



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीऑॅ के बाजू मे, नवरंगपुरा, अहमदाबाद 380009
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: **VIII/10-02/Commr./O&A/2010**

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आदेश की तारीख/Date of Order : 11.09.2024
जारी करने की तारीख/Date of Issue : 11.09.2024

द्वारा पारित/Passed by:- **शिव कुमार शर्मा, प्रधान आयुक्त**
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-44-2024-25 dated
10.09.2024 in the case of M/ Parikh Clearing Agency Pvt. Ltd. 803, President
House, Opposite C.N. Vidhyalaya, Ahmedabad and its Director Shri Rupin Parikh.**

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
- This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजू मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
- Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.

3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा शकती है।
7. 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".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice Nos. DRI/AZU/INV-26/INV-26/2009 dated 06.01.2010 issued by the ADG, DRI, AZU, Ahmedabad to M/ Parikh Clearing Agency Pvt. Ltd. 803, President House, Opposite C.N. Vidhyalaya, Ahmedabad & others.

Brief facts of the case:

Intelligence gathered by DRI, Ahmedabad indicated that certain importers of Mobile Accessories falling under CTH 85 are indulging in evasion of customs duty by resorting to gross undervaluation at the time of import. The intelligence further indicated that though the Mobile Accessories viz. battery, charger, handsfree, housing etc. bear brand name of Nokia, Sony Ericsson, Motorola, Samsung etc. they were, at the time of import, being mis-declared as unbranded. The intelligence also indicated that the Mobile Accessories were being actually imported from China. However, with a view to pay lower Customs duty, the importers were manipulating the actual value of the consignment imported from China with the help of firms based in Hong Kong who were issuing invoices for lower value which were presented before the Indian Customs at the time of import and thereby paying lesser amount of customs duty. The intelligence further indicated that the actual importers of the Mobile Accessories were not importing the goods in the name of their firms but were using the IECs of other firms.

2. Based on the above intelligence, officers of DRI detained, inter consignments of Mobile Accessories imported by the following firm at Complex, Ahmedabad and examined the same under proper panchnama.

S.No.	Name & Address of the firm	IEC No.	B/E NO. & Date	Date of Examination
1	M/s. Wireless Communication, B-15, Almeda Compound, Nr. Pratiksha Nagar, Sion, Koliwada, Sion, Mumbai.	0308089057	638348 dtd. 08.07.2009	9-10.07.2009, 10.07.2009 & 11.07.2009

3. In the course of the examination of the above mentioned consignment under panchnama (RUD No.1) it was found that the mobile accessories imported by screen, chargers, etc. Though the goods were declared to be unbranded the Sony Ericson and Blackberry. It was also found that the goods actually imported were in excess of the quantity at the time of filing bill of entry. Further, goods other than those declared in the invoice, packing list and bill of entry were also found. The undeclared goods were 1) wrist watches bearing brand name of Cartier, Louis Vuitton, rolex, Rado, Chopard, Longines, BVLgari, Mont Blanc, Gucci etc. 2) Belts bearing brand name of Gucci, Mont Blanc, Alfred Dunhill, Louis Vuitton, Hermes etc., 3) Ball pens and refills bearing brand name of Mont Blanc. 4) Onevertu imported by M/s. wireless Communication under Bill of Entry No. 678348 dtd. 08/07/2009 were detained for further investigation.

4. The Custom House Agent for the above mentioned firm is M/s. Parikh Clearing Agency Pvt. Ltd. Ahmedabad, holding CHA License No. 2/93 AABCP2081LCH001, A statement of Shri Rupin Parikh, the Director of the said firm was recorded on 09/07/2009 (RUD No.2) under section 108 of the Customs Act, 1962 wherein he stated inter alia that:-

- In the year 1991, he started his own CHA business in the name of M/s Parikh Clearing Agency Pvt. Ltd. Apart from himself, the Directors of the firm are, (i) Shri Kishor Parikh (his father) and (ii) Mrs. Purvi Parikh (his wife). He takes care of all CHA activity in the company and his wife and father sleeping

partners in the company. Their CHA License no is 2/93 issued by commissioner of Customs, Ahemadabad.

- His company mainly deals in Custom clearing of Pharmaceutical Products. They have started Custom clearing of Mobile Phones from November' 2008 and Mobile Accessories from April'2009.
- That in the month of December, 2008 he met hi Shri JaywnatThakar in Ahemadabad. Shri jaywant Thakkar visited Air Cargo Complex regarding various CHA's working ACC and had contacted him for the same.
- Shri JaywnatThakar had got shipments cleared through other CHA's From April'2009 they started handling Shri JaywantThakar's shipments
- M/s Om logistics is having their office at A-1, Patel Bhavan, 230, Samuel street, Masjid (W), Mumbai-3.
- All customs clearing documents such as Invoice, Packing list and Airway Bill copy are received by them by email for preparing Bill of Entry. The self certified copies of all documents were received by them through courier, He does not know the person who sign on the self certified documents and GATT declaration.
- Regarding import B/E No. 678348 dtd. 08/07/09 filed in the name of M/s Wireless Communication, B-15, Almeda Compound, Near Pratiksha Nagar, Sion, KoliwadaSion, Mumbai, having IEC No. 0308089057 for mobile accessories, he states that the said mobile IEC No. 0308089057 for mobile under Invoice no. ST-5967 dated 3/7/09 of SKYTEX, C6, 4/F, BLK C, Room 401, 36-44 Nathan Road, T.S.T, Kowloon , Hong Kong, having invoice value at HK\$89259.
- He personally does not know the concerned person of M/s Wireless Communication. Even for this shipment he was contacted by Shri Jaywant Thakkar and Shri Nimesh Shah of M/s Om Logistics, Mumbai. All the required documents for filing the Bill of Entry were received through email and the self certified documents by courier.
- He receives the required documents for filing of B/E from Jaywnat Thakkar through his emai ID omlogistic@yahoo.com. In case of Shri PrabhatTarsaria the documents are received from him through email ID pt.mobil07@gmail.com.
- His email ID is exim@acelogisticsindia.com and barot@acelogisticsindia.com.
- Regarding the payment of Customs duty, warehouse charges, D/o Charges and CHA agency charges, he states that he receives the same from Shri Jaywant Thakkar and Shri PrabhatTarsaria throughAngadia, M/s AmrutKanti having office at Super Mall, C.G. Road, Ahemadabad. All the payment received by them is in cash.
- The self certified documents for filing of B/E were sometimes they received by them through Angadia, M/s AmrutKanti and sometimes they receive the documents through following courier: (i) M/s DTDC, Below HavmorResturant, Ambawadi, Ahmedabad. (ii) M/s Poonam Courier, Ambawadi Ahmedabad. (iii) M/s Maruti Courier, Monalisa Tower, Ambawadi, Ahmedabad. (iv) M/s Shri Maruti Courier, Ahemadabad, Ambawadi, Ahmedabad.
- All past documents relating to Customs clearance handled by them and the first authorization letter in respect of all their clients would be submitted by him by tomorrow i.e. 10/07/2009.
- That being Licensed Customs House Agent, he is bound to follow the Custom House Agents Licensing Regulations 2004 and he is aware that in case of breach of any of Regulation, he is liable for penal action.

5. Statement of Shri Jaywant Thakkar, Partner of M/s. Om Logistcs, Mumbai was recorded on 10/7/2009 and 17/07/2009 (RUD No. 3) under section 108 of the customs Act, 1962 wherein he stated inter alia that:-

- In the year 2005 he started selling spare parts of Deck, Speaker, Mobile etc. He used to purchase these items from whole sale market situated at Grant

Road, Mumbai and sold the same to small shopkeepers in the suburbs of Mumbai. He did this work upto 2006.

- Thereafter, in the year 2007 he started trading of mobile accessories. He purchased mobile accessories at wholesale price from Sahara Market, near VT, Mumbai and sold the same to shopkeepers in the suburbs of Mumbai.
- At the same time in Feb '2007, he opened a firm in the same of M/s Om Logistics with his friend Shri Nimesh Shah as a Partner. In this firm they are providing transportation services to their customers. This firm does not have an Income Tax No. or bank account. The turnover of this firm in the year 2006-07 was near about Rs. 1,25,000/- and in the year 2008-09 was Rs. 2,30,000/-
- Shri Kantibhai Jain contacted him and told him that he wants to import mobile accessories from Hong Kong/China.
- Shri Kantibhai Jain asked him to arrange an IEC for which he contacted his friend Shri Tillu Agarwal and asked for IEC No.
- Shri Tillu Agarwal, having mobile no. 09867671267 provided him a IEC No. 0309005515 and informed that the said IEC belongs to his friend's firm M/s Shivani Enterprises, 104, First Floor, Samrudhi Apartments, Navghar Road Bhayander (East) Thane;
- Thereafter, he contacted Shri Kantibhai Jain and informed him that arrangement of IEC had been done and goods can be imported in the India. Shri Kantibhai purchased the mobile accessories from China and made the arrangement to import in India from Hong Kong airport.
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- Shri Kantibhai purchased the mobile accessories from China and made the arrangement to import in India from Hong Kong airport.
- Shri Kantibhai contacted Shri Harjinder Singh based at China and Hong Kong for getting invoice for the consignment.
- Shri Harjinder Singh is owner of M/s H.S. Industries, Hong Kong and M/s SKYTEX, Hong Kong. Shri Harjinder Singh's Chinese mobile number is 008613688897513 and Hong Kong mobile number is 0085260999471. Shri Harjinder Singh's wife's Hong Kong mobile number is 0085261783542.
- Shri Harjinder Singh only used to issue invoice in respect of consignments coming from Hong Kong and China. For the aforesaid consignment Shri Harjinder Singh had issued an invoice no. ST 4010 dated 27.06.09, having invoice value at HK\$ 54136.95.
- At the time of import, he contacted Shri Rupin Parikh, Director of M/S. Parikh Clearing Agency Pvt. Ltd., Ahmedabad for clearance of said consignment of mobile accessories. Shri Rupin Parikh told him that to clear the Nokia branded accessories by declaring non branded accessories from the Customs, he (Shri Rupin Parikh) would charge Rs.40/- per kg. to which he agreed.
- He came in contact with Shri Rupin Parikh Director of M/s Parikh Clearing Agency for the first time about one and half years back and was constantly in touch with him till date.
- During his visit to Air Cargo Complex, Ahmedabad, He was introduced to Shri Rupin Parikh-engaged in clearance work of Mobile by Shri Vipulbhai-Mobile No. 98250-19083.

➤ He contacted and told Shri Rupin Parikh about his intention of importing Mobile Accessories from Hong Kong and China 2-3 months back to which Shri Rupin Parikh told him that he would get any type import cargo/consignment cleared from Air Cargo Complex, Ahmedabad.

