सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250871MN00002252B0

क	फ़ाइल संख्या FILE NO.	S/49-32/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-161-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/263/2023-24 dated 23.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Decore Sources B22/1, 2nd Floor, Wazipur Industrial Area, Delhi - 110052

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.-**3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- **(क)** रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा **(ख)** अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by M/s Decore Sources, B22/1, 2nd Floor, Wazipur Industrial Area, Delhi - 110052, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/263/2023-24 dated 23.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that an intelligence was developed by the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad that a Delhi based company namely M/s. Zip Zap Exim Private Limited (IEC-0516944169)(hereinafter referred to as "M/s. ZZEPL") in connivance with its domestic buyers/actual importers had established a trading unit in Special Economic Zone, Kandla (Gujarat) (hereinafter referred to as "KASEZ" for the sake of brevity) with a sole intent to bypass the normal Customs Channels and clear the imported goods into domestic area by resorting to gross undervaluation and thereby defrauding the government exchequer by evading the payment of applicable due duties of Customs. As per SEZ Rules, 2006, if a SEZ (trading) unit clears the goods into Domestic Tariff Area (hereinafter referred to as "DTA" for the sake of brevity), the sale proceeds should be in Foreign Exchange only but intelligence indicated that M/s. ZZBPL was clearing the goods against payment of Indian rupees only and thus they were not earning any foreign exchange. Intelligence further suggested that all dealings with foreign suppliers were being done by the domestic buyers/actual importers only and M/s. ZZBPL was facilitating the domestic buyers in getting the goods cleared through their SEZ Unit by resorting to gross undervaluation for which they were charging commission.

2.1 M/s. ZZBPL was importing Knitted Polyester Fabrics under Customs Tariff Heading 6006 and various other Electrical Goods such as Mosquito Bats, LED Rechargeable Search Lights, Fancy Mini Torches, Small Rechargeable Batteries, Decorative Disco LED Par Lights, Decorative Disco Focus Lights, Laser Lights, LED Rope Lights, Led Christmas Lights etc., of assorted sizes etc. under Chapter 94 and 85 of Customs Tariff Heading and subsequently, clearing the same into DTA to various DTA importers. While importing the goods M/s. ZZBPL filed Bills of Entry with KASEZ authority for clearance of the goods imported via

Mundra Port to their unit in KASEZ. Subsequently, M/s. ZZBPL also filed DTA Bills of Entry in the name of various domestic buyers & cleared the goods on payment of Customs Duty.

2.2 Accordingly, a Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjno/o Commr-Cus-Kandla dated 08.09.2021 was issued to M/s ZZBPL & others.

2.3 Further, M/s Decore Sources (IEC:0516973223) had imported and cleared similar goods such as 'Electrical goods: Decorative LED par Light 54L' through Mundra Port by declaring similar valuations of these goods as declared by M/s. ZZEPL and various domestic buyers in above referred case. Details of such imports are as under:

Table-A

Sl. No	Bill of Entry No. & Date	tem No.	Description of goods	Quantity (In Pieces)	Declared price per Piece (In USD)	Declared Assessable value (In Rs.) (exchange rate;1USD =64.90)
	3309758 dt. 20.09.2017	4	Decorative LED par Light 54L	808	3.50	185390.93
Total						185390.93

2.4 Consequent to the above modus operandi adopted by M/s ZZEPL and the concerned DTA importers, in connivance with Chinese suppliers, it appeared that the appellant, importer of 'electrical Goods' had also mis-declared/ undervalued the goods imported and cleared through Mundra port under the Bills of Entry as per above mentioned Table-A.

2.5 In continuation of the Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn-O/o Commr-Cus-Kandla dated 08.09.2021 issued to M/s ZZEPL and others, the assessable value & Customs duty thereon

of the Bills of Entry as per Table-A were also liable to be rejected and re-determined.

2.6 Therefore, the misdeclared/under-assessed value of Rs. 1,85,391/- (Rs. One Lakh Eight Five Thousand Three Hundred and Ninety One Only) declared by the Appellant at the time of clearance of goods i.e. "Electrical Goods", was required to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same is required to be redetermined to Rs. 16,28,762/- (Rs. Sixteen Lakh Twenty Eight Thousand Seven Hundred and Sixty Two only) as per ANNEXURE-A to the Show Cause Notice.

2.7 Further, the appellant had hatched the conspiracy to import "Electrical Goods", by declaring lower values than the actual transaction values of the said goods to evade he Customs Duty, as indicated in ANNEXURE-A to the SCN. The differential amount between the actual value of Electrical Goods and the value shown in the commercial invoice, imported from said Chinese supplier were paid by them through non-banking channels / the Bank accounts of third parties with the Banks outside India. They had full knowledge and were instrumental in misdeclaration of the value of the goods at the time of their import. Thus, they had knowingly, consciously and deliberately declared incorrect low values in the impugned Bills of Entry at the time of imports and backed them up with false and fabricated documents, with the sole intention to evade the Customs duty. The firm had indulged in the activities relating to the said under valuation and mis-declaration of actual price of said imports, which resulted in evasion of Customs duty as detailed in ANNEXURE-A to SCN. All the aforesaid acts of omission and commission on the part of the appellants have rendered the impugned imported goods liable for confiscation under Section 111(m) and 111 (d) of the Customs Act, 1962. Further, the firm/person had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Thus, as discussed at para above, the appellant, had rendered themselves liable for penalty under the provisions of Section 112(a) & (b), 114A and 114AA of the Customs Act, 1962.

