case that an importer indulges in serious fraudulent mis-declaration and on being caught can seek re-export as a matter of right. The attempt made by importer stating reasons like consignment having been sent wrongly by supplier and seeking re-export is without basis and is an afterthought, the underlying idea being to minimize losses. Here again, the quantum of fine and penalty shall be imposed considering that there is little doubt on the fraudulent nature of these imports as well which is borne out from the fact that the importer did not possess the requisite BIS license for import of Toys.

19. Cross Examination sought by the Noticees:

(i) I find that **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment), (*Noticee No.6*) during his defense submission dated 16.07.2024; requested for Cross Examination of **Shri Baldevsinh Vala** (*Noticee No.5*), and **Shri Vipin Sharma** (*Noticee No.11*), while challenging the veracity of statements of the latter two. I also find that all the RUDs has already been supplied to the noticee. In this connection, I find that the statements of the Noticees have been incorporated in the impugned SCN and none of the noticees have retracted their statements. Whereas, I find that Shri Samir Sharma, G-Card holder of the Customs Broker firm M/s Al Cargo Services has not given any specific and valid grounds for seeking the cross-examination. It also doesn't appear from the facts of the case that the allegations against him in the notice are based solely on the statement of the two named individuals.

(ii) I find that **Shri Asif Sathi** (Beneficial owner of the import goods) and **Shri Dirgesh Dedhia**, Prop. of M/s. Exemplar Trading vide their defense submission dated 05.08.2024 requested for Cross Examination of Chartered Engineer. I observe that Noticee or his representative was part of Panchanama proceedings. It is also prevalent that SCN has been issued long back, however no objection was raised by Shri Asif Sathi or Shri Dirgesh Dedhia on the CE Report immediately after issuance of the SCN. I find that the aforementioned noticees appeared only in the third personal hearing held on 02.08.2024 and did not respond to the first two hearings. Therefore, asking for cross examination at this juncture is clearly a dilatory tactic. I observe that no purpose would be served to allow cross examination of such person as same would only unnecessarily protract the proceedings and has not been sought on genuine grounds. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case.

(iii) **Shri Hanif Kapadia** (Associate of beneficial owner) (*Noticee No.9*) vide written submission dated 05.08.2024 requested for cross examination of Shri Tahir Menn (*Noticee No. 3*), wherein he challenged the statement of Shir Tahir Menn Recorded under Section 108 of the Customs Act, 1962. I observe that though the right of cross-examination in any quasi-judicial proceeding is a valuable right given to the Noticee as these proceedings may have adverse consequences, at the same time, under certain circumstances, this right of cross-examination is not absolute and can be taken away if not necessary and relevant in the facts and circumstances of the case. It is well established that the evidence in adjudication proceeding need not be like the one in criminal cases. Shri Hanif Kapadia has not given any valid grounds for seeking cross-examination and it also does not appear from the facts of the case as laid down in the notice that the allegations against him are based solely on the statement of Shri Tahir Menn.

20.1. In this connection, from the records available before me I find that none the aforementioned persons have retracted their respective statement. Further, the instant case is related to mis-declaration of goods in respect of classification, quantity, valuation and concealment by **M/s. Exemplar trading**, which is based on documentary evidences and corroborated by voluntary statements recorded under Section 108 of the Customs Act, 1962. Besides, all the relied upon documents have already been supplied to the noticees, and the submissions made by them have been

taken on record. I find that **the statements recorded under Section 108 of the Customs Act, 1962, also make for substantive evidences.**

20.2. I observe that when there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination. Reliance is placed on Judgement of **Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273]**, as follows:

"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."

Therefore, I find that cross examination in the instant case is not necessary, has not been sought citing valid reasons and in certain cases sought by individuals who were evasive and did not take part in the investigations and now see this as an opportunity to delay the quasi-judicial process of adjudication.

20.3. I observe that the principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established. The cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per 138B(2) the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

20.4. I find that in the instant case there remains no scope of ambiguity for a man of prudence. Therefore, I observe that no purpose would be served to allow cross examination of such person as same has been sought only with the motive to protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737**:- wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.)**:- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai)**:- wherein it has been observed that cross-examination not to be claimed as a matter of right.

- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- e. Similarly in **A.L. Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

21. I find that during the course of investigation carried out by the DRI the statements of various persons have been recorded under Section 108 of the Customs Act, 1962 which have sufficient evidentiary value to prove the fact that the importer has improperly imported the impugned goods by way of concealment and mis- declaration of the same. I place reliance on the following relevant judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

- The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull- 1983(13)ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement-and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur {2000(117) E.L.t. 515(Tri)}**- wherein Hon'ble Tribunal held that— 'Smuggling evidence- statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.

➤ In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC**. Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

21.1. In view of above, I find that **M/s. Exemplar Trading** have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty by way of concealment and mis-declaration of the impugned goods. I hold that **M/s. Exemplar Trading** failed to ensure the accuracy and completeness of the information filed by them and thereby failed to fulfill their legal obligation of providing correct classification of the imported goods in the Bills of Entry and other documents presented by them before customs.

22. ROLES OF VARIOUS NOTICEES IN THIS ELABORATE SCHEME OF MISDECLARATION AND UNDERTHEVALUATION OF IMPORTED GOODS WITH INTENT TO DEFRAUD THE GOVERNMENT EXCHEQUER: -

I find that the present SCN has elaborately discussed the scheme of smuggling of e-Cigarettes by a group of persons, which is not the subject matter of present adjudication proceeding. However, the present round of adjudication deals with the issue of mis-declaration and undervaluation of other impugned goods. At the same time, it is seen that there was a well-established cartel at work and there is need to take a wholesome perspective of the roles of the members of the cartel across the imports.