- In May-2009, he met Shri Rupin Parikh personally and clarified that he is working as a Carrier and will be importing mobile accessories by using IEC Code No. of other individual/firms. Shri Rupin Parikh assured him about the clearance of cargo imported by him from Air Cargo Complex, Ahmedabad even if the cargo is imported by using IEC of other individual or firms, but, he demanded some extra money for the said work of clearance.
- The condition of payment of extra money was agreed upon by him and he started the import of Mobile Accessories through the C.H.A firm- M/s Parikh Clearing Agency. He paid Rs. 40/- per kg in cash to Shri Rupin Parikh for it.
- He had imported the cargo of mobile accessories at Air Cargo Complex, Ahmedabad in the name of M/s Shivani Enterprise, M/s Max Enterprise and M/s Wireless Communication through the Shri Rupin Parikh. He is neither proprietor nor partner in any of above firms. He had used IEC No. of the said firms with the consent of owners of the said firms for which he had paid some amount to owners of the IEC holder firms.
- The authority letter appointing M/s Parikh Clearing agency as C.H.A was prepared on letter pad of M/s Shivani Enterprise, M/s Max Enterprise and M/s Wireless Communication signed by Shri Ramesh (an employee of Shri Jaywant) as authorized signatory was handed over by him to Shri Rupin Parikh.
- Shri Rupin Parikh had never met any of owners of above firms and was already informed about using the IEC no. of said firms by Shri JaywantThakar.
- He had imported the said cargo in the name of the above firms for Shri Hitler Purohit, Shri Kalpesh Shah, Shri Kantibhai, Shri Karanbhai and Shri Rakesh HIFI, through Ahmedabad Air Cargo via Shri Rupin Parikh- C.H.A.
- He had imported mobile accessories like Housing, Charger, LCD, Spare Parts of Mobile, Connector, speaker, Hands Free Devices and Touch Glass in the 03 firms. In addition to this, he had imported one consignment of Mobile Phones.
- He had paid the IEC holders Rs. 5,000/- per Bill of Entry for allowing use of their IEC in importing goods.
- The remittance of the value of the imported goods have not been made from the accounts of the IEC holder company.
- The real owners used to buy the said goods from Hong Kong or China and send the said cargo through him and he used to hand over the same imported cargo to the real owners in India. The real owners used to pay Rs. 3/- per piece to him for arranging this deal as a carrier.
- The cargo imported by M/s Shivani Enterprise, M/s Max Enterprise and M/s Wireless Communication was sent to him by Shri Barot- an employee of Shri Rupin Parikh by transporter- M/s Ganesh Jayesh Transport, Ahmedabad, which was handed over to real owners of the goods by him in Mumbai.
- He used to differentiate the ownership of goods by the description of goods in Packing List as the same had its individual marks/codes.
- He admitted that all consignment of Mobile/ Mobile Accessories imported at Air Cargo Complex, Ahmedabad in the name of the above 3 firms have been grossly undervalued i.e. the declared price in the supplier invoice is only 10-15% of actual price.
- He used to receive the suppliers' packing list/ Invoice on his e-mail address- jaywantthaker@yahoo.com and he used to sent the scannedcopy of Packing List and Invoice to Shri Rupin Parikh on his e-mail Id - barot@acelogisticsindia.com.

► Shri Rupin Parikh used to get print out of the same and use the same as important document i.e. attach it for filing Bill of Entry etc and assessment was done by Customs Authority on the basis of description and value declared in the Invoice and payment of duty was done on the same.

► In the import documents produced by them before Customs through M/s Parikh Clearing Agency CHA, they have shown/declared the description of imported goods as Mobile Accessories instead of Branded Mobile Accessories. The said mis-declaration of description was done because NOKIA Company has filed a Case under the Provisions of I.P.R Act in Mumbai and the said type of cargo could not be imported by them without mis-declaration in such a manner and Shri Rupin Parekh was aware of these facts.

► The imports at Air Cargo Complex, Mumbai was done through CHA- M/s Dalal& Sons. He had got the import consignments cleared at ACC,

Mumbai through Shri Himanshubhai of M/s Dalal& Sons.

► Regarding the goods imported in the name of M/s Wireless Communication, he admitted that consignment was cleared through him at Air Cargo Complex, Ahmedabad vide B/E No.678348 dated 08/07/09 and the same was mis-declared as unbranded Mobile Accessories instead of "Branded Mobile Accessories".

► The consignment cleared through said B/E dated 08/07/09 was of 123 Cartons, out of which 4 Cartons contained Misc. items like Wristwatches, Belt, Slipper, Pen drive (Storage Device), V.C Phone etc and rest of 119 Cartons contained Mobile Accessories most of which were Branded Mobile Accessories. To his knowledge, these cartons contained Branded Mobile Accessories of NOKIA, LG, SONY ERICSSON brand.

► They have declared the value of imported goods vide Bill of Entry No. 678348 dated 08/07/2009 as Rs. 5,67,642/- which is wrong and the correct and real value of said imported goods is approximately Rs. 45,00,000/-.

► The goods with marks as "KJ" is of Kantibhai, the goods with mark as " G" is of Kalpeshbhai, the goods with mark as "RK" is of Rakeshbhai HIFI as shown in packing List.

► The correct value of goods imported vide B/E No. 678348 dated 08/07/2009 is Rs. 45,00,000/- which is the wholesale price and the retail price of the said goods would be even higher than it.

► The name and address of real owners of goods imported using the name of M/s Max Enterprise and M/s Wireless Communication is as given under:

- Shri Kantibhai-1st Floor, Sara Market, Opp. Manish Market, Near V.T,Mumbai.
- Shri Kalpeshbhai- Mota Market, Opp. Manish Market, Near V.T, Mumbai.
- Shri Rakesh HIFI- Opp. Amana Market, Opp. Fish Market, Near V.T, Mumbai.
- Shri Hitlerbhai- Amana Market, Ground Floor, Near V.T, Mumbai.
- He also promised to provide the actual Invoice with actual price of the imported goods in the name of M/s Max Enterprise and M/s Wireless Communications.

► He has imported mobile/mobile accessories only in the name of M/s Shivani Enterprises, M/s Max Enterprises and Communication from Air Cargo, Ahmedabad.

► Apart from above said firms, he also imported mobile/mobile accessories in the name of M/s Max Wile, M/s Sai Impex and M/s Bhayani Enterprises from Air Cargo, Mumbai. The clearance of mobiles/mobile accessories imported through Air Cargo, Mumbai has been done by Shri HemanshooAjmera.

► He produced the details of the consignments of mobiles/mobile accessories imported by him in the name of M/s Shivani Enterprises, M/s Max Enterprises and M/s Wireless Communication during the year 2009.

► As per the said details the total consignments of mobile/mobile accessories imported in the name of said three firms are as under. The total declared value shown therein is 10-15% of the actual value;

S. No.	Firm on whose name import has been done	Total number of consignments imported	Total Declared Assessable Value
1	M/s ShivaniEnterprises	11 Consignments	1,29,12,785/-
2	M/s Wireless Communication	38 Consignments	5,17,71,638/-
3	M/s Max Enterprises	20 Consignments	2,90,31,642/-

► He has also imported mobile/mobile accessories in name of aforesaid firms from NhavaSheva Port.

► At present he is not having details of import of mobile/mobile accessories in name of M/s Max Wile, M/s Sai Impex and M/s Bhayani Enterprises, and would produce the same within two-three days. **सीना** that in respect of goods imported through Air Cargo, the actual importer Regarding procedure of import of mobile/mobile accessories, he stated purchases the goods from Guangzhou Mobile Accessories market and made the payment for the said goods.

► He did not know how the payment reached China from India and only the actual importer can explain the same.

► The business man / shopkeepers from whom actual importers purchased the goods, sent the goods to the warehouse situated at Guangzhou. This warehouse belonged to Shri. Harjinder Singh. Thereafter, the actual importer informed him (Shri Jaywant) through phone, the particulars of cartons related to his goods and he used to confirm from the warehouse regarding the said goods through phone. When goods of two or three actual Importers accumulated in the warehouse, which were near about 40-50 cartons, then he telephonically used to inform the Manager of warehouse to send these cartons to Hong Kong.

► Shri Harjinder Singh arranged the transportation of said goods upto Air Cargo, Hong Kong. Shri. Harjinder Singh used to dispatch the said goods to India after getting cleared from Hong Kong Customs.

► On arrival of said goods at India he arranged an IEC and got the said goods cleared from Customs through CHA and delivered the said goods to actual importers.

► For these consignments he collected amount on the basis of per piece or per kg from the actual importer. These rates were dependent upon the market value and he used to fix same with importer before import.

These rate are as under:

- Rate of Mobile housing Rs.3.50 to Rs.4.00 per Pc;
- Rate of Hands free Rs.3.00 to Rs.3.25 per Pc;
- Rate of Battery - Rs.8.00 to Rs.8.50 per Pc;
- Rate of Mobile LCD- Rs.6.50 to Rs.7.00 per Pc;

(e). Rate of Mobile Spare Parts Rs.350.00 per Kg;

- The above rates included freight from Guangzhou to India, Customs warehouse charges in India, Customs Duty, DO charges, CMC charges and transportation charges from Air Cargo to importer's place.
- Similarly, in case of import through NhavaSheva Port of mobile/mobile accessories the actual importer purchased the goods from Guangzhou Mobile Accessories market and got the said goods loaded into container from China Port. The importer himself would make the payment in China for purchase of goods, container charges and sea freight from China to India.
- He did not know how the payment reached China from India because the payment was made by importer himself.
- After loading of the container the importer used to send him a copy of BL. On the basis of said BL, he was filing Bill of Entry through CHA. He arranged IEC for import of said consignment. Thereafter he used to get the said goods cleared from Customs and deliver the goods at Mumbai or Bhiwandi as per the direction of importer. The Customs duty and octroi have been paid by the importer.
- For this work he fixed a lump sum package with the importer. This package used to range from Rs.80,000/- to Rs.90,000/-. This package included port warehouse charges and transportation charges from NhavaSheva to Mumbai/ Bhiwandi.
- Regarding page no. 33 of file seized on 10.07.09 from premises of CHA, M/s Parikh Clearing Agency, Ahmedabad, he stated that this was an email sent by Shri Rahul Shah to Shri Rajesh Barot. Shri Rahul Shah was working in his office and was the brother of his partner Shri Nimesh Shah.
- Shri Rajesh Barot was working in the office of their CHA, Shri Rupin Parikh. This email was related to consignment under which 123 cartons were imported vide BE No.678348 dated 08.07.2009 by M/s Wireless Communication, Mumbai. Under this consignment mobile accessories have been imported.
- Through this email he has instructed his CHA, Shri Rupin Parikh that 'PIs do not examine rn1, tk1, jn1, jn2, kj39 cartons (123 shipments)'.
- In this regard, he stated that in the last week of June' 2009 he had been to China, where he did shopping for his family members and relatives, which included slippers, socks, key chains, pens, belts, branded watches, storage devices and one Vertu mobile. Out of which some belts, one Tag Heuer watch and Vertu mobile had been purchased by him for Shri Rupin Parikh.
- At the same time two importers Shri Rakesh and Shri Kalpesh have purchased mobile accessories and were intending to import the same to India and since the said import was done by him, he packed his goods in the cartons and shipped the same with the said consignment.
- This shopping was packed in carton no. rn1, tk1, jn1, jn2, kj39 and therefore, he had instructed Shri Rupin Parikh through email not to examine these cartons. This email was sent by Shri Rahul Shah to Shri Rajesh Barot on his direction.
- The goods purchased by him were worth Rs.75,000/-. While going to China he had taken 2000 USD with him and he had made the payment for the said goods in cash from the said amount.