2.8 In view of the above, a Show Cause Notice dated 15.02.2022 was issued whereby M/s Decore Sources, were called upon to show cause to the Additional Commissioner of Customs, Custom House Mundra, as to why: -

(i) Total assessable value of Rs. 1,85,391/- declared by them/assessed at the time of clearance of goods i.e. "Electrical Goods", as mentioned in ANNEXURE-A to this show cause notice, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and redetermined to Rs. 16,28,762/- as mentioned in ANNEXURE-A to this show cause notice, under sub section (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 f the Customs Valuation (Determination of Value of Imported Goods) R les, 2007 read with Rule 10 of the of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for B 1 of Entry, as mentioned in ANNEXURE-A.

(ii) Differential Customs Duty amounting to Rs. 3,39,712/- (Rs. Three Lakh Thirty Nine Thousand Seven Hundred and Twelve Only) on the goods imported i.e., Electrical Goods', under the Bill of Entry, valued (re-determined value) as detailed in ANNEXURE-A should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) The goods i.e 'Electrical Goods' imported by them under the said Bill of Entry and further valued (re-determined value) as mentioned in ANNEXURE-A, should not be held liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962.

(iv) Penalty should not be imposed upon them under Section 112(a) & (b), 114A and 114AA of the Customs Act, 1962.

2.9 Consequently, the Adjudicating Authority passed the following order: -

i. He rejected the declared assessable value of Rs. 1,85,391/- (Rs. One Lakh Eighty Five Thousand Three Hundred and Ninety One Only) for the goods mentioned in Table-A under Rule 12 of CVR, 2007 and ordered to re-determine the same as Rs. 16,28,762/- (Rs. Sixteen Lakh Twenty Eight Thousand Seven Hundred and Sixty Two only) in terms of Rule 9 of the CVR, 2007 read with Section 14 of Customs Act, 1962 ;

ii. He confirmed the demand of differential/short paid Customs duty amounting to Rs. 3,39,712/- (Rs. Three Lakh Thirty Nine Thousand Seven Hundred and Twelve Only) for the goods mentioned in Table-A and order to recover the same from the appellant in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962 ;

iii. He ordered to recover the interest from the appellant at appropriate rate under Section 28AA of Customs Act, 1962 on the above confirmed demand of duty;

iv. He ordered to confiscate the impugned goods mentioned in Table-A under Section 111(d) & 111(m) of the Customs Act 1962. Since, the subject goods are not physically available for confiscation; therefore, he refrained from imposing any redemption fine under Section 125 of the Customs Act, 1962;

v. He imposed a Penalty of Rs.3,39,712/- (Rupees Three Lakh Thirty Nine Thousand Seven Hundred and Twelve Only) on the appellant under Section 114A of the Customs Act, 1962;

vi. He imposed a Penalty of Rs.1,50,000/- on the appellant under Section 114AA of the Customs Act, 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The impugned is bad in law, contrary to the facts of the case and attendant provisions of law, therefore, if permitted to stand, would result in miscarriage of justice. Because findings of the Adjudicating Authority are without any evidence and based on assumptions and presumptions only, therefore, the same are legally not sustainable. The Adjudicating Authority vide Order-in-Original dated 23.02.2024 has inter alia held that the Appellant had cleared the impugned goods by declaring incorrect low value at the time of import

and backed them up with false and fabricated documents with the sole intention to evade the custom duty.

3.2 The said findings of the Adjudicating Authority are without any evidence and being based on assumptions and presumptions only. The Appellant has submitted that the officers of DRI did not recover any incriminating document either from the Appellant or its Custom Broker which could even remotely suggest that the Appellant had declared the assessable value incorrectly and on lower side. There is no allegation in the impugned Show Cause Notice leave aside any evidence that the Appellant used any fake or fabricated document for custom clearance of the impugned goods or that the Appellant had made any payment over and above the declared invoice values of the imported goods.

3.3 The Appellant has further submitted that neither the Appellant nor its Custom Broker has ever admitted that the Appellant had declared the assessable value incorrectly and on lower side. Therefore, there is no statement against the Appellant which insinuates it in this case in any manner. Moreover, the Adjudicating Authority has failed miserably to bring out any evidence of any instance of contemporaneous imports of identical or similar goods at higher values. The only evidence against the Appellant is some earlier imports by other importers where the department rejected the declared invoice values of the imported goods on the basis of a Chartered Engineer's certificate/Valuation Report dated 06.07.2018. In the most respectful submissions of the Appellant, placing of reliance of Chartered Engineer in this case is contrary to the provisions of CVR, 2007 thus, cannot be relied upon.