22.1. Role and culpability of Shri Dirgesh Dedhia, Prop. of M/s. Exemplar trading

(i) I find that in the present case, M/s. Exemplar trading has imported total 02 import consignments through Container No. SEGU4114778 and TCNU8506372 vide BE no. 2013039 and 2013040 both dated 30.08.2022. The details of the import consignments are given as under;

	Contain er Number	DTA Bill of Entry No. and dated	Declared description of Goods as per BE/BL/IGM	Goods found during examination	Quanti ty	Value (As per CE) (INR)
1	SEGU41 14778	2013039 dated 30.08.202 2	Hair Trimmer,	KEMEI Hair Trimmer	25440	30833280
			Hair Dryer,	KEMEI Hair Dryer	2000	1098000
			Hair Straightener	KEMEI Hair Straightener	3000	1497000
2	TCNU85 06372	2013040 dated 30.08.20 22	Water Bottle	Water bottle	2300	1147700
			Empty Carton Box	Empty Carton Box	24000	140000
			Small Waterproof Adhesive Tape	Small Waterproof Adhesive Tape	8712	3476088
			Foot Pads	Foot Pads	60000	720000
				Dancing Cactus Toys	24000	15600000

- (ii) I find that during visit carried out by the DRI officials under Panchnama dated 16.09.2022 at the declared premises of M/s. Exemplar trading, no business activities were noticed there.
- (iii) I find that investigation carried out by the DRI revealed that Shri Dirgesh Dedhia, Prop. of M/s. Exemplar trading provided signed documents to Shri Asif Sathi and others to use the same for import of offending goods.
- (iv) I find that M/s. Exemplar trading have willingly and deliberately indulged into conspiracy of importing and clearance of prohibited goods i.e. Toys and other offending goods. Further, the importer knowingly concerning themselves in removing, depositing, harbouring, keeping, concealing, selling and dealing with prohibited goods and others mis-declared goods which resulted in contravention of the prohibition of Customs Act, 1962 and Rules made there under. Thus, the aforementioned acts and omission on part of the importer has rendered the impugned goods liable for confiscation under Section 111 of the Customs Act, 1962. In view of above, I find that the importer has rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.
- (v) Therefore, I hold that the aforesaid acts of suppression of facts and willful mis-statement by the importer had led to evasion of Customs duty of **Rs. 1,66,46,081/- (Rs. 1,46,95,072/- +) Rs. 19,51,009/-**; thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the said Customs duty was evaded by reason of willful mis-declaration and suppression of facts with a malafide intention. Therefore, the impugned imported goods such as Hair Trimmer/Hairdryer/hair Straightener, Waterproof Adhesive Tape, Water Bottle, Foot Pads, Empty Cartons valued at **Rs.3,89,12,068/- (Rs. 3,34,28,280/- + Rs. 54,83,788/-)** is liable for confiscation under Section 111(f) and Section 111(m) of the Customs Act, 1962. Further, the impugned '**Toys**' misdeclared as 'Exercise Book', 'Plastic Cube', total valued at **Rs. 1,56,00,000/-** imported by M/s. Exemplar trading in violation of provisions of Conditions 2 of Chapter 95, are liable to be confiscated under Section 111(d), Section 111(f), Section 111(m) of the Customs Act, 1962. With regards impugned dutiable goods, I find that Shri Dirgesh Dedhia, Prop. of M/s. Exemplar trading is therefore liable to penalty under Section 112(a)(ii) of the Customs Act, 1962 in respect of impugned dutiable goods. With regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that Shri Dirgesh Dedhia, Prop of M/s. Exemplar trading are liable to penalty under Section 112(a)(i) of the Customs Act, 1962.
- (vi) In the present case, M/s. Exemplar trading had lent its IEC to Shri Asif Sathi, Shri Safaraz, Shri Tahir etc. This IEC of M/s. Exemplar trading was used by Shri Asif Sathi and others for their own import, and they have used KYCs of this firm for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It reveals that M/s. Exemplar trading has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, Shri Dirgesh Dedhia, Prop of M/s. Exemplar trading is liable to penalty under Section 114AA of the Customs Act, 1962.

(vii) I observe that the importer was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, while in the instant case, the importer had resorted to mis-declaration and undervaluation of impugned imported goods such as Water Bottles, Hair Trimmer, Hair Dryer, Hair Straightener, Small Adhesive Waterproof Tape. Moreover, they also imported 'Toys' in violation of the provisions of Condition 2 of Chapter 95. For these contraventions and violations, the goods fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(d), Section 111(f) and Section 111(m) of the Customs Act, 1962.

(viii) I observe that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. I find that these acts and omissions of the Importer rendered Shri Dirgesh Dedhia, Prop of M/s. Exemplar trading liable for penal action under Section 114A of the Customs Act, 1962.

(ix) I observe that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, I refrain from imposing penalty under Section 112(a) and Section 112(b) of Customs Act, 1962.

22.2. ROLE AND CULPABILITY OF SHRI ASIF SATHI

(i) I find that it is evident from statement dated 05/06.09.2022 of Shri Baldevsinh Vala, Authorised Signatory of M/s. Kalpana Exim, Mundra (Kutch), that Shri Asif had requested him for arranging transportation and clearance of the import goods from Mundra to Bhiwandi for which he agreed and arranged Shri Sameer Sharma of M/s. Al Cargo Services as Customs Broker and Shri Chhaju Ram as Transporter. Shri Baldevsinh Vala in his said statement also stated that on departure of the consignment /vessel from load port, Mr. Asif used to send him Bill of Lading through WhatsApp along with Invoice, Packing List etc.; and based on these documents Bills of Entry were filed with Customs. Shri Baldevsinh Vala also stated that Shri Asif is controller and actual beneficiary owner of various named importers /firms which are registered in the name of different persons; that every time the payments with respect to the consignments pertaining to these firms were received by him (Shri Baldevsinh) from Mr. Asif and none of the persons declared as owner/Prop. in IEC record ever contacted him for any consignment pertaining to these firms other than Mr. Asif and Mr. Tahir.

(ii) **I find that Shri Baldevsinh in his statement dated 07.12.2022 confessed that Asif himself had given him forged/fabricated/manipulated documents with respect to description and quantity of import goods;** while explaining the chats in the group "Mm", Shri Baldev stated the role of Asif as mastermind in importing e-cigarettes, fake /copy products violating IPR, Toys etc. I find that Shri Sarfaraj Kamani in his statement dated 29.09.2022 confirmed that Shri Asif used to contact with the overseas suppliers and he just followed the instructions of Shri Asif. While explaining the chats in the group "Mm", Shri Sarfaraj revealed that these messages in Chat Group "Mm" were relating to loading of import goods involving copy goods, Bluetooth goods

etc.; that he had sent the above mentioned messages in the group as per directions of Shri Asif.