6. Shri Jaywant Thakar had stated that the actual importers of the goods imported in the name of M/s. Wireless Communication were Shri Kalpesh Kantibhai Damani, Proprietor of M/s Sun Electronics, 328-Sahara Market, Nr.Manish Market, Victoria Terminus, Mumbai and Shri Rakesh Jain. Therefore, a statement of Shri Kalpesh Damani was recorded on 16/7/2009 and 17/7/2009 (RUD No.4) under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:-

- ◆ He started trading in Mobile accessories since 2004-05 and purchases the goods from local market and/or from Delhi and sells them on retail basis. In Delhi, he used to purchase from Karol Bagh and Gaffar Market.
- ◆ He went to China for the first time during March-2004 and stayed there for about two and half months. In China he stayed with his friends Asif & Aslam through the reference of one of his friends at Mumbai.
- ◆ Mr. Asif and Aslam are working in a company working under the name of M/S RIM INTERNATIONAL at Guangzhou in Guangdong province of China.
- ◆ With the reference of his friends he also worked in the same company for the period of two months. There he was looking after miscellaneous office work like preparation of Packing list, Invoice banking work etc.
- ◆ M/S RIM INTERNATIONAL was engaged in the export of readymade garments from China to Dubai and other Middle East destinations. M/s RIM INTERNATIONAL was headed by one Shri. Yusuf who was settled in China and was having office at Guangzhou in Guangdong province of China.
- ◆ M/s RIM International was also engaged in the invoicing of different goods for export from China to various countries.
- ◆ He was being paid 3500 RMB per month as salary by the company and he was managing his expenses from the same. The company was in requirement of English speaking personnel for dealing with their foreign customers and since he was able to communicate in English he was preferred by the company. During Sep-2004, he again went to China and stayed there for about two months in the same place and was working with the same company. He came back in the month of November and was again helping his father in his business.
- ◆ During his visits to China he was able to closely study the market in China as he was accompanying the visitors/customers coming to M/s RIM INTERNATIONAL to their respective destinations. Since he was having some basic knowledge of mobile accessories he was able to learn the market trend and the pattern of business in the said commodity. He also calculated the margin in case of import and selling of such item in the local market.
- ◆ During his working with RIM International in China, he learnt the complete procedure of purchase of goods from Chinese markets, their invoicing, export stuffing and movement of the export shipments to different countries under bill of lading/air way bill etc.
- ◆ From 2007 he started the work of arranging of shipments from China on behalf of the customers based in Dubai. Whenever the customers required some major shipments from China, they used to contact the Chinese suppliers on e-mail/phone and then ask him to arrange for loading the cargo in containers and shipping the containers from China to their desired destinations.
- ◆ Since he was able to communicate with the Chinese and also talk in English he was asked to supervise the shipments from China. For his services, he charged 3% of the Invoice Value as a commission apart from his to and fro fare, lodging and boarding etc. He was supervising the shipment of garments and mobile accessories from China to other countries.
- ◆ The 3% commission amount was included in the invoice amount and was received by the Chinese suppliers/invoicers from the receivers. Then the Chinese suppliers gave the money to him in China.
- ◆ He is also having a bank account in China and the commission amount was sometimes deposited in the bank account in China and he utilized the same amount during his visits to China.

◆ He does not have any Import Export Code (IEC) in his name or in the name of his firm M/s Sun Electronics. He has never imported any consignment in his name or in the name of his firm M/s Sun Electronics, Mumbai.

◆ He agreed with the statement of Shri. JaywantThaker dtd.11.07.2009 and confirmed that the consignment imported under the name of Wireless Communications at Ahmedabad Air Cargo Complex and detained by DRI, Ahmedabad actually belonged to him.

◆ Regarding the shipment of 92 boxes imported under the name of M/s Wireless Communications, B-15, Almeda Compound, Pratiksha Nagar, ion Koliwada, Mumbai-37 (IEC-0308089057), he stated that the items contained in the 92 boxes were actually ordered by him and he was the actual owner of the said goods, i.e. mobile accessories.

◆ He was in touch with one Shri. JaywantThaker of Mumbai staying in Kandivli (W), Mumbai. Shri.JaywantThaker worked as an agent for arranging imports for various actual importers. As a part of his (Shri Jaywant) business he was arranging the shipments on behalf of various importers from China to India.

◆ He met Shri.JaywantThaker in the last week of June-2009 in Sahara Market, Victoria Terminus, Mumbai. Shri Jaywant informed him that he was going to China for arranging shipment to India and in case he (Kalpesh) has some orders he may tell him.

◆ He contacted his friends in the China, and ordered some Mobile Accessories viz..Housing for mobile phones, Handsfree for Mobile Phones, Keypad for Mobile Phones, Charger for Mobile Phones, Spare Parts for Mobile Phones (Ringer, Flex Cable, Speaker, Connector), LCD Screen for Mobile Phones, Battery for Mobile Phones etc.

◆ The charges to be paid to Shri Jaywant were fixed with him as under:

For Housing for mobile phones - Rs.6 per piece

For Handsfree for mobile phones- Rs.4 per piece

For Battery for mobile phones Rs.12 per piece

For Spare parts for mobile phones Rs.0.45 per piece

For Keypad for mobile phones - Rs.1.5 per piece

For Pouch for mobile phones Rs.4.50 per piece

For Charger for mobile phones - Rs.7.50 per piece

◆ The above charges included Custom duty, freight, insurance, freight from airport to Mumbai and handling charges. Shri. Jaywant also confirmed that, on payment of the above expenses, the goods would be delivered at his shop in Sahara Market, Mumbai. The above payment was to be given after receiving the goods at Mumbai.

◆ After analyzing the purchase cost and the expenditures, he found that the goods would be viable and would be sold at good profit hence, he ordered for the consignment with Shri Jaywant.

◆ Thereafter, he placed the orders for the items Mobile Accessories with his friend in China and requested him to pack the boxes and deliver them to a Particular Warehouse in China as desired by Shri Jaywant. Thereafter, Shri Jaywant arranged for the IEC and Custom clearing.

◆ After seeing Invoice No.ST-5967,dtd.03.07.2009 issued by M/s SKYTEX, सोमा Hong Kong in favour of M/s Wireless Communications, Mumbai for Afferent items of Mobile Accessories totally valued at HK\$ 89259.80 he States that, he had not purchased the goods from M/s SKYTEX, HongKong and the values declared in the said invoice are not the actual value of the goods-Mobile Accessories ordered by him.

◆ He also confirmed that, out of the 123 cartons mentioned in the Packing List the Cartons marked with the markings-"KJ" followed by the carton number actually contains Mobile Accessories ordered by him. He confirms that "KJ" marked cartons are serially marked from "KJ-01" to "KJ-95", however, cartons numbers "KJ-15, 16 and 75" are actually not mentioned, therefore actual count of the cartons ordered by him comes to 92 only.

◆ The invoice from M/s SKYTEX, Hong Kong was arranged by Shri. Jaywant and he did not know the firm/company. The Mobile Accessories ordered by him and contained in the 92 cartons covered under Invoice No.ST-5967, dtd.03.07.2009 and detained by DRI, Ahmedabad at Air cargo Complex, Ahmedabad were of Chinese origin and purchased from different shops in China.

◆ The actual price/values of the items are as under :

Sr.No	Declared Description	Actual Description	Quantity (Pieces)	Declared Price (HK\$ Per Piece)	Actual Price (RMB Per Piece)	Total Actual Price (USD)
1	Housing	Housing for Mobile Phones Branded- Nokia/Sony Ericsson/ Samsung/C hina/ Motorola	12212	0.90	2	3561
2	Handsfree	Handsfree for Mobile Phones- Branded- NOKIA/ Sony Ericsson	30490	0.90	1.9	8448
3	Keypad	Keypad- Parts for Mobile Phones- Unbranded	12530	0.10	0.80	1462
4	Patta	Flex Cable- Parts for Mobile Phones- Unbranded*	3380	0.10	0.25	142
5	Battery	Battery for Mobile Phones	1319	2.00	3.80	731
6	LCD	LCD Screen for mobile Phones- Unbranded*	15020	2.00	3.80	8324
7	Small Cable	Small Cable- Parts for Mobile Phone Unbranded*	700	0.10	0.60	61
8	Small Pin	Small Pin- parts for Mobile Phones- Unbranded*	1200	0.09	0.40	70
9	ON/Off Rubber	On/Off Rubber-	11500	0.10	0.10	168

		Parts for Mobile Phones- Unbranded*				
10	Charging Connector	Charging Connector- Parts for Mobile Phones- Unbranded	16300	0.10	0.30	713
11	Ringer	Ringer- Parts for Mobile Phones- Unbranded*	10500	0.10	0.40	613
12	Touch Glass	Touch Glass- Parts for Mobile Phones- Unbranded*	1080	0.10	1.20	189
13	Speakers	Speakers- Parts for Mobile Phones- Unbranded*	10000	0.10	0.25	5833
14	Mic	Mic- Parts for Mobile Phones- Unbranded*	2500	0.10	0.15	55
15	Connector	Connectors- Parts for Mobile Phones- Unbranded*	4300	0.10	0.15	94
16	Screen Guard	Screen Guard- Parts for Mobile Phones- Unbranded*	1050	0.10	0.20	30.62
17	Pouch	Pouch for carrying Mobile Phone- Branded	400	0.60	1.2	70

◆ He admitted that the actual price/value of each item stated in vertical Col-6 of the above table was the original price of each item negotiated by him with his suppliers in China.

◆ He undertook to produce the original Invoices of these items from the actual Chinese suppliers. He has already sent a message to his suppliers to mail him a copy of original invoice from China, however on checking his e-mail-kan13-6@hotmail.com he found that there was no mail from his suppliers.