3.4 Regarding valuation report by Chartered Engineer, the Appellant has submitted that it is settled law that the valuation report of a Chartered Engineer cannot not be relied upon, as Chartered Engineer is empowered to value only in case of import of second hand machinery under the Customs Valuation Rules. The Appellant seeks to place reliance on the judgment given by Hon'ble CESTAT, New Delhi in the case of Jain & Sons Vs Commissioner of Customs, Delhi {Final Order No. 50574 of 2023 in Appeal No. C/51726 of 2022 (SM), decided on 28-4-2023} reported as (2023) 8 Centax 77 (Tri.-Del). In this judgment Hon'ble CESTAT has specifically held as under:-

"24.6 So far the Valuation Report submitted by the Chartered Engineer, Shri R.K. Agarwal is concerned, who had valued the imported machines as USD

13,000 per machine. The appellant have disputed the valuation by Shri R.K. Agarwal, Chartered Engineer on the ground of competency and also on merits. The Chartered Engineer has been empowered to value only in case of import of second hand machinery under the Customs Valuation Rules. In case of new machinery, Rules require valuation to be done on the basis of contemporaneous imports (NIDB data). In absence of such data, authority is required to follow the Valuation Rules in seriatum, which has not been done."

In view of the above facts, the findings of the Adjudicating Authority regarding undervaluation are patently incorrect and contrary to the facts of this case and judicial pronouncements. Therefore, in view of these facts, the entire case of the department against the Appellant is based on assumptions only and not backed by any evidence.

3.5 The Appellant has submitted that it is settled law that suspicion, even if grave, cannot replace evidence. Since findings of the Adjudicating Authority in this case are on the basis of mere suspicion only, therefore, such findings cannot sustain legally. On this issue the Appellant wishes to place reliance on the following judgments:

- Cargo World Versus Commissioner Of Customs, New Delhi 2009 (245) E.L.T. 780 (Tri. - Del.)

- Jai Jagdamba Malleables Pvt. Ltd. Versus Ccmmissioner of C. Ex., Kanpur 2009 (245) E.L.T. 648 (Tri. - Del.)

- Sachin Kumar Versus Commissioner of Customs, Mangalore 2020 (374) E.L.T. 775 (Tri. - Bang.)

- P & J Auromatics Versus Commissioner of Customs of Central Excise, DELHI-II 2016 (334) E.L.T. 675 (Tri. - Del.)

- King Export Vs Commissioner of Customs, Amritsar 2011 (266) ELT 0388 (Tri. Delhi)

3.6 Vide Order-in-Original dated 23.02.2024, the Adjudicating Authority has inter alia held that the Appellant undervalued the impugned

goods. The Appellant has submitted that the findings of the Adjudicating Authority are incorrect and contrary to the facts of this case since there is no case of any undervaluation and the Appellant has truthfully declared the true and correct transaction value of the imported goods which was mutually agreed upon between the Appellant and the Overseas Supplier after negotiations made in the normal reuse of International business. The Appellant has further submitted that the Overseas Supplier would have offered the same prices to any other customer on the same terms and conditions. There is no relationship between the buyer and seller in this case and this transaction is not covered under any of the exceptions mentioned in Rule 3 of CVR, 2007. Transactions between the Appellant and the Overseas Supplier have taken place in an ordinary course of International business without any favour. The Adjudicating Authority has not provided any evidence in Order-in-Original dated 23.02.2024 either in the form of any document such as any parallel invoice recovered from the Appellant, its Custom Broker or any other person in respect of the subject goods, contemporaneous imports of identical or similar goods at higher values or any statement given by the Appellant or its Custom Broker admitting undervaluation to show that there is any mis-declaration in respect of value of the impugned goods. Therefore, the findings of the Adjudicating Authority regarding undervaluation of the impugned goods is not backed by any evidence. In view of the above facts, the findings of the Adjudicating Authority regarding undervaluation are patently incorrect and contrary to the facts of this case and judicial pronouncements.

3.7 Vide Order-in-Original No. MCH/ADC/AK/263/2023-24 dated 23.02.2024, the Adjudicating Authority has inter alia held that the price declared by presenting undervalued invoices in respect of Bills of Entry filed by the Appellant for procurement of subject imported goods were incorrect and the actual paid value of imported goods was different and higher, hence the same cannot be considered as the correct value for imported goods for the purpose of Section 14 of the Customs Act, 1962 New Delhi is liable to be rejected under Rule 12 of CVP., 2007.

Rule 12 of CVR, 2007 is reproduced below for the kind perusal of the hon'ble Commissioner:-

12. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer

of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

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

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

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

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

(f) the fraudulent or manipulated documents.