- (iii) I find that Shri Tahir in his statement dated 24.09.2022 confirmed that Shri Asif requested him to import goods on IEC of M/s. M.M. Enterprises and offered him monetary benefits in lieu of providing his IEC. I find that Shri Tahir in his statement dated 25.09.2022 while explaining the chats in the group "Mm", revealed the role of Shri Asif as mastermind in importing e-cigarettes, fake /copy products violating IPR, Toys etc.
- (iv) I find that Shri Mohammad Asif Sathi in his statement dated 21.09.2022 confessed that he imported various items at Mundra port and cleared the same through Mundra SEZ in the IECs of various firms including M/s. Exemplar Trading which were formed in the name of other persons on payment of fixed amount to such IEC holders depending upon the gravity of mis-declaration/concealment/nature of cargo in the consignment. Shri Mohammad Asif Sathi also confessed in his statement that Shri Baldevsinh of forwarder firm M/s. Kalpana Exim, Mundra used to manage to change/forge/fabricate documents received from overseas suppliers by showing different description and quantity. I find that Shri Mohammad Asif Sathi in his said statement also explained the procedure of documentation and payment to overseas supplier which was said to have been done by cash collected from the buyers and deposited in the Bank accounts of dummy IEC holder firms for subsequently making payment to the suppliers' Bank account from the dummy firm;
- (v) I find that the investigation carried out by the DRI revealed that for Customs clearance and transportation of goods Shri Asif Sathi acted hand in gloves with Shri Baldevsinh.
- (vi) In view of above, I find that in the present case of import of goods in name of M/s. Exemplar Trading, Shri Asif has acted as the mastermind of the smuggling cartel and his role remains the same as has been described in above paras. Thus, such acts and omission on part of Shri Asif have rendered impugned goods liable for confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112 of Customs Act 1962. With regards impugned dutiable goods, I find that Shri Mohammad Asif Sathi is therefore liable to penalty under Section 112(a)(ii) of the Customs Act, 1962 in respect of impugned dutiable goods. With regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that Shri Mohammad Asif Sathi is liable to penalty under Section 112(a)(i) of the Customs Act, 1962.
- (vii) I find that Shri Asif Sathi had used IECs of dummy firms for his own import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/ undervaluation. He has also forwarded incorrect documents for filing of Bills of Entry for these consignments with false declarations. He has knowingly and intentionally made/signed/used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it is beyond doubt that Shri Asif Sathi is also liable to penalty under Section 114AA of the Customs Act, 1962.

(viii) I observe that the importer was required to make a truthful declaration as to the contents of the Bills of Entry submitted for assessment of Customs duty, while in the instant case, the importer had resorted to mis-declaration and undervaluation of impugned imported goods such as Water Bottles, Foot Pad, Hair Trimmer, Hair Dryer, Hair Straightener, Water Proof Adhesive tape etc. Moreover, they imported 'Toys' in violation of the provisions of Condition 2 of Chapter 95. For these contraventions and violations, the goods fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(d), Section 111(f) and Section 111(m) of the Customs Act, 1962.

(ix) I observe that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. I find that these acts and omissions of the Importer rendered him liable for penal action under Section 114A of the Customs Act, 1962.

(x) I observe that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, with regards impugned dutiable goods, I refrain from imposing penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that Shri Mohammad Asif Sathi is liable to penalty under Section 112(a)(i) of the Customs Act, 1962.

22.3. Role and culpability of Shri Mohammed Tahir Menn

(i) I find that Shri Baldevsinh Vala in his statement dated 09.12.2022 stated that Shri Mohammed Tahir Menn and Shri Samir Sharma were well aware about mis-declaration in the import consignments pertaining to Shri Mohammad Asif Sathi. Shri Baldevsinh Vala further stated that all the work related to clearance and transportation of all the import consignment pertaining to Shri Mohammad Asif Sathi and his associates at Mundra port was handled by him and Shri Tahir. I find that Shri Vala also revealed in his said statement that Shri Mohammad Tahir Menn and himself were looking after crossing of containers/goods in this case to avoid interception by enforcement agencies.

(ii) I find that Shri Baldevsinh Vala in his statement dated 09.12.2022 also confessed that he along with Shri Mohammed Tahir Menn and Shri Samir Sharma were well aware about mis-declaration in the import consignment pertaining to Shri Mohammad Asif Sathi.

(iii) I find that from various statements, WhatsApp chat conversations, it is evidently clear that Shri Tahir used to coordinate through Shri Baldevsinh for all the firms on behalf of Shri Asif. Along with Shri Baldevsinh, Shri Tahir was looking after crossing of containers/goods after customs clearance to avoid interception by enforcement agencies.

(iv) I find that from WhatsApp chat conversations it is also clear that Shri Tahir has been deeply involved with import of other goods like toys requiring BIS compliance, mobile phone accessories having mark/logo of various brands like Boat, Realme, etc. infringing Intellectual Property Rights (IPRs), concealment and mis-declaration of goods with respect to quantity and other material

particulars in gross violation of the provisions of Customs Act, 1962 and other allied Acts.

- (v) I find that Shri Tahir has admittedly received substantial monetary benefits from the mastermind in lieu of facilitating the illegal import in the IEC of firms including M/s. Exemplar Trading.
- (vi) Thus, it is evident that Shri Tahir has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. Such acts and omissions and by knowingly concerning himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, on part of Shri Tahir Menn has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112 of Customs Act 1962. Therefore, with regards impugned dutiable goods, I find that Shri Tahir Menn is liable to penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that he is liable to penalty under Section 112(a)(i) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.
- (vii) I find that Shri Tahir had used IECs of dummy firms (J H Enterprises) for import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/ concealment/ undervaluation. He has also dealt with incorrect documents for filing of Bills of Entry for these consignments with false declarations. He has knowingly and intentionally made/ signed/ used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, Shri Tahir Menn is also liable to penalty under Section 114AA of the Customs Act, 1962.