◆ He admitted that the prices/value of the items were purposely misdeclared with an intention to pay less customs duty. It had been done to survive in the cut throat competition in the local market of mobile accessories.

◆ He undertook to pay up the differential duty arising out of the above undervaluation as soon as possible.

◆ Regarding the payments forwarded to the overseas suppliers, he stated that he had not forwarded any amount to the overseas suppliers till today. In this business they are given a maximum credit period of 45 days.

◆ On being asked as to how the documents were received without payment, he stated that, the Invoice attached with the import documents was not from the actual supplier of the goods, they were Invoiced by a firm based in Hong Kong and arranged by Shri Jaywant. Shri Jaywant can explain better in the matter of import and clearance.

◆ Regarding the branded goods found in the cartons imported/ordered by him, he admitted that the items like Housing for Mobile Phones, Battery for Mobile Phones, Pouches for carrying Mobile Phones, Handsfree for Mobile Phones were all branded with the popular Mobile Phone Brands-like NOKIA, SAMSUNG, MOTOROLA, SONY ERICSSON etc.

◆ He also admitted that, the branded goods found in the 92 boxes booked and ordered by him and covered under Invoice No.ST-5967, dtd.03.07.2009, were actually received as ordered by him. He was aware that the said items were branded with specific Brand Names and this fact was not declared in the Invoice or Packing List or the Air Way Bill No-CP181914, dtd.05.07.2009. and/or 589-92998054dtd.05.07.2009.

◆ Though the goods bear the abovementioned brand names, they were not genuine but duplicates made in China. The fact of branded items was purposely not declared in the import documents as branded items are not allowed to be imported by persons other than the authorized users of the specific brands and was in violation of the Intellectual Property Rights.

◆ This was his first import and he had never ever imported any other item in past and he had also not imported any consignment of Mobile accessories in any other name in the past from any port or airport in India.

7. Out of the 123 cartons imported by M/s. Wireless Communications, 27 cartons were actually imported by Shri. Rakesh Jain. Therefore, a statement of Shri Rakesh Jain, Proprietor of M/s. HIFA, Shop No.H1, Ground Floor, R.D.Market, Opp. Amana Market, MusafirKhana, Mumbai was recorded on 29/12/2009 (RUD No.5) under Section 108 of the Customs Act, 1962 wherein he stated inter alia that :-

◆ After dropping out from school in the year 2000 he left his studies and was jobless for about a year. Then with the help of his father he got a job in a shop named as "R.S. Telecom" situated at Indraprastha, Basement, Near Station, Borivali (West), Mumbai. The said shop was owned one Shri Naresh Shah and engaged in the retail sale of Mobiles Phone and Mobile Accessories. Due to some financial crisis the said shop was closed by its owner.

◆ Since he was having experience of purchase and sale of mobile and its accessories, he opened his own shop in the name of M/s HIFA, Shop No. H1, Ground Floor, R.D. Market, Opp. Amana Market, MusafirKhana, Mumbai.

◆ The said premise is rented and he pays Rs.6500/- per month as rent. From the said shop he started wholesale business of mobile accessories.

◆ He purchases mobile accessories from Sahara Market, Mumbai and sells the same to small shopkeepers in the suburbs of Mumbai.

◆ He does not have any bank account of his firm. All the financial dealing done by him is in cash with his suppliers and customers.

◆ He came to know that there was a big market wholesale market of mobile accessories in Guangzhou, China and the same are available very cheap and found that purchasing directly from Guangzhou, China and selling it in India would be profitable. So he thought of importing mobile accessories from China.

◆ He came to know that for import of Mobile Accessories from China an IEC number and a bank account is required.

- ◆ He learnt that Shri Jaywant Thakar of Mumbai, a regular visitor at Sahara Market, Mumbai is engaged in arranging import of Mobile Accessories from China.
- ◆ He met Shri Jaywant Thakar in the 1st week of June' 2009 and during meeting told him about his intention to import mobile accessories directly from China. Shri. Jaywant Thakar asked for import export code number to which he had informed him that he did not have one.
- ◆ Shri Jaywant had informed him that he could arrange for import on some other importer's import export number.
- ◆ He had also told Shri Jaywant that he did not know any supplier of mobile accessories of Guangzhou, China, to which Shri Jaywant had informed him that one Shri. Harjinder Singh, who is owner of M/s H.S. Industries, Hong Kong and M/s Skytex, Hong Kong ho arranges for export of mobile accessories from China through Hong Kong.
- ◆ Shri Jaywant also told him that he could place order of mobile accessories with Shri Harjinder, who would purchase the ordered mobile accessories from Guangzhou, China for him and export the same to him. Shri Harjinder would charge 3% of value of goods as his commission.
- ◆ He had informed Shri Jaywant Thakar after about a week that he was ready to import mobile accessories from China and had showed him the list of mobile accessories which he intended to purchase from China.
- ◆ Shri Jaywant called Shri Harjinder on his mobile phone and he placed his order of mobile accessories with Shri Harjinder. Shri Harjinder had requested for two week's time for purchase of the ordered mobile accessories and export of the same.
- ◆ He had told Shri Jaywant to arrange for IEC of any firm for import and also handed over the work of clearance of import consignment from Customs. For this arrangement Shri Jaywant told him that he would accept commission suitable to him.
- ◆ Thereafter, in last week of June' 2009 Shri Harjinder informed him that his ordered goods were ready and asked for export schedule, which he had informed Shri Jaywant Thakar.
- ◆ Shri Jaywant told him that he had some other consignment with Shri Harjinder Singh, which is about to be imported through Air Cargo at Air Cargo Ahmedabad. On the direction of Shri Jaywant, Shri Harjinder dispatched his consignment of mobile accessories with the said cargo and accordingly, he had requested Shri Jaywant Thakar for clearance of said consignment from Customs.

On 10.07.2009, he had received a phone call from Shri Jaywant Thakar informing that his consignment of mobile accessories had been put on hold by DRI. Shri Jaywant had also informed that the mobile accessories purchased by him have been imported using IEC of M/s Wireless Communication, Mumbai.

- ◆ After seeing Commercial Invoice No. ST-5967, dated 03.07.2009 issued by M/s SKYTEX, C-6, 4/F BLK C, RM-401, 36-44 Nathan Chunking, 36-44 Nathan Road, TsimTshaTsui, Kowloon, Hong Kong for different types of Mobile Accessories and the name of the buyer is written as "Wireless Communication", B-15, Almeda Compound, Near Pratiksha Nagar, Sion, Koliwada Sion, Mumbai and Packing List of the same date, he states that out of the total consignment of 123 Cartons only 27 Cartons were ordered by him and was to be delivered to him.
- ◆ The cartons bearing Marks RK1 to RK27 belong to him. He also confirmed from the description that they were the same items ordered by him from Shri Harjinder Singh for Import through Shri Jaywant Thakar at Air Cargo Complex, Ahmedabad.
- ◆ After seeing Bill of Entry No. 678486, dated 08.07.2009 filed at Customs Air Cargo Complex, Shahibaug, Ahmedabad in the name of M/s Wireless Communication, B-15, Almeda Compound, Near Pratiksha Nagar, Sion, Koliwada Sion, Mumbai, he confirmed that the out of 123 Cartons imported vide the said bill of entry 27 cartons

goods belonged to him and the custom duty for the said goods as decided by the authorities was required to be paid by him.

◆ The Mobile Accessories purchased by Shri Harjinder Singh for him and contained in the 27 cartons covered under Invoice No. ST-5967, dated 03.07.2009, examined by DRI, Ahmedabad were of Chinese origin and purchased from different shops in Guangzhou, China.

◆ He did not remember the actual price/values of the items however, he undertook to produce the original Invoices of these items from the actual Chinese suppliers at the earliest.

◆ He admitted that the prices/value of the items were deliberately mis-declared with an intention to pay less customs duty.

◆ He also undertook to pay up the differential duty arising out of the above undervaluation as soon as possible.

◆ He did not know the Proprietor of M/s. Wireless Communication as the said import export number was arranged by Shri Jaywant.

◆ The money for the above 27 cartons of mobile accessories was to be paid by him to Shri Harjinder through his agent at Mumbai. However, he has not paid any amount till date.

◆ This was his first import through Shri Jaywant Thakar and he had never imported any other item in past. He had also not imported any consignment of Mobile accessories in any other name in past from any port or airport in India.

8. Some of the mobile Accessories imported by M/s. Wireless Communication, Mumbai were bearing the brand name of Nokia. M/s. Nokia Ltd has registered their brand name with the Customs Authorities in ms of the Intellectual Property Rights (Imported Goods) Enforcement 2007. Therefore, M/s. Nokia India Ltd, Gurgaon and their authorized Representative Attorneys M/s. Sen-Oberoi, New Delhi were requested vide letter dtd. 20/07/2009 (RUD No.6) for examination of the goods to determine whether the same were in infringement of the IPR. Shri Archit Sharma, Lawyer from the firm of M/s Sen-Oberoi, Attorneys and Authorised Representatives of M/s Nokia Corporation appeared in the DRI office on 21/8/2009 and examined the representative samples drawn from the consignment imported by M/s Wireless Communication under B.E. No.678348 dtd. 08/07/2009. The examination of the samples was carried out under a Panchnama dtd. 21/8/2009. On examining the representative samples Shri Archit Sharma opined that the goods were infringing the IPR of Nokia.

9. In the course of the investigations against the importers of Mobile Accessories, searches were carried out at the premises of M/s. P.T. Mobile & Accessories, Shop No.303, First Floor, Sahara Market, Nr. Manish Market, Musafir Khana, Mumbai who had imported mobile accessories in the name of M/s. Hari Krishna International, Surat. Therefore, the said premises were searched by the officers of DRI, Mumbai on 10/7/2009 under a Panchnama. In the course of the searches, the officers recovered documents pertaining to the purchase of Mobile Accessories in China and their subsequent sale in India.

10. A statement of Shri Prabhat Tarsaria, Proprietor of M/s. P.T. Mobile & Accessories, Mumbai was recorded on 10/7/2009 and later on 17/7/2009 under Section 108 of the Customs Act, 1962 wherein he confirmed that the invoices recovered from his premises by the officers of DRI, Mumbai on 10/7/2009 reflect the actual transaction values of the goods imported by him in the name of M/s. Hari Krishna International, Surat. In the course of his further statement recorded on 30/9/2009 under Section 108 of the Customs Act, 1962 he had also stated that the mobile accessories were purchased by him in Guangzhou, China from different sellers/shops and that these goods were shipped to India on the basis of the invoices issued by the Shippers based at Hong Kong. Shri Prabhat Tarsaria tabulated the details contained in the invoices seized from his office premises and stated that the prices indicated in these invoices

reflect the actual price of the mobile accessories purchased by him in Guangzhou, China and imported in the name of M/s. Hari Krishna International Communication and M/s.Rays International. Further, the invoices under which the mobile accessories imported by Shri Prabhat Tarsaria were sold in the Indian market were also recovered in the course of the Search at his shop. These invoices contain the details of the mobile accessories and the price at which they were sold by him in the local market in Mumbai.