3.8 The Adjudicating Authority has not returned any findings in the impugned order as to whether there is any instance of contemporaneous imports of identical or similar goods at higher values, or any abnormal discount was

given to the Appellant or there is any case of fraudulent or manipulated documents or there is any misdeclaration in respect of description, quality, quantity, county of origin, year of manufacture or production. Therefore, in absence of any such findings, given by the Adjudicating Authority, rejection of the declared invoice values under Rule 12 of CVR, 2007 is patently incorrect and legally not sustainable.

3.9 The Appellant has submitted that in this case there is no instance of contemporaneous imports of identical or similar goods at higher values and the Adjudicating Authority has rejected declared invoice values under Rule of 12 CVR, 2007 on the basis of certain imports only where the declared invoice values were re-determined on the basis of a valuation report given by a Chartered Engineer. The Appellant has already submitted that a valuation report given by a Chartered Engineer is not a valid ground for rejection of declared invoice values. Therefore, rejection of the declared invoice values of subject goods on the basis of a valuation report given by a Chartered Engineer is patently incorrect and legally not sustainable.

3.10 The Appellant has further submitted that the declared unit invoice value of the goods imported by the Appellant from the Overseas Supplier represent their true and correct value at the time of their export from China and there is no case of their rejection and enhancement.

3.11 The Appellant has submitted that there is no mis-declaration/non-declaration of any parameter such as brand, grade, specifications that have relevance to value. Also the Adjudicating Authority failed miserably to provide any evidence of any contemporaneous import of identical or similar goods at higher values, any abnormal discount, any payment over and above the declared invoice values or any fraudulent or manipulated documents. In view of these facts, invocation of the provisions of Rule 12 of CVR, 2007 in this case to reject the declared invoice value is patently incorrect and legally not sustainable. The Appellant has submitted that apart from the Valuation Report given by the Chartered Engineer in some previous imports, there is no other evidence to show undervaluation of the impugned goods. Rejection of the declared invoice value of goods on the basis of report given by Chartered Engineer is patently incorrect and contrary to the guidelines laid down under Section 12 of CVR, 2007 read with Rule 4/Rule 5 of the said Rules. Hence, rejection of declared invoice value cannot sustain legally.

3.12 The Adjudicating Authority in this case rejected the declared invoice values under Rule 12 of CVR, 2007 and ordered for their re-determination under Rule 9 of the said Rules. The Appellant has submitted that the said findings of the Adjudicating Authority are patently incorrect and contrary to the facts of this case and provisions of Section 14 of the Customs Act, 1962 read with CVR, 2007. The Appellant has submitted that in the impugned order, there is no evidence of contemporaneous imports of identical or similar goods at higher prices or any payment over and above the declared invoice values of subject goods. The Appellant has further submitted that valuation report given by a Chartered Engineer cannot be a ground for rejection and re-determination of declared invoice values in this case.

3.13 The Adjudicating Authority failed to appreciate that the declared invoice value of impugned goods was rejected and re-determined by the officers of Customs and Bill of Entry was finally assessed by them. Therefore, they had data of contemporaneous imports of identical or similar goods with them. However, the Adjudicating Authority has neither considered this fact nor verified it from the officers who assessed the subject Bill of Entry. Moreover, in this case the Appellant also submitted copies of some of the sale bills raised by the Appellant and GST returns filed by the Appellant which clearly show that the Appellant is selling the imported goods after their clearance in the local market at the prices which correspond to their declared invoice values. From these documents, declared invoice values merit acceptance under Rule 7 of CVR, 2007.

3.14 The Adjudicating Authority has ordered for re-determination of the declared invoice values on the basis of Valuation Report given by a Chartered Engineer under Rule 9 of CVR, 2007. Provisions of Rule 9 of CVR, 2007 are given below:-

> *9. Residual method.-*
>
> *(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;*
>
> *Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the*

seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

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

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

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

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

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

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

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

3.15 The Appellant has submitted that Rule 9 of CVR, 2007 inter alia provides that the value under this Rule can be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. After rejection of declared invoice values, the Adjudicating Authority is bound to re-determine the same by proceeding sequentially in accordance with rules 4 to 9. Only after discarding applicability of Rule 4,5,7 and 8 of CVR, 2007, Adjudicating Authority should adopt Rule 9 of the said rules.

3.16 In this the Adjudicating Authority has not given any data of contemporaneous import of identical or similar goods or any other information in respect of data available in India for re-determination of value of impugned goods under Rule 9 of CVR, 2007 and simply relied on a Valuation Report given by Chartered Engineer. As stated above, Valuation Report given by Chartered Engineer cannot be used for rejection and re-determination of the declared invoice values in this case. Therefore, in view of facts of this case and judicial position, re-determination of value under Rule 9 is patently incorrect and legally not sustainable.

3.17 The Appellant has submitted that the officers of Assessing Group after analysis of data of contemporaneous imports of identical or similar goods rejected the declared invoice values of the impugned goods and re-determined

them. Therefore, their assessment attained finality and without challenging the said assessment by way of filing appeal against the said assessment, department cannot raise any demand in respect of the same items.