22.4. Role and culpability of Shri Baldevsinh Vala

- (i) I find that Shri Mohammad Asif Sathi in his statement dated 21.09.2022 stated that Shri Baldevsinh Vala, Authorised Signatory of M/s. Kalpana Exim managed to change/forge/fabricate the documents sent by shipper pertaining to subject import consignments by showing different description and quantity. He also stated that Shri Baldevsinh also agreed to facilitate customs clearance of prohibited items such as e-cigarettes and toys requiring BIS for Shri Asif Sathi.
- (ii) I find that Shri Mohammad Tahir Menn, Proprietor of M/s. M.M. Enterprises, Bhuj (Kutch), in his statement dated 24.09.2022 stated that Shri Baldevsinh assured that he would clear the consignments of toys (without BIS by way of concealment). He stated that he had given initially Rs 1 lakh and later Rs 3.75 lakh to Shri Baldevsinh after clearance of first import container in his IEC (M M Enterprises). Shri Mohammad Tahir Menn further deposed that Shri

Baldevsinh assured that he would clear the toys after importing the same under his IEC.

- (iii) I find that Shri Dirgesh Dhiraj Dedhiya, in his statement dated 18.08.2023, stated that in the month of April, 2022, Shri Baldevsinh told him that Shri Asif was going to import slippers, hair straightener, cloth bag, mop, clipper, trimmer, water bottles, etc. at Mundra port through Mundra SEZ and also offered 3% commission of invoice value in lieu of allowing IEC of M/s. Exemplar Trading for import of the goods; that Shri Baldevsinh used to do clearance related work of consignments imported in his firm;
- (iv) I find that Shri Samir Sharma in his statement dated 05/06.09.2022 stated that he got the customs related work of various firms including M/s. Rajyog Enterprises, from Shri Baldevsinh Vala who was looking after the forwarder work in M/s. Kalpana Exim. I find that Shri Samir Sharma deposed that Shri Baldevsinh provided him the Bill of Lading, Invoice and Packing list for the import consignments pertaining to subject firms, and that Shri Baldevsinh Vala provided him the KYC documents such as CHA authority letter, IEC copy, GST certificate, PAN card, Aadhar Card and address proof, Bank details etc.
- (v) I find that investigation carried out by the DRI unearthed that Shri Baldevsinh Vala was an active associate of the cartel involved in smuggling of prohibited item e-cigarettes and other offending goods imported illegally at Mundra port by way of concealment and mis-declaration like toys requiring mandatory BIS compliance, mobile phone accessories infringing Intellectual Property Rights and/or other goods involving gross undervaluation.
- (vi) I find that investigation revealed that Shri Baldevsinh forged the documents provided by foreign supplier for filing Bills of entry for clearance of offending goods and thus manipulated import documents. Bills of entry with incorrect descriptions/value were filed with Customs Authorities at Mundra SEZ by Baldevsinh through Shri Sameer Sharma of Customs Broker firm M/s. Al Cargo Services. After ensuring customs clearance on the basis of fake declarations, Shri Baldevsinh Vala looked after arrangement of transportation of these goods from Mundra SEZ to the Bhiwandi Godowns of mastermind Shri Mohammad Asif Sathi.
- (vii) I find that Shri Baldevsinh Vala had knowledge about the undervaluation in import goods which is evident from chats messages in which he assured Shri Asif that he will handle the valuation aspects.
- (viii) I find that Shri Baldevsinh Vala has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It is also evident that Shri Baldevsinh Vala willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112 of Customs Act 1962. Therefore, with regards impugned dutiable goods, I find that Shri Baldevsinh Vala is liable to penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS

Certification is mandated by law, I find that he is liable to penalty under Section 112(a)(i) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

(ix) I find that Shri Baldevsinh Vala also manipulated the description and values in Bills of Entries (including the Bills of Entry pertaining to M/s. Exemplar Trading and guided other members of smuggling racket regarding stuffing, and filing wrong declarations in Documents for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation. Therefore, I find that he has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Shri Baldevsinh Vala is liable to penalty under Section 114AA of the Customs Act, 1962.

22.5. Role and culpability of M/s Kalpana Exim

(i) I find that investigation carried out by the DRI revealed that all the consignments in this case were forwarded for clearance by one Shri Baldevsinh Vala, Authorised Signatory of M/s. Kalpana Exim, Mundra. Shri Abhalsinh Vala is the Proprietor of the firm M/s. Kalpana Exim, however, due to disturbance in his family life, Shri Baldevsinh was looking after overall business operations in this firm. Shri Abhalsinh Vala was part time assisting in preparing invoices and other related activities.

(ii) I find that Shri Baldevsinh also agreed to facilitate customs clearance of prohibited items such as e-cigarettes and toys requiring BIS for Shri Asif.

(iii) I find that M/s.Kalpana Exim offered Shri Asif to take care of customs clearance work (through Shri Samir Sharma) of mis-declared, prohibited, restricted, undervalued consignments as the forwarding work of these imported consignments for transport to godowns in Bhiwandi.

(iv) I find that M/s.Kalpana Exim actively associated itself with the cartel for smuggling of prohibited item e-cigarettes and other offending goods imported illegally at Mundra port by way of concealment and mis-declaration like toys requiring mandatory BIS compliance, mobile phone accessories infringing Intellectual Property Rights and/or other goods involving gross undervaluation.

(v) In view of above I find that M/s.Kalpana Exim has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also reveals that Kalpana Exim has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS and the goods infringing IPR, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions and by knowingly concerning himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, they have made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered themselves liable to penalty under Section 112 of Customs Act 1962. Therefore, with regards impugned dutiable goods, I find that

M/s.Kalpana Exim are liable to penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that they liable to penalty under Section 112(a)(i) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

(vi) Further, I find that M/s.Kalpana Exim was fully aware that the consignments were in name of dummy importers i.e. M/s. Exemplar Trading in this case. Yet they connived with the smuggling cartel and attempted to transport these goods to Bhiwandi. Therefore, I find that Kalpana Exim has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Kalpana Exim is liable to penalty under Section 114AA of the Customs Act, 1962.

22.6. Role of Shri Mohamed Hanif Ismail Kapadia

(i) I find that Shri Hanif Kapadia was a business associate of Shri Asif Sathi. He was engaged in running the business of online sale-purchase of mainly trimmers and shavers, massagers etc. in partnership with Shri Mohammad Asif Sathi through their firm M/s. Astrum Trading Pvt. Ltd. Shri Asif was importing these massagers /trimmers/shavers through various dummy firms as highlighted in investigation by way of gross undervaluation and mis-declaration. The same goods were being sold jointly by Shri Asif and Shri Hanif online in domestic market of India.