11. A further statement of Shri Rupin Parikh, Director of M/s. Parikh Clearing Agency Pvt. Ltd, Ahmedabad was recorded on 10/11/2009 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that :-

◆ He submitted a sheet containing name & address of importer, B/E No. & date, Invoice No., Overseas Suppliers Name & Address alongwith all import details in respect of import consignment handled by them, till date, that details are as under:

Sr.No.	IEC Code No.	IEC Company Name	IEC Holder's Name	Authorised Representative name
1	520804337	Rays Inte. A-104, Avdhut Society, Opp. Ashok Nagar, Katargam Road, Surat	Ramesh Kochariya A-104, Avdhut Society, Opp. Ashok Nagar, Katargam Road, Surat	Prabhat Tarsaria
2	5208046130	Hari Krishna Intel., 105 D.K. Nagar-2, Nr. Santoshi Krupa, Katargam, Singapore Road, Surat	Bharathbhai Vora, 105 D.K. Nagar-2, Nr. Santoshi Krupa, Katargam, Singapore Road, Surat	Prabhat Tarsaria
3	0308089057	Wireless Communication, B-15, Ameda Compound, Nr. Pratiksha Nagar, Sion, Koliwada Sion, Mumbai-37	Bhaskar Babu Gunti, Babuyellayya Gunti, B-15, Ameda Compound, Nr. Pratiksha Nagar, Sion, Koliwada Sion, Mumbai-37	Jaywant Thakkar
4	0308068394	Max Enterprise, House No. 223 Mot Ali Gass, Post-Sopra, Taluka- Vasai, Thane-203	InasAlex Mo Alex Mot House No. 223 Mot Ali Gass, Post- Sopra, Taluka- Vasai, Thane-203	Jaywant Thakkar
5	0309006015	Bhayani Enterprise, 75 Jansukh Aptt., Kasturba Road, Kandivali West, Mumbai-67	Karan Bhayani, R D Bhayani, Jansukh Aptt., Kasturba Road, Kandivali West, Mumbai-67	Jaywant Thakkar
6	0309005515	Shivani Enterprise, 104 First Floor, Samrudhi Aptts., Navghar Road, Bhayander (E), Thane	Sushil Kadan, 104, 104 First Floor, Samrudhi Aptts., Navghar Road, Bhayander (E), Thane	Jaywant Thakkar

- ◆ Regarding the IEC holder and owner of the firms he states that he knows the IEC Code & Name of IEC holder but he has never met them;
- ◆ In the month of April 2009 Shri Prabhat Tarsaria contacted him on phone & enquired about the import of mobile accessories through ACC, Ahmedabad. He had invited him to visit his office to discuss further. Shri Prabhat Tarsaria came to his office and during the meeting informed him that he got his mobile no. from Mumbai Market. They settled clearing charges at 3000/- per consignment + Customs Duty + Airline D/O charges + W/ House Charges + Transport Charges.
- ◆ He has never personally met Shri Ramesh Kochariya & Shri Bharathbhai Vora who are Proprietors of M/s. Rays International & M/s. Hari Krishna International, respectively.
- ◆ At the time of imports in respect of M/s. Rays International & M/s. Hari Krishna International, Shri Prabhat Tarsaria used to send email of Invoice, P. List & AWB Copy

& 1 set of Self Certified documents + GATT declaration through courier for further clearance of the shipment. On the basis of these documents they used to calculate duty amount + D/O Charges + W/House Charges and accordingly inform Shri Prabhat Tarsaria. Shri Prabhat Tarsaria would send amount through Angadia firm M/s Patel Amratbhai Kantibhai Co., 206, 2nd floor, Super Mall, Nr Lal Bungalow, C. G. Road, Ahmedabad.

◆ Shri Jaywant Thakkar authorized representative of M/s. Wireless Communication, M/s. Bhayani Enterprise, Shivani Enterprises & Max Enterprise contacted him on his mobile and informed that he was in Ahmedabad & wanted to meet him regarding import of mobile accessories. Thereafter Shri Jaywant Thakkar came to his office & during the meeting Shri Jaywant Thakkar informed him that he got his number from ACC, Ahmedabad.

◆ They settled clearing charges Rs. 3000/- per consignment + Customs Duty + Airline D/o + W/House Charges + Transport Charges. After the shipment of Cargo from Hong Kong Shri Jaywant Thakkar used to inform him about the same & send the relevant invoice, P. List & AWB copy by email and 1 set of self certified documents + GATT declaration through courier.

◆ On receipt of the above documents they used to produce B/E in customs for customs clearance & get the cargo cleared after paying necessary charges & duty on behalf of importer. Regarding payment of Customs Duty + Airline D/O + W/House Charges + Clearing charges, he states that the amount was sent to him by Shri Jaywant Thakkar through Angadia firm M/s. Patel AmratKantilal Co., 206, 2nd Floor, Super Mall Nr. Lal Bungalow, C.G. Road, Ahmedabad.

◆ For the first 2 consignments of M/s. Wireless Communication, the necessary charges & duty was received by him through Angadia firm M/s. Shankar Kumar & Co., G-14, Swaminarayan Complex, Opp. Jubali Hospital, Revdi Bazar, PanchKuva, Ahmedabad.

◆ He has never met the Proprietor of M/s. Shivani Enterprise, Shri SushilKadam& Sunil Kadam, M/s. Bhayani Enterprise, Shri Karan Bhayani, M/s. Max Enterprise, Shri Inas Alex Mot & Alex Mot and M/s. Wireless Communication, Shri BhaskarGunti& Shri BabuGunti.

◆ For the last 2 shipments one of M/s. Max Enterprises & one consignment of M/s Wireless Communication, the clearing charges was further negotiated by Jaywant Thakkar and reduced to Rs. 2000/- per consignment + Customs Duty + Airline D/o + W/House Charges + Transportation Charges (if any). They did not receive any amount in addition to the above charges.

◆ On being informed that Shri Jaywant Thakkar had stated that they were paying Rs. 40/- per kg in cash for clearances of mobile accessories, he states that he does not agree with the statement of Shri Jaywant Thakkar.

◆ They have in all cleared/ filed documents for 16 consignments of Shri Jaywant Thakkar and Shri Prabhat Tarsaria for which they have received amount of Rs. 1,68,218/- towards their agency charges, EDI fee, W/H charges and D/O Charges. He produces copy of the ledger accounts for the relevant period reflecting the said amount. The amount of Rs. 1,68,218/- does not include the amount of customs duty as the same was being deposited in the banks in the name of the importers.

◆ They were handling customs clearances for the 6 firms on the basis of the authority letter given to them by Shri Jaywant Thakkar and Shri Prabhat Tarsaria.

◆ He has never met any of the proprietors of the 6 firms. They did not verify whether the authority letters were in fact issued by the proprietors of the 6 firms. However they verified the name of the signatory with the name mentioned in the IEC.

◆ He has never spoken with any of the proprietors of the 6 firms and has also not ascertained whether the goods imported in the name of their firms/ IEC's belong to them or not.

- ◆ Regarding the Email at page 33 of the file seized from his office premises, he states that this mail was received by Shri Rajesh Barot who is Manager of M/s. Ace Logistics Pvt. Ltd., which was their group company. On receipt of this mail Shri Rajesh Barot informed Shri Jaywant Thakkar over the phone that selection of goods for examination is done by the EDI system and it is not possible for them to select or exclude goods from examination. After communicating this Shri Rajesh Barot had deleted the mail.
- ◆ On being shown page 3 on Annexure A, Panchnama dated 9-10.07.09, Page 2 of Annexure A, Panchnama dated 10.07.09, Page 3 & 7 of Annexure A, Panchnama dated 11.07.09 and asked he stated that Carton No. rm1, tk1, jn1, jn2 &kj 39 are mentioned in the goods examined under the panchnama by the officers of DRI. These were the same cartons which Shri Jaywant Thakkar had requested for ensuring non examination by the office of Customs.
- ◆ Having gone through the said documents he finds them to be goods which were not declared in the relevant invoice and Price list which they submitted for filing the B/E. These are smuggled goods as they were not declared.
- ◆ Shri Jaywant Thakkar had requested non examination of the above mentioned cartons they were not aware of the contents of these cartons & neither were they aware that the goods contained in these Cartons were not declared in the Invoice and Price list given to them for filing B/E.
- ◆ Shri Barot had not informed him about the mail and therefore he could not know about it and accordingly informed the customs.
- ◆ As the Directors of M/s. Ace Logistics P. Ltd. and Mrs. Purvi Rupin Parikh, he was the active and working Director looking after all the activities of the firm and all employees including Shri Rajesh Barot reported to him.

12. A Statement of Shri Bhaskar Babu Gunti, Proprietor of M/S.Wireless Communication, Mumbai was recorded on 18/11/2009 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that :-

- ◆ Due to some personal reason, he left his studies in mid session of Class X Std. and initially started working in a garment shop at Dadar (West). After working for years in said garment shop, he left the said job and started working as a sales man in 'Top Mobile House' a retail shop of M/s. Mobile and Mobile accessories situated at Suleman Maniar Chawl, Shop No.3, Gokhale Road, South Dadar, Mumbai-3. The said shop was owned by Shri Mahindrabhai and was engaged in the selling of Mobile and its accessories. He is still working with the said firm.
- ◆ In the said job he was not earning sufficient and he was also facing monetary crisis. Shri Mahindrabhai the owner of the said shop used to purchase mobile accessories from one Shri Nimesh Shah, who frequently visited the shop to take orders and to settle his payment with Shri. Mahindra Bhai.
- ◆ He became friendly with Shri Nimesh Shah and came to know that Shri Nimesh Shah was a Partner of M/s Om Logistics and also engaged in business of import and sale of Mobile Accessories. He told Shri Nimesh Shah regarding his monetary crisis. Shri Nimesh Shah advised him that import and sale of Mobile Accessories was a lucrative business and fetches good income.
- ◆ Shri Nimesh Shah also told him to import Mobile Accessories from China and that for the same an Import-Export Code and a bank account was required.
- ◆ Since Shri Nimesh Shah knew his financial condition, he advised him to create a firm and obtain an Import-Export Code and that on the said IEC, he would import the Mobile Accessories from China for wholesalers based at Mumbai and that per consignment he (Shri Nimesh Shah) would pay some money to him.
- ◆ He liked the proposal of Shri Nimesh Shah and agreed to open a firm. Thereafter, in the month of Feb 2009 as advised by Shri Nimesh Shah, he created a firm in the name of M/s Wireless Communication at his residence address i.e. B-15, Almeda Compound, Near Pratiksha Nagar, Sion, Koliwada

Sion, Mumbai and also opened Current Account of his said firm with Dena Bank, Branch Sion (West), Mumbai having account No.009611023782.