3.18 In this case the Adjudicating Authority has invoked the provisions of Section 28(4) of the Customs Act, 1962 for confirming the demand of differential duty. However, in the most respectful submissions of the Appellant, provisions of Section 28(4) of the Customs Act, 1962 are not applicable in this case.

Section 28(4) of the Customs Act, 1962 is given below:-

Section 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 wilful mis-statement; or

(c) suppression of fact,

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 "Iso 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.

3.19 The Appellant has submitted that in this case, there is no case of any mis-declaration in respect of any quantity, description or classification of the impugned goods. The only allegation against the Appellant is undervaluation of the impugned on the basis of a Valuation Report given by Chartered Engineer which in the most respectful submissions of the Appellant is legally not sustainable.

3.20 The Appellant has submitted that Section 28(4) of the Customs Act, 1962 clearly mandates that provisions of this Section are applicable only where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by

reason of collusion; or any willful mis-statement; or suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter.

3.21 The Adjudicating Authority has invoked the provisions of Section 28(4) of the Customs Act, 1962 but he failed miserably to provide any evidence against the Appellant or their Custom Broker either in documentary form or in the form of any incriminating statement to show that the impugned goods are undervalued. Further, the Appellant did not have any role in the preparation of any import documents such as import invoice, packing list etc which were sent by the Overseas Supplier and the impugned Bills of Entry were filed on the basis of same documents. The department did not recover any parallel invoice or any evidence that the Appellant presented any manipulated documents for filing of subject Bills of Entry.

3.22 The Appellant also submits that there is no evidence against the Appellant or its Custom Broker who filed the subject Bills of Entry which can even remotely suggest that there is any collusion, willful mis-statement or suppression of facts by the Appellant or their agent i.e. Custom Broker. The Adjudicating Authority has not provided any evidence that the Appellant or their Custom Broker had any role in either preparing of any document such as import invoice, packing list etc or wrongfully entering details of the impugned goods in the system of customs department. Therefore, in view of these facts, there is no case of any collusion, willful mis-statement or suppression of facts by the Appellant or their Custom Broker in clearance of goods covered under the subject Bills of Entry. Accordingly, provisions of Section 28(4) of the Customs Act, 1962 are not applicable against the Appellant in this case.

3.23 The Appellant also places reliance on the case of Commissioner of Central Excise, Aurangabad vs. Bajaj Auto Limited, 2010 (260) ELT 17 (SC), wherein it was held by the Hon'ble Supreme Court of India that the proviso to Section 11A(1) of the Central Excise Act, 1944 can only be invoked when there is a conscious act of either fraud, collusion, willful mis-statement, suppression of fact, or contravention of the provisions of the Act or any of the rules made thereunder on the part of the person chargeable with duty or his agent, with the intent to evade payment of duty. It is submitted that the wordings of the proviso to Section 11A(4) of the Central Excise Act, 1944 are in pari-materia with Section 28(4) of the Customs Act. Therefore, ratio of the aforementioned judgments will be applicable to the present case as well.

3.24 Based upon the above referred judgment it can be said that to invoke the provisions of Section 28(4) of the Customs Act, it has to be proved that there was a conscious or intentional act of collusion, willful mis-statement or suppression of fact, on the part of the importer. The intention or deliberate attempt, on the part of importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of extended period. No such proof had been adduced by the Adjudicating Authority in the impugned order dated 15.03.2024. Thus, provisions of Section 28(4) of the Customs Act, 1962 are not applicable in this case.

3.25 Vide impugned order, the Adjudicating Authority has ordered for confiscation of the impugned goods under Section 111 (m) of the Customs Act, 1962. The Appellant has submitted that in this case Bill of Entry was filed on the basis of import invoice and other documents sent by the Overseas Supplier. There is no case of any excess quantity or mis-classification of the imported goods. The only finding against the Appellant is in respect of value of the goods, however, the Appellant most respectfully submits that invocation of the provisions of Section 111(m) of the Customs Act, 1962 by the Adjudicating Authority for the alleged misdeclaration of value of the impugned goods is patently incorrect and legally not sustainable. The Appellant has further submitted that the unit value of the goods declared in the subject Bills of Entry represents their true and correct unit value at the time of their export from the country of export. Therefore, it is clear from these facts that there is no mis-declaration in respect of value of the impugned goods. The officers of Assessing Group rejected and re-determined the declared invoice values on the basis of data of contemporaneous imports of identical or similar goods. In order to ensure early release of the consignment, the Appellant did not challenge the assessment done by the officers of Assessing Group and got the subject goods cleared on payment of duty on the loaded values. There was no allegation of any mis-declaration by the officers of Assessing Group and the subject Bill of Entry was finally assessed by the officers of Customs without invoking the provisions of Section 111(m) of the Customs Act, 1962. Therefore, invoking of provision of Section 111(m) of the Customs Act, 1962 in this case is not warranted. In view of these facts, provisions of Section 111(m) of the Customs Act, 1962 are not applicable against the Appellant in this case.