(ii) I find that Shri Hanif Kapadia was partners/business associates of Shri Asif in companies registered in China such as M/s. AH International Trading Co. Limited, in which AH stands for 'Asif' and 'Hanif' and in M/s. HK Longcheng Trade Co. Limited, in which HK stands for Hanif Kapadia as per version of Shri Tahir. Thus, Shri Hanif, in a pre-planned manner, had connived with Shri Asif for managing companies in China. From these companies in China undervalued goods were routed to India and imported in dummy companies managed by Shri Asif.

(iii) I find that Shri Hanif has done acts of omission and commission which rendered impugned goods liable for confiscation; and also he has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. Toys and other mis-declared goods imported by M/s. Exemplar Trading which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, the impugned goods are liable to confiscation under Section 111 of the Customs Act, 1962. By such acts of omission and commission Shri Hanif Kapadia has also rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, with regards impugned dutiable goods, I find that Shri Hanif Kapadia are liable to penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that they liable to penalty under Section 112(a)(i) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I

refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

(iv) I find that the investigation revealed that Shri Hanif was managing the firms M/s. AH International Trading Co. Limited, and M/s. HK Longcheng Trade Co. etc. in China from where mis-declared goods were being sent to India including the imports done in the name of M/s. Exemplar Trading. I find that the Bills of Entry filed for goods of these companies did not reflect the correct entries and entries were manipulated by Shri Baldev and/or Shri Asif. Since Shri Hanif was managing these firms, such manipulation of entries cannot occur without his knowledge. Hence, it is evident that Shri Hanif Kapadia has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Shri Hanif Kapadia is liable to penalty under Section 114AA of the Customs Act, 1962.

22.7. Role of Shri Samir Sharma

- (i) I find that during the course of investigation Summons dated 29.09.2022, 06.12.2022, 20.12.2022 and 06.04.2023 were issued to **Shri Samir Sharma** directing him to appear before investigating officer but he did not appear and avoided his presence disobeying the Summons issued to him and abusing the provisions of Section 108 of Customs Act, 1962. Considering his role in the offence and on anticipation of his arrest under Section 104 of Customs Act, 1962, Shri Samir Sharma filed Application for Anticipatory Bail before Hon'ble Additional Sessions Judge, Bhuj and the matter is sub-Judice.
- (ii) I find that as Shri Samir Sharma was avoiding his presence before the investigating officers, Summons dated 09.06.2023 was issued to Shri Anil Mandal, Prop. of Customs Broker firm M/s. Al Cargo Services directing him to appear before the investigating officer to tender statement, to produce documents/details and to explain the evidences but he did not respond either.
- (iii) I find that Shri Baldevsinh in his statement dated 09.12.2022 stated that Shri Samir Sharma was getting Rs. 2.5 lakh to Rs. 3 lakh per consignment in lieu of clearance of offending goods like toys requiring mandatory BIS compliance, mobile phone accessories infringing IPR, by way of mis-declaration; that Shri Samir Sharma was well aware about mis-declaration in the import consignment pertaining to Shri Mohammad Asif Sathi.
- (iv) I find that Shri Dirgesh in his statement dated 22.11.2022, also stated that Shri Samir Sharma used to do clearance related work of consignments imported in M/s. Exemplar Trading.
- (v) I find that Shri Sharma G-Card holder in Customs Broker firm M/s. Al Cargo Services (CB License No. ANUPM4678FCH001) was part of conspiracy hatched by Shri Baldevsinh Vala, Shri Asif and other associates of the smuggling cartel to import mis-declared/restricted/prohibited/undervalued goods.
- (vi) Shri Samir Sharma assured Shri Baldevsinh Vala for clearance of import consignments of offending goods from Customs. Investigation revealed that Shri Samir Sharma never met the IEC holders and hence verification of genuineness of the IEC holders was not done by him through his reliable sources. It is admitted fact by the mastermind and other concerned key persons

that the IEC holders merely allowed their IECs to the mastermind of smuggling racket for getting money from him.

(vii) I find that being a customs broker Shri Samir Sharma knew that e-way bills were part of the documents required at the time of exiting the consignments from SEZ to DTA while granting Delivery. Yet he connived with the smuggling cartel and submitted E-way Bills with SEZ Customs Authorities having names of unrelated parties such as M/s. Anjali Enterprises, M/s. Nikunj Enterprises, M/s. MD, M/s. Sapna International, M/s. ZU International etc.

(viii) In view of above, I find that various persons in their respective statements recorded under Section 108 of the Act, have confessed that Shri Samir Sharma was well aware about mis-declaration in the import consignment pertaining to Shri Mohammad Asif Sathi. His reluctance to join the investigation and use the opportunity to establish his bonafide is a clear indicator of his involvement in aiding the smuggling cartel. Trying to wash away his hands at this juncture and point fingers elsewhere while having evaded taking part in the investigations establishes his role in the entire scheme.

(ix) I find that Shri Samir Sharma has willfully and deliberately indulged into conspiracy of clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Samir Sharma has rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, with regards impugned dutiable goods, I find that Shri Samir Sharma is liable to penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that he is liable to penalty under Section 112(a)(i) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

(x) I find that Shri Samir Sharma filed Bills of Entry in name of IECs of dummy firms, including M/s. Exemplar Trading in this case, for clearance of various offending goods by way of mis-declaration/ concealment/ undervaluation. He has also filed incorrect declarations in Bills of Entry for these consignments in return of monetary consideration. He has knowingly and intentionally made/signed/used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it establishes that Shri Samir Sharma is also liable to penalty under Section 114AA of the Customs Act, 1962.

22.8. Role of Shri Parvej Alam

(i) I find that Shri Baldevsinh Vala in his statement dated 07.12.2022 stated that he was giving container no., truck no., driver contact no. to Shri Parvej Alam for each and every consignment.