- ◆ On the basis of the said firm and bank account details, he applied for IEC with the DGFT, Mumbai and DGFT issued IEC No. 0308089057 in the name of his firm M/s Wireless Communication. The expenses incurred in respect of obtaining IEC were borne by Shri Nimesh Shah. He produced a copy of Certificate of Importer-Exporter Code (IEC) issued by DGFT, Mumbai.
- ◆ He handed over the said IEC to Shri Nimesh Shah who also asked for signed blank cheques of the bank account of M/s Wireless Communication, which he gave. Thereafter, Shri Nimesh Shah started importing mobile accessories in the name of M/s Wireless Communication by using the said IEC.
- ◆ He did not know name of overseas suppliers nor has any details of them. He was not aware as to how Shri Nimesh Shah made the payment to overseas suppliers. He undertook to produce a copy of his bank account statement within two days.
- ◆ For allowing Shri Nimesh Shah to use the IEC of his firm for importing Mobile Accessories, Shri Nimesh Shah had paid him Rs.45,000/- till date.
- ◆ Regarding payment terms with the overseas suppliers and M/s Wireless Communication, he stated that he did not have any knowledge of the same. However, Shri Nimesh Shah informed him that the overseas suppliers used to give the importers three months credit and after import and the persons for whom the goods were being imported sell the goods and on receipt of sale proceedings, payment was being made to overseas suppliers.
- ◆ Regarding the name of custom clearing agents who used to clear imported consignments of M/s Wireless Communication from Customs at Mumbai and Ahmedabad, he stated that he did not have any knowledge in this regard because this work was handled by Shri Nimesh Shah.
- ◆ He did not make any investment in the business of mobile accessories imported by M/s Wireless Communication. All the investment was made by Shri Nimesh Shah.
- ◆ He was not aware of the details of imports of mobile accessories made by M/s Wireless Communication since its inception to till date and only Shri Nimesh Shah who was having the complete details can provide the same.
- ◆ None of the goods imported in the name of his firm and using its IEC belonged to him.
- ◆ He was not aware that one consignment of mobile accessories imported by M/s Wireless Communication vide B/E No. 678348 dated 08.07.09 was seized by the officers of DRI, Ahmedabad at ACC, Ahmedabad. However, on receipt of summons, he had enquired with Shri Nimesh Shah who had informed him that the goods were detained because they had not declared the true and correct value and had declared a lower value.
- ◆ He was not aware about the actual value of the goods, however in this regard Shri Nimesh Shah will be able to tell the actual facts. Though the goods imported in the name of his firm and using his firm's IEC, the same did not belong to his firm, he understood that the duty liability was upon his firm as the bill of entry was filed in the name and IEC of his firm.

13. The goods imported by M/s. Wireless Communication, Ahmedabad at Air Cargo Complex, Ahmedabad under Bill of Entry No.678348 dd.08/07/2009 were placed under seizure by the officers of DRI, Ahmedabad on 09/11/2009 under the reasonable belief that the same are liable for confiscation under the provisions of Section 111(d) and (m) of the Customs Act, 1962.

14. Accordingly show cause notice was issued to M/s. Wireless Communication, B-15, Almeda Compound, Nr. Pratiksha Nagar, Sion, yada, Sion, Mumbai calling upon them to show cause to the Commissioner Customs, having his office at Custom House, Opp. Old High Court, Angpura, Ahmedabad, as to why:-

(i) The declared classification of the mobile accessories under CTH 85177090 should not be rejected and the goods re-classified under 85299090, 85072000, 85044030 etc. as detailed in Annexure A to the SCN.

(ii) The total value of Rs. 5,67,960/- declared by them in respect of the mobile accessories viz. Housing, Battery, Charger, LCD Screen, Touch Glass, Ringer, Speaker etc. imported at Air Cargo Complex, Ahmedabad vide Bill of Entry No.678348 dtd.08/07/2009, as mentioned in Annexure 'A' to the Show Cause Notice, should not be rejected and re-determined as Rs.2,88,05,296/- (excluding goods at para 22.5) as shown in Annexure 'A' to the SCN under Section 14 of the Customs Act, 1962 read with Rules 3 and 9 Customs Valuation (Determination of price of the imported goods) Rules, 2007;

(iii) The goods i.e. Housing, Battery, Charger, LCD Screen, Touch Glass, Ringer, Speaker, Key Pad etc. (including the excess and undeclared quantity) valued at Rs.2,61,87,860/- (Re-determined value) seized on 09/11/2009 should not be confiscated under the provisions of Section 111(d) (1) and (m) of the Customs Act, 1962.

(iv) The mobile accessories bearing the brand name of Nokia valued at Rs.26,17,436/- (re-determined value) imported contrary to the prohibition under Section 11 (2) of the Customs Act, 1962 should not be confiscated under Section 111 (d) (1) & (m) of the Customs Act, 1962.

(v) The 04 cartons containing Wrist Watches, Belts, Ball pens and refills, One Vertu Ascent Ferrari Mobile Phone, USB Pen Drives, Socks, Slippers etc. having a stated value of Rs.75,000/- which were not declared in the invoice and packing list and at the time of filing of bill of entry should not be absolutely confiscated under Section 111 (d), 111 (i) and 111 (1) of the Customs Act, 1962.

(vi) Differential Customs duty amounting to Rs.56,44,191/- (Rupees fifty six lakhs forty four thousand one hundred and ninety one only), as detailed in the Annexure 'A' to the show cause notice, evaded by them on the said goods, should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962;

(vii) interest should not be recovered from them on the said differential customs duty, as at (vi) above, under Section 28 AB of the Customs Act, 1962;

(viii) Penalty should not be imposed on them under Section 114 A of the customs Act, 1962.

(ix) Penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962.

15. Show cause notice was issued Shri Kalpesh Damani and Shri Rakesh Jain, the actual importers of the goods imported under BE No. 678348 dtd.08/07/2009, to show cause to the Commissioner of Customs, , as to as to why penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962.

16. Show cause notice was Shri Jaywant Thakar and Shri Nimesh Shah of M/s.Om Logistics, Mumbai to show cause to the Commissioner of Customs, Ahmedabad, as to why penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962.

17. Show cause notice was M/s.Parikh Clearing Agency Pvt Ltd, Ahmedabad and Shri Rupin Parikh to show cause to the Commissioner of Customs, Ahmedabad, as to why penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962.

18. Further addendum dtd 13.07.2011 to show cause notice was issued from F.No. DRI/AZU/INV-5/2010 by Addl. Director General, Ahmedabad Zonal Unit, Ahmedabad calling upon to them that the differential customs duty amounting to Rs. 56,44,191/- as indicated in Annexure-A to the show cause notice would be recovered jointly and severally from M/s Wireless Communication, Mumbai, Shri Kalpesh Damani and Shri Rakesh Jain and Shri Kalpesh Damani and Shri Rakesh Jain were also made liable for

the acts of wilful mis-statement and suppression of facts by M/s Wireless Communication, Mumbai.

19. Written submission: Advocate of M/s. Parikh Clearing Agency Pvt. Ltd. and its Director Shri Rupin Parikh submitted their written submission date 06.08.2024 on 12.08.2024 wherein they interalia stated as under:

19.1 That in the remanded proceedings, they have received three letters from your office regarding personal hearing for cross-examination of Shri Jaywant Thakar on 12.07.2024, 22.07.2024 and 02.08.2024, however, Shri Jaywant Thakar did not turn up for cross-examination; that it is a settled legal position that if a person whose statement is relied upon by the department does not turn up for cross-examination than the statement of such person is to be eschewed from the evidence and cannot be relied on the adjudicating authority; that in a case of Karan Traders reported at 2016 (339) ELT 249 (Mad.), Hon'ble High Court of Madras has held that when the department was unable to produce persons whose statements are relied upon for cross-examination, then the statements recorded from them should be eschewed by the adjudicating authority and thereafter, the adjudicating authority ought to have proceeded with the adjudication; that in case of Arsh Castings Pvt. Ltd. reported at 1996 (81) ELT 276 (Tribunal) the Appellate Tribunal has held that it is an elementary principle of natural justice and fair play that a person who is sought to be proceeded against and penalized in adjudication on the basis of third-party statements should be afforded effective opportunity to challenge the correctness of the same as per law by cross-examination, if he so desires. If witness do not turn up for cross-examination, it is open to the adjudicating authority to proceed with the adjudication without relying on these statements against the person so charged. Failure of a witness to appear for cross-examination will not be a ground to penalize the appellants in law when the appellant is entitled to an opportunity of cross-examination of third party on whose statement reliance is placed upon; that similarly, in the case of Kasat Chemicals Pvt. Ltd. reported at 2006 (202) ELT 666 (Tri.-Mumbai) the appellate tribunal has held that it is well settled that demands based on statements of persons who do not turn up for cross examination is not sustainable; that therefore, in the facts of the present case the statements of Shri Jaywant Thakar who did not turn up for cross-examination has to be eschewed and cannot be relied upon to impose penalty on them.

19.2 That in the present case as the evidence led by the Customs Department is mainly statements of Shri Jaywant Thakar; but these are only statements, which cannot be straightaway admitted as evidence in quasi-judicial proceedings like adjudication of the subject show cause notice; that it is laid down under Section 138B of the Customs Act that such statements could be admitted as evidence only after the person who made the statement was examined as a witness before a Court in court proceedings, and before the quasi-judicial authority conducting adjudication in adjudication proceedings under the Customs Act; that Section 138B of the Customs Act provides that a statement made and signed by a person before a Gazetted Officer of Customs during the course of any enquiry under the Customs Act is relevant for the purpose of proving the truth of the facts which it contains only when the person who made such statement is examined as a witness in the case before the adjudicating authority, and the adjudicating authority was of the opinion that, having regard to the circumstances of the case, such statement should be admitted as evidence in the interests of justice; that Section 138B of the Customs Act mandatorily provides for this procedure, and sub section (2) thereof also lays down that this procedure shall apply in relation to any proceedings under this Act, other than a proceeding before a Court; that provision of Section 138B of the Customs Act, 1962 has fallen for consideration before the Hon'ble Punjab & Haryana High Court in cases of Jindal Drugs Pvt. Ltd. reported in 2016 (340) ELT 67 (P&H) and M/s. G-Tech Industries reported in 2016 (339) ELT 209 (P&H), and the Hon'ble Punjab and Haryana High

Court has held in both these cases that a statement recorded by an investigating officer was not admissible as evidence in adjudication proceedings unless and until the person who made the statement was examined before the adjudicating authority in the adjudication proceedings conducted under the Act; that in case of M/s. J&K Cigarettes Ltd. reported in 2009 (242) ELT 189 (Delhi) and in a case of M/s. Dhariwal Industries Ltd. reported in 2015 (325) ELT 532 (KAR), the Hon'ble Delhi High Court and the Hon'ble Karnataka High Court respectively have also affirmed the above referred view that any statement made and signed by a person before the gazetted officer during the course of any enquiry cannot be relied upon for the purpose of proving what was contained in such statement unless the person concerned was examined before the adjudicating authority during the adjudication proceedings.