3.26 Vide impugned order, the Adjudicating Authority has ordered for confiscation of the impugned goods under Section 111 (d) of the Customs Act, 1962 on the ground that the impugned goods require BIS certification. However, the Appellant most respectfully submits that there was no requirement of any BIS Certification on the impugned goods at the time of their clearance. Even the officers of Customs who assessed and examined the subject goods did not ask for any such BIS certification and allowed clearance of the subject goods without any requirement of BIS certification. Therefore, the impugned goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962. The Appellant also submits that the subject goods are not available for confiscation and even the Adjudicating Authority has also held the same in Order-in-Original No. MCH/ADC/AK/263/2023-24 dated 23.02.2024.

3.27 Vide impugned order, the Adjudicating Authority has imposed a penalty on the Appellant under Section 114A of the Customs Act which is reproduced below:

[Section 114A. Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under subsection (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.]

From the perusal of the aforesaid provision, it is clear that penalty under Section 114A of the Customs Act, 1962 can be imposed in cases when the duty has not been paid or short-paid / part-paid by the reason of collusion or any willful misstatement or suppression of facts.

3.28 In the case of CC v. Videomax Electronics, 2011 (264) ELT 0466 (Tri.- Bom.), it was held that the legal requirements to invoke penalty under Section 114A of the Customs Act is the same as extended period of limitation under Section 28 of the Customs Act, 1962. In essence, if the extended period of limitation under Section 28 is not invocable, penalty under Section 114A of the Customs Act, 1962 cannot be imposed. The Appellant in its submissions made in above paras has demonstrated that the provisions of Section 28(4) of the

Customs Act, 1962 cannot be invoked in the present case in the absence of evidence of any willful mis-statement or suppression of facts. Hence, by virtue of the same, penalty under Section 114A is also not imposable.

3.29 In this regard, the Appellant also place reliance on the decision of the Supreme Court in the case of Aban Loyd Chiles Offshore Ltd. v. CC reported in 2006 (200) E.L.T. 370 (SC). The above ratio was affirmed by the Hon'ble High Court of Andhra Pradesh in Commissioner of Customs, Vishakhapatnam v. Jai Balaji Industries Limited reported in 2018 (361) E.L.T. 429 (A.P.). The Hon'ble High Court vide para 6,7 and 8 held as follows -

> *"6. In the aforementioned admitted facts of the case and provision of law, we are of the opinion that Section that Section 114AA does not get attracted as sine qua non for invoking the said provision is that it must be established that a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration statement or document, which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Act. As noted hereth before the section the set itself has envisaged provisioned assessment, it cannot be said that incorrect value of the imported goods per se amounts to any of the acts referred to in the said provision.*
>
> *7. ... could be seen from the reasons assigned by the Tribunal, in respect of design, engineering and technical supervision charges, the actual value of the services requires interpretation of the agreement and from the nature of the contract, which includes design, engineering and technical supervision charges, it is a matter of interpretation of contract as to whether value of those services form part of the value of goods and services and if so, how to quantify the same.*
>
> *8. In the light of the above facts and circumstances of the case, we are of the opinion that the Tribunal has assigned sound reasons for setting aside the penalty and therefore, all the questions of law framed by the Revenue are answered against it. In the result, the appeal is dismissed. No costs."*
> *[Emphasis supplied]*

In view of the facts of the case and judgments cited above, penalty under Section 114A of the Customs Act cannot be imposed on the Appellant on the ground that the ingredients of the said Section are not satisfied in the instant case.

3.30 The Appellant has further submitted that the penal provisions are only a tool to safeguard against contravention of rules, a contention which is also supported by the Statute. In this regard, the Appellant has submitted that the penal provisions of Section 114A of the Customs Act, 1962 are invokable for serious offences, where the duty has not been paid or levied by reasons of fraud, collusion or any willful misstatement or suppression of facts, or contravention of rules with intent to evade payment of duty. Thus, the penal provisions are to be taken only as a tool to safeguard against contravention. In view of the foregoing, the imposition of penalty in terms of Section 114A of the Customs Act, 1962 is liable to be set aside.

3.31 In this connection the Appellant places reliance on the cases of Tamil Nadu Housing Board v. CCE [1994 (74) ELT 9 (SC)], and CCE v. Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]. The Appellant also relies on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. The State of Orissa reported in AIR 1970 (SC) 253. As regards the imposition of penalty it was held as under:

> *"But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceedings, and the penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Where penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.*

3.32 The Appellant has submitted that in the present case, there was neither any willful mis statement or suppression of any facts nor was there any intention to evade payment of duty. In view of the foregoing submissions, the Appellant has submitted that no penalty is imposable under Section 114A of the Customs Act. As laid down in CC vs. Videomax Electronics, 2011 (264) ELT 0466

(Tri.-Bom), if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act, 1962 cannot be imposed. Further, as mentioned above, in this case the conduct of the Appellant was completely bona fide. The Appellant neither had any intention to evade payment of duty, nor had any knowledge of the liability of the goods to confiscation. In the absence of any malafide on the part of the Appellant, no penalty is imposable.