(ii) I find that **Shri Parvej Alam** was working for Shri Asif and Shri Sarfaraj and was incharge of their Godowns in Bhiwandi. He was arranging for unloading of containers arriving from various ports like Mumbai, Mundra etc. to the

warehouses/godowns in Bhiwandi. He was also coordinating with Shri Baldevsinh for details of Trucks/containers departing from Mundra to the godowns. Based on instructions of Asif, he was also dispatching imported goods including e-cigarettes and Toys to various domestic customers.

(iii) In view of above, I find that Shri Parvej Alam knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. I find that Shri Parvej has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. Therefore, such acts of omissions and commission on part of Shri Parvej Alam by dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under; has made goods liable to confiscation under Section 111 of the Customs Act, 1962. I find that Shri Parvej Alam has also rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, with regards impugned dutiable goods, I find that Shri Parvej Alam is liable to penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that he is liable to penalty under Section 112(a)(i) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

22.9. Role and culpability of Shri Gaurav Sahay

(i) I find that Shri Baldevsinh in his statement dated 07.12.2022, stated that Shri Asif had created a WhatsApp Group 'Mm' and Shri Gaurav Sahay was also a member of this WhatsApp Group. There were routine discussions about importing counterfeit goods, restricted goods in this group. I find that Shri Gaurav Sahay was also involved in preparation of documents in name of dummy firms as evident from the chat in group.

(ii) I find that the investigation carried out by the DRI clearly revealed that Shri Gaurav Sahay was an active member of the smuggling cartel being led by Shri Asif. He was an active member of WhatsApp Group "Mm". He was also into the business of lending dummy IECs to Shri Asif as evident from chat conversations in the group. I find that being active member of WhatsApp group "Mm", Shri Gaurav Sahay was also privy to plans regarding import of prohibited goods such as e-cigarettes; restricted goods such as Toys; counterfeit mobile accessories etc. and other undervalued/mis-declared goods. I find that Shri Gaurav Sahay was also receiving monetary benefits from Shri Asif and Shri Tahir had clearly mentioned that he had given Rs 1,00,000/- to Shri Gaurav Sahay for his work in clearing goods pertaining to Asif.

(iii) Thus, it is beyond doubt that Shri Gaurav Sahay has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping , concealing and dealing with Prohibited goods i.e. Toys and other offending goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, such act on part of Shri Gaurav Sahay has rendered goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also

rendered himself liable to penalty under Section 112(a)(ii) of Customs Act 1962. Therefore, with regards impugned dutiable goods, I find that Shri Gaurav Sahay is liable to penalty under Section 112(a)(ii) of Customs Act, 1962. However, with regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that he is liable to penalty under Section 112(a)(i) of the Customs Act, 1962. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

- (iv) I find that he is also involved in manipulation of documents by way of mentioning "Notify Party" in name of dummy firms, being managed by Shri Asif one of which was M/s. Exemplar Trading. I find that the Investigation carried out by DRI revealed that he also actively managed the BLs of the consignments imported by Shri Asif. In these IECs including M/s. Exemplar Trading, Bills of Entries having wrong declarations in documents for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation have been filed.
- (v) In view of above, it is evident that Shri Gaurav Sahay has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore such acts of omission and commission has rendered Shri Gaurav Sahay liable to penalty under Section 114AA of the Customs Act, 1962.

22.10. Role and culpability of Empezar Logistics

- (i) I find Shri Akash Desai, General Manager of M/s. Empezar Logistics Pvt. Ltd. in his statement of 08.09.2022, has stated that M/s. Empezar Logistics had generated Sub-login ID on SEZ Online portal and allotted the same to Shri Samir Sharma, G Card Holder, CHA Firm M/s. AL Cargo Logistics for filling of Bill of Entry for warehousing and DTA Clearance for all firms.
- (ii) I observe that as per User Manual issued by NSDL Database Management Ltd., after Admin user has been created, the Admin user shall create the unit operational users-On SEZ Online home page, Admin user shall select the link Administration->Maintain users- Click on the Add button to create a new user. Therefore, multiple maker, approver and CHA user IDs can be created using admin ID of unit, developer, co-developer. However, Unit maker users can create & initiate Customs Transactions/Administrative applications in SEZ Online System. The Unit Maker users cannot submit any transactions to the DC's Office & can only prepare the documents & submit to Unit Approver Users.
- (iii) I have carefully perused the defence submissions made by Shri Samir Sharma of M/s. Al Cargo Services, and by M/s. Empezar Logistics Pvt. Ltd. From the aforementioned submissions it comes forth that Shri Samir Sharma of M/s. Al Cargo Services approached M/s. Empezar Logistics Pvt. Ltd., for storing goods imported by M/s. Rajyog Enterprises, and eventually user ids were created for the said unit and the CHA for filing the required bills of entry for the movement of goods. Therefore, I find that role of SEZ unit- M/s. Empezar Logistics Pvt. Ltd. is limited to approval of the documents filed by the unit maker with regard to checklist of documents. Thus, in the instant case the unit maker filed the

Bill of Entry, which was assessed by the Customs officers. Therefore, I find that SEZ unit provides warehousing service as specified under Rule 18(5) of the SEZ Rules.

(iv) In view of above, I find that role of SEZ unit- M/s. Empezar Logistics Pvt. Ltd. is limited to approval of the documents filed by the unit maker with regard to checklist of documents and not with the actual goods. I find that creation of sub-ID available on the NSDL Database Management Ltd is a part of SEZ online system. I find that with a sub-ID created to Customs House Agent, Shri Sameer Sharma, M/s AL Cargo, prime responsibility of correct declaration is with Shri Sameer Sharma and not with M/s. Empezar Logistics Pvt. Ltd. Further, I find that there is no indication of connivance of any employee of M/s. Empezar Logistics Pvt. Ltd. with beneficiaries of the goods. Further no allegation has been made in any of the statement of Noticee's against M/s Empezar supporting the allegation of investigating agency of facilitating the operation of the smuggling cartel. It clearly comes out during the investigation that all aspects relating to customs clearance documentation were entrusted to Samer Sharma and even in cases where bills for clearance were filed on self-basis, it was Sameer Sharma who was handling the documentation and interacting with the members of the smuggling cartel. There is no stated evidence showing direct contact of any individual from the smuggling cartel to have been in communication with anyone from the side of M/s. Empezar Logistics Pvt. Ltd. Therefore, I find that the allegations of investigation agency that the onus for filing correct declarations of the goods in the Bills of Entry falls on the warehousing Unit and that they were involved in facilitating the smuggling, does not hold water. In view of above, I hold that penalties as proposed under Section 112(a), Section 112(b), Section 117 and Section 114(AA) of the Customs Act, 1962 upon M/s. Empezar Logistics Pvt. Ltd., are not sustainable.