19.3 That in the present case also, statements of Shri Jaywant Thakar have been recorded by the Officers and all such statements are relied upon for proposals of fastening liabilities against us on the basis that his statements and to prove the allegations leveled in the show cause notice. However he is not so far examined as a witness before you in this adjudication proceedings; and therefore none of these statements is otherwise admissible as evidence in the adjudication being conducted. If these statements are discarded, then the whole case of the Customs falls in view of contravention of Section 138B of the Customs Act, in the facts of this case.

19.4 That the allegations against them are only supported by the statements of Shri Jaywant Thakar and no other corroborative or documentary evidence is available in the present case; that it is a settled legal position that uncorroborated statements of co-accused cannot be made the basis of imposing penalty on the co-noticees in absence of any cogent and tangible evidence; that Hon'ble CESTAT in the case of M/s. Prasanta Sarkar reported at 2007 (209) ELT 220 held that it is well settled that the statement of co-accused is a weak evidence and cannot be made a sole basis of imposing the penalty; that similarly in the case of Sushil Kumar Kanodia reported at 2007 (218) ELT 453, the Hon'ble CESTAT, Chennai held that incriminating statements cannot be relied upon to conclude the culpable conduct of a co-accused and penalty cannot be imposed solely based on such statements; that said decision of the Hon'ble CESTAT was challenged in appeal before the Hon'ble Madras High Court and the Hon'ble Madras High Court by upholding the decision of the Hon'ble CESTAT dismissed the appeal filed by the department. The Hon'ble CESTAT in the case of M/s. Orient Enterprises, New Delhi reported at 1986 (23) ELT 507 has also categorically held that a statement of a co-accused is always tainted with falsehood because he twists the story or colors the version in a way to show himself innocent and paints his companion as the perpetrator of the crime; that Hon'ble CESTAT has further emphasized that hence cross-examination, is essential preceding the acceptance of such statements. This decision of the Hon'ble CESTAT has been carried in appeal before the Hon'ble Apex Court and vide its judgment reported at 1997 (92) ELT A69 the Hon'ble Apex Court dismissed the appeal of the department; that the jurisdictional High Court in a catena of decisions in the case of M/s. Saakeen Alloys Pvt. Ltd. reported at 2014 (308) ELT 655, M/s. Suntrek Aluminum Pvt. Ltd. reported at 2013 (288) ELT 500, Chhajusingh S. Kanwal reported at 2011 (272) ELT 202 has categorically held that confessional statements solely in absence of any cogent evidence cannot make the foundation of levying excise duty on the ground of evasion of tax and furthermore, it has also been held that a solitary statement could not be said to be a cogent and convincing piece of evidence.

19.5 That it is a settled legal position that penal action or levy of duty cannot be done in absence of corroborative evidence and statement of the co-accused cannot be solely relied upon for such purposes; that in the present case, the department has categorically relied upon the statement of Shri Jaywant Thakar to propose imposition of penal liability on us and such reliance placed upon the statement of Shri Jaywant Thakar to propose imposition of penalties in absence of any other evidence is not in

accordance with law and therefore, the proposition to impose penalty on us is not sustainable and hence liable to be dropped in the interest of justice.

19.6 That it is a settled legal position that a CHA could be held guilty and liable for penalty under the Customs Act only if he was aware about mis-declaration or mis-deeds of the importer whose goods were being handled by him, but if the CHA was not aware about any illegality or irregularity on the part of the importer for whom the documents like a Bill of Entry were filed by a CHA, then no penalty under the Customs Act could be justifiably imposed on him; that they relied on the decision of R. S. Travels reported at 2007 (217) ELT 384 and Success Engineering reported at 2007 (215) ELT 220 (Tri.-Ahmd.), the Appellate Tribunal, Ahmedabad and M/s. Savithri Jewellers Pvt. Ltd. reported at 2020 (374) ELT 754, M/s. Apson Enterprises reported at 2017 (358) ELT 817, M/s. Nirmal Kumar Agarwal reported at 2013 (298) ELT 133, M/s. Moriks Shipping and Trading Pvt. Ltd. reported at 2008 (227) ELT 577; they have not abetted or colluded with Wireless Communication or Shri Jaywant Thakkar, and that they have acted in a bonafide manner carrying out instructions issued to them by the client and they have submitted the documents like Bill of Entry to the Customs authorities at Air-Cargo Complex, Ahmedabad strictly in accordance with the instructions as well as import documents given to them by the client, therefore, there is no justification in the proposal to impose penalty on us invoking section 112(a) of the said Act.

20. Discussion and findings: I have carefully gone through the Show Cause Notice dated 16.12.2011, written submission dated 06.08.2024, relevant provisions of law and various decisions relied on by the advocate in their submission on behalf of M/s. Parikh Clearing Agency Pvt. Ltd and its Director Shri Rupin Parikh and records of personal hearing held on 12.08.2024.

21. This denovo proceeding has been initiated consequent to the CESTAT's Final Order No A/10417-10418/2023 dated 07.03.2023 in respect of Appeal No.C/67/2012-SM and C/68/2012-SM2 filed by M/s. Parikh Clearing Agency Pvt. Ltd, and its Director Shri Rupin Parikh respectively. Relevant Para of CESTAT's Final Order No A/10417-10418/2023 dated 07.03.2023 is reproduced as under:

“4. I have carefully considered the submission made by both sides and perused the records. I find that the appellants were imposed penalty under section 112 (a) on the basis of statement given by the third party. In this circumstances it is necessary for the adjudicating authority to provide the cross examination of the person. If statement were relied upon for imposing penalty on appellant, in terms of section 135 B it is mandated that the witnesses should be examined/ cross examined particularly, when the statement is used to implicate the other person. In this regard the judgment cited by the learned counsel, directly supports their case. Therefore, I am of the view that the Adjudicating Authority must grant the cross – examination of the witnesses to the appellants.

4.1 As per my above discussion and finding, appeals are allowed by way of remand to the Adjudicating Authority for passing a fresh order after allowing the cross-examination. ***It is made clear that in case after due process if the cross-examination is not possible, the adjudicating authority may pass a fresh order on the basis of the available records.***

5. Accordingly, the impugned order to the extent of imposition of penalty on the present appellants is set aside. Appeals are allowed by way of remand to the Adjudicating Authority.”

22. As per the direction of the Hon'ble CESTAT given in their Final Order No. A/10417-10418/2023 dated 07.03.2023 ample opportunities for cross examination of Shri Jaywant Thakkar was extended to M/s. Parikh Clearing Agency Pvt. Ltd. and its Director Shri Rupin Parikh. Shri Jawant Thakker was called upon to remain present

for his cross examination on 12.07.2024, 22.07.2024 and 02.08.2024. However, letters issued to Shri Jaywant Thakkar for remaining present for his cross examination were returned undelivered from postal authority with remarks 'No such person on given address'. Further, M/s. Parikh Cleraing Agency Pvt. Ltd and its Director Shri Rupin Parikh were also informed to provide the known address of Shri Jaywant Thakkar. The advocate of M/s. Parikh Clearing Agency Pvt. Ltd and its Director Shri Rupin Parikh vide letter date 22.07.2024 submitted that they do not have contact with Shri Jaywant Thakkar, therefore, they are not aware of whereabouts of Shri Jaywant Thakkar and therefore, they are unable to provide any details regarding address of Shri Jaywant Thakkar. Hon'ble CESTAT in its Order No A/10417-10418/2023 dated 07.03.2023 has directed that ***in case after due process if the cross-examination is not possible, the adjudicating authority may pass a fresh order on the basis of the available records.*** Since Shri Jawant Thakker did not appear for Cross examination as sought by M/s. Parikh Cleraing Agency, I proceed to adjudicate the case ***on the basis of the available records.***

23. The issue to be decided by me in present proceeding is limited to whether M/s. Parikh Clearing Agency and its Director Shri Rupin Parikh is liable for penalty under Section 112 of the Customs Act, 1962. I find that this is denovo proceeding limited to M/s. Parikh Clearing Agency and its Director Shri Rupin Parikh. **I made it clear that proceeding against all the noticees except M/s. Parikh Clearing Agency and its Director Shri Rupin Parikh adjudicated by the erstwhile Commissioner of Customs, Ahmedabad vide Order In Original No. 5/Commr/ACC-Ahmedabad/2012 dated 30.03/16.04.2012 remains unchanged.**

24. I find that in the present case, the case was booked by the DRI on the intelligence that certain importers of Mobile accessories falling under CTH 85 were indulged in evasion of Customs Duty by resorting to gross undervaluation and further mobile accessories viz. battery, charger, hands-free mobile bearing brand name of Nokia, Sony Ericson, Motorola, Samsung etc and they were at the time of import mis-declared the same as unbranded and further during the investigation, it was detected that actual importer of mobile accessories were not importing the goods in the name of their firms but were using the IEC No. of other firms. In the present case, M/s. Parikh Clearing Agency had filed Bill of Entry No. 678348 dated 08.07.2009 on behalf of importer M/s. Wireless Communication, Sion, Mumbai having IEC No. 0308089057.