3.33 In the case of Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (J159) (SC), Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona-fide belief. The Appellant relies on the following decisions wherein it was held that penal action is not permissible in absence of mens rea:

a) CC Vs. Kamal Kapoor - 2007 (216) ELT 21 (P & H)
b) CC Vs. Surbhit Impex - 2012 (286) ELT 500 (Bom.)
c) Ghanshyam Metal Udyog Vs. CC - 2008 (229) ELT 631 (Tri. Ahmd.)

The Appellant has already demonstrated that the proviso to Section 28(4) is not invokable, therefore, imposition of penalty under Section 114A is not sustainable.

3.34 Because the quantum of penalty imposed on the Appellant is very high and excessive and does not commensurate with the gravity of offence, if any. It has been held in a catena of judgments that the penalty has to be in proportion to the alleged offence as the purpose of penalty is deterrence and not retribution.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 12.06.2025, following the principles of natural justice wherein Shri Naveen Gupta, Manager of the appellant appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

(i) Whether the delay of 2 days in filing the appeal should be condoned.

(ii) Whether the declared transaction value was rightly rejected under Rule 12 and re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007).

(iii) Whether the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 is justified.

(iv) Whether the imported goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

(v) Whether the imposition of penalties under Sections 114A and 114AA of the Customs Act, 1962 is warranted.

5.2 The Appellant has sought condonation of a delay of 2 days beyond the stipulated period of 60 days . The reason cited is "personal exigencies." Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if sufficient cause is shown for the delay. In this case, the appeal was filed with a delay of 2 days beyond the initial sixty-day period, but within the condonable 30 days period. The Appellant has attributed the delay to personal exigencies. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has

shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice.

5.3 The Adjudicating Authority has rejected the transaction value declared by the Appellant under Rule 12 of CVR, 2007 on a reasonable doubt about the truth and accuracy of the declared value, as per the provisions of Rule 12(1). The Appellant's argument that the findings are based on assumptions and presumptions is without merit. The investigation initiated by the Directorate of Revenue Intelligence (DRI) against M/s Zip Zap Exim Private Limited (ZZEPL) unearthed a clear modus operandi of undervaluation and duty evasion. It was found that actual importers dealt directly with foreign suppliers and used a Special Economic Zone (SEZ) unit, like M/s ZZEPL, to clear goods into the Domestic Tariff Area (DTA) while resorting to gross undervaluation. The differential amount was paid through non-banking channels.

5.4 In this case, the Appellant, M/s Decore Sources, was found to have imported similar goods by declaring similar undervalued amounts as those declared by M/s ZZEPL and its domestic buyers. This establishes a direct link to the fraudulent scheme and provides a cogent reason for doubting the declared value. The department has discharged its burden to prove undervaluation by relying on the intelligence gathered, statements recorded from other parties in the connected investigation, and a Chartered Engineer's report. The Appellant's claim that no evidence was adduced is therefore factually incorrect.

5.5 The Appellant has heavily relied on the argument that the Chartered Engineer's report cannot be the basis for valuation, citing the case of Jain & Sons Vs Commissioner of Customs, Delhi. However, this argument is misplaced. The Adjudicating Authority did not use the Chartered Engineer's report to determine the value under the primary valuation methods (Rules 4-8). Instead, the report was used as a basis for re-determination under the residual method, Rule 9 of CVR, 2007. This is in line with the interpretative notes to Rule 9, which allow for "reasonable flexibility in the application of such methods" based on "data available in India" when the value cannot be determined under preceding rules. The OIO provides detailed reasoning for why Rules 4 to 8 could not be applied due to the lack of ascertainable data for profits, general expenses, and relevant cost details. The statements of other importers corroborating the Chartered Engineer's estimated values further strengthen the department's position.

5.6 Further, the Appellant's reliance on the Eicher Tractors judgment is not applicable here. That case pertains to situations where the declared transaction value is the sole consideration and there are no restrictions on the buyer's use of the goods. In the present case, there is clear evidence, as discussed in the OIO, of a fraudulent scheme involving payments through non-banking channels, which demonstrates that the declared price was not the sole consideration. Therefore, the transaction value could not be accepted, and the rejection under Rule 12 was justified.

5.7 The Appellant has contended that the demand, raised after four and a half years from the date of clearance, is time-barred and that the extended period under Section 28(4) is not applicable. Section 28(4) of the Customs Act, 1962 allows for the recovery of duty within five years if the non-levy or short-levy is due to collusion, willful misstatement, or suppression of facts.