22.11. Role and culpability of Shri Vipin Sharma, then Preventive Officer, Mundra SEZ.

(i) I find that **M/s. Exemplar trading** had imported **02 Consignments** at Mundra Port for clearance and had filed **Bills of Entry bearing No. 2013039 and 2013040 both dated 30.08.2022** pertaining to **Container Nos. SEGU4114778 and TCNU8506372**, respectively. Both the Bills of Entry were given out of charge from Mundra SEZ and cleared from the warehouse Unit M/s. Empezar Logistics Pvt. Ltd. in the same containers through which the goods were originally imported. During examination of the both the containers mis-declaration in respect of quantity and value were found including concealment of toys which required mandatory compliance of BIS as per policy condition 2 of Chapter 95 of the Customs Tariff. During examination of the Container No. **TCNU8506372**, it was noticed that undeclared Toys were found. Shri Vipin Sharma submitted the examination report for both the import consignments as under;

Examination Order:

"Check the goods, Inspect the lot. Check description, Qty., w.r.t. Invoice and P/L"

Examination Report:

"examined as per SEZ Norms, Examined the goods. Inspected the Lot. Checked description, Qty, w.r.t. Invoice and P/L"

- (ii) From the above, it comes forth that Shri Vipin Sharma, the then Preventive officer had not examined the goods as mandated in spite of specific directions given by the assessing officer on the system. This indicates that the examination of subject goods was not carried out properly as both the containers were containing offending goods.
- (iii) I find that Shri Vipin Sharma had submitted the examination report without verifying the actual details/description of the goods whereas, in consequent examination the goods were found mis-declared in respect of quantity, description and value thereof which shows his negligence towards his duties. The details of examination carried out by the DRI is as under:

Sr. No.	Container No.	Status of the Goods	Major Outcome of examination
1	TCNU8506372 VIDE DTA Bill no. 2013040 dated 30.08.2022	Panchnama dtd.06.09.2022 drawn at M/s. Vijaylakshmi Warehouse, Mundra, and detained by detention memo dated 06.09.2022 and seized on 01.11.2022	24000 Pcs of undeclared Toys (BIS compliance required) were found concealed with declared goods.
2	SEGU4114778 Vide DTA Bill no. 2013039 dated 30.08.2022	Panchnama dtd.06.09.2022 drawn at M/s. Vijaylakshmi Warehouse, Mundra, and detained by detention memo dated 06.09.2022 and seized on 01.11.2022	Excess quantity of 3090 Pieces of Hair Trimmer, Hair Dryer and Hair Straightener were found with declared goods.

- (ii) From above, I find that the goods were found mis-declared and concealed in both the containers. I find that in cases of two containers TCNU8506372 and SEGU4114778 the then Preventive Officer – Shri Vipin Sharma submitted his examination report whereby it is evident that the said examination report was submitted without application of mind and due diligence. It has also come out that the two containers in the instant case were found as it is as the time of interception by DRI indicating that they were not de-stuffed and diligent examination was not carried out. This again strengthens the case against the examining officer. However, I find that the investigation agency DRI failed to bring forth the outright connivance of Shri Vipin Sharma in relation to impugned goods. Nevertheless, I find that the quantum of concealment of impugned goods in the subject containers revealed that ingredients to invoke penalty under provisions of Section 112(a) of the Customs Act, 1962 are available. Such act of omissions on the part of Shri Vipin Sharma rendered **"Toys" (Qty. 24000 pieces, Market Value- Rs. 1,56,00,000/-)** liable to confiscation under section 111(d), 111(f) and 111(m), of the Customs Act, 1962. It therefore reveals that Shri Vipin Sharma, then Preventive Officer, Customs House, Mundra has rendered himself liable to penalty under **Section 112 (a)(i)** of the Customs Act, 1962.
- (iii) I find that other imported impugned goods i.e. 3090 pieces of Hair Trimmer, Hair Dryer and Hair straightener were found mis-declared in respect of description and quantity thereof liable to confiscation under section 111 (f) and

111(m) of the Customs Act, 1962. It therefore reveals that Shri Vipin Sharma, then Preventive Officer, Customs House, Mundra have rendered himself liable to penalty under **Section 112 (a)(ii)** of the Customs Act, 1962.

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

ORDER

➤ IN RESPECT OF DUTIABLE GOODS:

- (i) I reject the declared value of impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN imported by M/s. Exemplar Trading (IEC No. BVIPD3861L), in terms of Rule 12 of CVR, 2007; and order to re-determine the value of the same as **Rs. 3,89,12,068/- (Rs. 3,34,28,280/- + Rs. 54,83,788/-)** in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- (ii) I order to confiscate the impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs 40,00,000/- (Rupees Forty Lakhs only)** under Section 125 of the Customs Act, 1962.
- (iii) I confirm the demand of Customs Duty of **Rs. 1,66,46,081/- (Rs. 1,46,95,072/- (+) Rs. 19,51,009/-) (Rupees One Crore Sixty Six Lakh Forty Six Thousand Eighty One only)** against **impugned goods i.e. 30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (iv) I impose penalty of **Rs. 1,66,46,081/- (Rupees One Crore Sixty-Six Lakh Forty-Six Thousand Eighty-One only)** upon **Shri Dirgesh Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 114A of the Customs Act, 1962. I hold that penalty under Section 112(a)(ii) of the Customs Act, also leviable from the importer, however, I refrain from imposing penalty upon them under Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112(ii) and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.
- (v) I impose penalty of **Rs. 1,66,46,081/- (Rupees One Crore Sixty-Six Lakh Forty-Six Thousand Eighty-One only)** upon **Shri Asif Sathi (Beneficial owner of the import goods)** under Section 114A of the Customs Act, 1962, however, I refrain from imposing penalty upon them under Section of Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of

Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.

- (vi) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Parvej Alam** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Baldevsingh Vala** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (ix) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services
- (x) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Gaurav Sahay** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xi) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Hanif Kapadia** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xii) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon M/s **Kalpna Exim** under Section 112(a)(ii) of the Customs Act, 1962.
- (xiii) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Vipin Sharma** under Section 112(a)(ii) of the Customs Act, 1962.
- (xiv) I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 112(a)(ii) of the Customs Act, 1962, for the reasons discussed hereinabove.

24. IN RESPECT OF OFFENDING GOODS I.E. TOYS, IMPORTED WITHOUT MANDATORY BIS:

- (i) I order for absolute confiscation of the impugned offending goods i.e. **24000 Toys** falling under HS Code 95030010 found concealed in the import consignments pertaining to **Container No. TCNU8506372** and having market price of **Rs. 1,56,00,000/-** imported under **Bills of Entry no. 2013040 dated 30.08.2022**, in violation of the provisions of Condition 2 of Chapter 95, under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as detailed vide **Annexure-B**.
- (ii) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Dirgesh Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 112(a)(i) of the Customs Act, 1962.
- (iii) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Asif Sathi (Beneficial owner of the import goods)** under Section 112(a)(i) of the Customs Act, 1962.
- (iv) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.

- (v) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Parvej Alam** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- (vi) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Baldevsinh Vala** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 112(a)(i) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Gaurav Sahay** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- (ix) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Hanif Kapadia** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- (x) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **M/s Kalpna Exim** under Section 112(a)(i) of the Customs Act, 1962.
- (xi) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **Shri Vipin Sharma, the then Preventive Officer** under Section 112(a)(i) of the Customs Act, 1962.
- (xii) I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 112(a)(i), of the Customs Act, 1962, for the reasons discussed hereinabove.

25. IMPOSITION OF PENALTY UNDER SECTION 114 AA OF THE CUSTOMS ACT, 1962:

- (i) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Dirgesh Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 114AA of the Customs Act, 1962.
- (ii) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Asif Sathi (Beneficial owner of the imported goods)** under Section 114(AA) of the Customs Act, 1962.
- (iii) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
- (iv) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Baldevsinh Vala** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
- (v) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 114(AA) of the Customs Act, 1962.
- (vi) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Gaurav Sahay** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Hanif Kapadia** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.

(viii) I impose penalty of **Rs 1,00,000/- (Rupees One Lakhs only)** upon **M/s Kalpana Exim** under Section 114(AA) of the Customs Act, 1962.

(ix) I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 114(AA) of the Customs Act, 1962, for the reasons discussed hereinabove.

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

J
27/8/2024
(K. Engineer)
Commissioner of Customs,
Custom House, Mundra.

Dated: 27.08.2024

F.No. GEN/ADJ/COMM/ 566/2023-Adjn
By Speed Post & through proper/official channel

To (Noticees),

1. Shri Dirgesh Dedhia
Proprietor of M/s. Exemplar Trading,
Plot No. 156, Ghanshyam Park, Baroi Road Mundra (Kutch)
(email id- dirgeshdd2007@gmail.com and exemplartrading1@gmail.com)
2. Shri Asif Sathi (Beneficial owner of the import goods),
Flat No. 4104, 41st Floor, B-Wing, Orchid Enclave, Belasis Road, Mumbai Central, Mumbai-400008 (email id- asifsathi@gmail.com)
3. Shri Tahir Menn (Associate of beneficial owner),
2-B, Mehandi Colony, Sural Bhit Road, Nandan Van Society, Bhuj (Kutch), (email id mm.ent8692@gmail.com and tahirmenn7@gmail.com.)
4. Shri Parvej Alam (Associate of beneficial owner),
Anand Nagar, Shri Kiran Ubale ki Chawl, Anjul Fata, Bhiwandi, Thane.
5. Shri Baldevsinh Vala, (Associate of beneficial owner),
Office No. B-11, Indraprastha Hotel, Shakti Nagar, Mundra (Kutch) , R/o- Plot No. 92-B, Himalay Nagar-2, Mundra (Kutch)
(email-baldevvala@gmail.com, and kalpanaeximdoc@gmail.com).
6. Shri Samir Sharma , G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment)
64, Sadguru Smart City, Nava Kapaya, Mundra
(email id alcargoservice.mundra@gmail.com and sameer.sharma49@yahoo.com.)
7. Shri Gaurav Sahay (Associate of beneficial owner),
Working in M/s. Royal Minerals, Mundra (complete address not available).
8. Shri Hanif Kapadia (Associate of beneficial owner),
2704, A-Wing, Orchid Enclave, Belasis Road, Mumbai Central, Mumbai-400008
(email-dprsyjack5@gmail.com).
9. M/s Kalpana Exim,
Office No. B-11, Indraprastha Hotel, Shakti Nagar, Mundra (Kutch) , R/o- Plot No. 92-B, Himalay Nagar-2, Mundra (Kutch)
(email-baldevvala@gmail.com, and kalpanaeximdoc@gmail.com).
10. M/s. Empezar Logistics Pvt Ltd.,
Mundra SEZ, Mundra Port, Mundra, Kutch.
11. Shri Vipin Sharma,
Then Preventive Officer, Mundra Customs House, present posted at CGST, Central Excise, Surat Commissionerate, Surat
(email – vipins.g201301@gov.in).

Copy to: -

1. The Additional Director General, DRI, Gandhidham Regional Unit, Plot No. 5&6, Ward-5A, Near Vinayak Hospital, Adipur, Kutch-370 205 (Email: driganru@nic.in).
2. The Development Commissioner, 4th Floor, C Wing, PUB, Mundra, SEZ, Mundra (Email: so-mpsez@gov.in).
3. The Specified Officer, Mundra, SEZ (Email: so-mpsez@gov.in).
4. Notice Board.
5. Office Copy.

Copy To: -

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 2) The Additional Director, DRI, Gandhidham Regional Unit, Plot No.5866, Ward-5A, Near Vinayak Hospital, Adipur, Kutch-370205 (*Email:driganru@nic.in*), for information.
- 3) The Specified Officer, Mundra Special Economic Zone, Gandhidham.
- 4) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 6) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 7) Notice Board.
- 8) Guard File.