5.8 The Adjudicating Authority has established that the Appellant, in connivance with foreign suppliers, willfully mis-declared the value of the goods to evade customs duty. The payment of differential amounts through non-banking channels constitutes a deliberate and conscious act of suppression of the true transaction value. This is not a mere technical or venial breach, as argued by the Appellant, but a clear case of deliberate intent to evade duty. The Hon'ble Supreme Court in Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)] clarified that the extended period of limitation can be invoked if there is mens rea to evade duty, meaning a deliberate act of omission or commission. The facts of the present case, as established by the Adjudicating Authority, indicate that the Appellant was not merely making an interpretational error but actively concealing the true value of the goods and mis-declaring them. This clearly falls within the ambit of "suppression of facts" with intent to evade, thereby justifying the invocation of the extended period of limitation under Section 28(4). The Appellant's argument about previous clearances at the declared CTH does not absolve them from liability for a fraudulent scheme uncovered by specific intelligence. Thus, the invocation of the extended period of limitation is fully justified.

5.9 The OIO ordered the confiscation of the goods under Section 111(d) and 111(m) of the Customs Act, 1962.

- Section 111(m): This section applies to goods that "do not correspond in respect of value or any other particular with the entry made under this Act." The Appellant's contention that there was no mis-declaration of value is unsustainable, as it has been established that the declared value was not the true transaction value and was intentionally kept low to evade duty. Therefore, the goods did not correspond to the value declared in the Bill of Entry, making them liable for confiscation under Section 111(m).

- Section 111(d): This section applies to goods imported "contrary to any prohibition imposed by or under this Act or any other law for the time being in force." The Adjudicating Authority has correctly found that the imported LED lights require mandatory registration with the Bureau of Indian Standards (BIS) under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012." The failure to produce the required BIS registration certificate makes the goods "restricted" under the import policy and, by virtue of Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, they are deemed to be "prohibited goods" under Section 11 of the Customs Act, 1962. The Appellant's argument that the goods are freely importable is rejected, as this freedom is subject to compliance with domestic laws and quality standards. The Appellant's failure to comply with the BIS requirement renders the goods liable for confiscation under Section 111(d).

5.10 The OIO has rightly refrained from imposing a redemption fine as the goods were cleared long ago and are not physically available. This is in line with the judicial pronouncements cited by the Appellant themselves, such as Shiv Kripal Ispat Pvt. Ltd. and is not a ground for setting aside the confiscation order itself.

5.11 The Appellant has contested the imposition of penalties under Sections 114A and 114AA, claiming that there was no willful misstatement or use of false documents.

- Section 114A: This section mandates a penalty equal to the duty determined under Section 28 if the short-levy is due to collusion, willful misstatement, or suppression of facts. As discussed above, the invocation of Section 28(4) is justified due to the deliberate suppression of the true value and the payment through non-banking channels. The Appellant's conduct demonstrates a clear mens rea (guilty mind) and is not a

"technical" or "venial" breach. The Hon'ble Supreme Court in Union of India v. Dharamendra Textile Processors (2008) 13 SCC 369 has clarified that penalties for certain offenses are mandatory once the ingredients of the offense are met. Therefore, the imposition of a penalty under Section 114A is mandatory and justified. The Adjudicating Authority has correctly noted that penalties under Section 112 and 114A are mutually exclusive and has rightly chosen to impose the penalty under Section 114A.

- Section 114AA: This section imposes a penalty for knowingly or intentionally making or using a false or incorrect declaration or document in a material particular. The Appellant's declared value was a material particular, and providing an undervalued invoice constitutes using a false document. The OIO found that the Appellant "knowingly, consciously and deliberately declared incorrect low values... and backed them up with false and fabricated documents." This finding is supported by the investigation and corroborating statements from other importers. Therefore, the imposition of penalty under Section 114AA is also fully justified. The Appellant's reliance on cases like Hindustan Steel Ltd. is distinguishable because the Appellant's conduct goes beyond a "bona fide belief" and demonstrates a conscious disregard for the law.

5.12 In light of the comprehensive analysis of the facts, the legal provisions, the contentions of the Appellant, and the findings of the Adjudicating Authority, it is evident that the Appellant's transaction value was correctly rejected, the extended period of limitation was rightly invoked, and the goods were liable for confiscation and penalties. The Appellant's arguments are not supported by the facts on record and are rebutted by the evidence from the connected investigation.

5.13 In view of the foregoing, I pass the following order:

i. The appeal filed by M/s Decore Sources against Order-in-Original No. MCH/ADC/AK/263/2023-24 dated 23.02.2024 is hereby rejected.

ii. The Order-in-Original is upheld in its entirety, confirming the rejection and re-determination of the assessable value, the demand for differential customs duty of ₹ 3,39,712/- under Section 28(8) read with Section 28(4) of the Customs Act, 1962, the recovery of interest under Section 28AA, the

confiscation of goods under Sections 111(d) and 111(m), and the imposition of penalties under Sections 114A and 114AA.

iii. The appeal is disposed of accordingly.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-32/CUS/MUN/2024-25 2834 Date: 08.08.2025

By Registered post A.D/E-Mail

To,
M/s Decore Sources,
B22/1, 2nd Floor, Wazirpur Industrial Area,
Delhi-110052.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

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