24.1 As stated hereinabove that the limited issued to be decided by me in present proceeding is limited to whether M/s. Parikh Clearing Agency and its Director Shri Rupin Parikh is liable for penalty under Section 112 of the Customs Act, 1962. I find it worth to re-produce the relevant para of statement dated 09.07.2009 of Shri Rupin Parikh, Director of CHA firm M/s. Parikh Clearing Agency Pvt. Ltd which is as under:

"On being asked regarding import B/E No. 678323 dated 08.07.09 filed in the name of HARI KRISHNA INTERNATIONAL, 105 D.K.NAGAR-2, NR. SANTOSHI KRUPA, KATARGAM, SHAGAN PARK RD, SURAT, having ICE No. 52080446130 for Mobile accessories, I stated that the said mobile accessories have been imported under invoice no. BJ-0549 dtd. 30th June 2009 from R&H International Trading Company, 5/FL, Yeung Chung CNo.8J Ind Bldg, No.20 Wang Hoi Road, Kaoton Bay, Kawlom, Hong Kong, having invoice value HK\$33620/38. I do not know personally the concerned person of M/s. Hari Krishna International, Surat. For the shipment Shri Jaywant Thakkar Partner of M/s. Om Logistics Mumbai have contacted me for clearing of said shipment. On being asked regarding introduction with Shri Jaywant Thakkar, I state that near about in the month of December, I met him in Ahmedabad. Shri Jaywant Thakkar visited Air Cargo Complex regarding various CHA's working at ACC and he contacted me for the same. He also cleared shipment through other CHA's firm from April 2009 we started doing his shipments. Om Logistics having office at A-1

Patel Bhuvan, 230 Samuel St. Masjid (W) Mumbai-3. Jaywant having Mobile No. 986713895& his Partner Nimish Shah having mobile No. 9702207292. All Customs clearing docs such as Invoice, P. List & AWB received by E mail to prepare B/E and self certified copies of all docs was coming to us by courier. The sign. On the self certified docs & GATT declaration, the person is not known to me.

Similarly, on being asked regarding import B/E No. 678348 dt.08.07.2009 filed in the name of Wireless Communication B-15, Almeda Compund Nr. Pratiksha Nagar, Rd, Sion, Koliwada, Sion Mumbai having IEC No. 0308089057 for mobile accessories have been imported under invoice no. ST-5967 dt. 03.07.2009 SKYTEX c6,4K,BLK C,RM-401,36-44 Nathan Chunking, Nathan Rd, Tsim Sha Tsui, Kowloon, Hong Kong. I further state that I personally do not know the person of M/s. Wireless Communication, Mumbai. Even for the said shipment, I was contacted by Shri Jaywant Thakkar & Shri Nimish Shah of M/s. Om Logistics, Mumbai. All the required docs for filing Bill of Entry were received through e mail & self certified docs by courier having invoice value HK\$89259/-.

On being asked, I state that I received the required documents for filing of B/E from Jaywant Thakkar through his email ID omlogistic@yahoo.com. On being asked regarding payment of Customs duty, W/house Charges, D/o charges, CHA Agency charges, I received from Shri Jaywant Thakkar & Shri Prabhat Tarasia through Angadia M/s. Amrut Kanti having his office @ Super Mall, C.G. Road, Ahmedabad. I further state that all the payment received by us is in cash."

24.2 Further statement of Shri Rupin Parikh , Director of M/s. Parikh Clearing Agency Pvt. Ltd was recorded on 10.11.2009 wherein on being asked regarding IEC holder and owner of the firms, he stated that he knew the IEC Code and Name of IEC holder but he never met them.

"On being shown page 33 of the file seized under Panchnama dt. 10.07.2009 drawn at my office premises. In token of having seen and read the said document, I put my dated signature on the same. On being asked I state that this mail was received by Shri Rajesh Barot who is Manager of M/s. Ace Logistics P. Ltd which is our group company. I further state that on receipt of this mail Shri Rajesh Barot informed Shri Jayant Thakkar over phone that selection of goods for examination is done by the EDI system & it is not possible for us to select or exclude goods from examination. After communicating this Shri Rajesh Barot had deleted the mail. I am being shown page 3 of the Annexure A to Panchnama dated 9-10/07/2009, Page 2 of Annexure A, Panchnama dt. 10/07/09, Page 3 & 7 of Annexure A, Panchnama dt. 11/7/09 in token of having seen and read the said documents, I put my dated signature on the same. On being asked I state that carton No. rn1,tk1, jn2 & kj39 are mentioned in the goods examined under the panchnama by the officer of DRI. I further state that these are the same cartons which Shri Jaywant Thakkar had requested for ensuring non examination by the office of Customs. I further state that having gone through the said documents, I find them to be goods which were not declared in the relevant invoice & P. List which we submitted by us for filing the B/E. On being further asked I state that these are contraband goods as some were not declared. On being asked I state that though Shri Jaywant Thakkar had requested non examination of the above mentioned cartons we were not aware of the contents of these cartons & neither were aware that the goods contained in these cartons were not declared in the invoice & P. list given to us for filing B/E. On being asked whether we had disclosed /informed the Customs regarding request by Shri Jaywant Thakkar for non examination of the above said 5 cartons, I stated that Shri Barot had not informed me about the mail and therefore, I could not know about it & accordingly informed the Customs.

On being asked, I state that the Director of M/s. Ace Logistics P. Ltd are myself & Mrs. Purvi Rupin Parikh. I further state that I am the active and working Director looking after all the activities of the firm & all employees including Shri Rajesh Barot report to me."

24.3 I find that E mail dated 08.07.2009 14:28 from M/s. Rahul Shah [omlogistic@yahoo.com] to Exim [Ace Logistics] Cc: Rajesh Barot having subject : ctn which should not been examine in 123 shipment. wherein it is stated that " pls. do not examine rn1,tk1, jn2, kj39 cartons (123 shipment)" was recovered from the premises of M/s. Parikh Clearing Agency during the search proceeding carried out under Panchanama dated 10.07.2009. I observe how the mail was received by M/s. Ace Logistics P. Ltd when only M/s. Parikh Clearing Agency was appointed as CHA and how Shri Jaywant Thakkar knew the E mail ID of M/s. Ace Logistics P. Ltd. Further Shri Rupin Parikh is also one of the Director of M/s. Ace Logistics P. Ltd. Thus, all these circumstantial evidences in form of E-mail and confessional statement of Shri Jaywant Thakkar and Shri Rupin Parikh corroborate that M/s. Parikh Clearing Agency Pvt. Ltd and its Director Shri Rupin Parikh had abetted Shri Jaywant Thakkar in smuggling of goods.

24.4 Further, I find it worth to re-produce the relevant para of the statement of Shri Jaywant Thakkar recorded on 11.07.2009 which is as under:

"On being asked, I state that mobile accessories were imported in name of M/s. Shivani Enterprise, M/s. Max Enterprise and M/s. Wireless Communication at Air Cargo Ahmedabad through Shri Rupin Parikh. On being asked regarding appointment of CHA M/s. Parikh Clearing Agency, he stated that to appoint M/s. Parikh Clearing Agency, his employee Shri Ramesh had singed as Authorised Signatory on letter head of M/s. Shivani Enterprise, M/s. Max Enterprise and M/s. Wireless Communication and it was handed over by him to Shri Rupin Parekh. **Rupin had never met any owner of said firms and he had informed to Shri Rupin that he uses the IEC of said firms**"

25. Thus, I find that Shri Jaywant Thakkar in his statement dated 11.07.2009 on being specifically asked, have stated that mobile accessories were imported in the name of M/s. Shivani Enterprise, M/s. Max Enterprise and M/s. Wireless Communication at Air Cargo Ahmedabad through Shri Rupin Parikh. Further, these facts has been admitted by Shri Rupin Parikh in his statement recorded on 09.07.2009. When only one person contacts different importers for clearance of imported goods and that too with appointment of same person as Authorised Signatory by different importers on their letter head would clearly raises doubt. In the present case, Shri Rupin Parekh was well aware that Shri Jaywant Thakkar is Partner of Om Logistics and without verifying the genuine/real importers have directly dealt with Shri Jaywant Thakkar clearly establishes that Shri Rupin Parikh has abetted with Shri Jaywant Thakkar to defraud the Government Exchequer. Shri Rupin Parikh has admitted that only Shri Jaywant Thakkar was contacting him for clearance of the goods and he(Shri Rupin Parikh) do know who the actual importers were.

26. Further, I find that Shri Rupin Parikh in his statement recorded on 10.11.2009 has admitted that he (Shri Jaywant Thakkar) had sent E mail on 08.07.2009 to Rajesh Barot of M/s. Ace Logistics (their group company) clearly directing to not examine rn1,tk1, jn2, kj39 cartons (123 shipment). I find that Bill of Entry No. 678348 was filed on 08.07.2009 for the clearance of imported goods in the name of importer M/s. Wireless Communication. On being specifically asked, Shri Rupin Parikh has stated that his employee Shri Rajesh Barot had deleted the said E-mail and further he had not informed him (Shri Rupin Parikh) that E mail dated

08.07.2009 directing not to get the examination of rn1,tk1, jn2, kj39 cartons (123 shipment) is lame excuse as Shri Rupin Parikh has admitted that all the documents required for filing of Bill of Entry were received through E mail. Thus, when the documents for filing of Bill of Entry are communicated to him (Shri Rupin Parikh) and when the specific direction given is not communicated is not convincing. On the contrary, said E mail as well the statement of Shri Rupin Parikh and Statement of Shri Jaywant Thakkar corroborate that Shri Rupin Parikh was well aware that goods being imported in the name of M/s. Wireless Communication were not the actual importer but Shri Jaywant Thakkar was actual beneficiary of the imported goods, however, he abetted with Shri Jaywant Thakkar in getting the clearance of imported goods from Air Cargo Complex which act has made liable the imported goods imported vide Bill of Entry No. 678348 was filed on 08.07.2009 liable for confiscation under Section 111 of the Customs Act, 1962 and therefore, penalty is required to be imposed under Section 112 of the Customs Act, 1962.

27. Thus, I find that Custom Broker without verifying the genuineness of importers and inspite of having the knowledge that Shri Jaywant Thakkar was not real importer filed the Bills of Entry and abetted Shri Jaywant Thakkar. Further, inspite of having the knowledge that they had received E mail regarding non examination of rn1,tk1, jn2, kj39 cartons (123 shipment) from Shri Jaywant Thakkar, they did not communicate the same to the Customs. Further, I find that Shri Rupin Parikh had not disclosed the facts that they had received E mail from Jaywant Thakkar regarding non examination of rn1,tk1, jn2, kj39 cartons (123 shipment) during his first statement recorded on 09.07.2009. The said E-mail was recovered under Panchnama dated 10.07.2009 during the search proceeding conducted at the premises of M/s. Parikh Clearing Agency Pvt. Ltd. 803, President House, Ambawadi, Ahmedabad. Further, only after showing the said E-mail dated 08.07.2009 to Shri Rupin Parikh on his subsequent statement recorded on 10.11.2009, he admitted that Shri Jaywant Thakkar had sent E mail on 08.07.2009 to Rajesh Barot of M/s. Ace Logistics (their group company) clearly directing to not examine rn1,tk1, jn2, kj39 cartons (123 shipment). Further, on being specifically asked, Shri Rupin Parikh has stated that his employee Shri Rajesh Barot had deleted the said E-mail. Thus, I find that had the said E mail under Panchnama dated 10.07.2009 not recovered, Shri Rupin Parikh would have never disclosed the said facts. Thus all these vital evidence proves that M/s. Parikh Clearing Agency Pvt. Ltd. and its Director Shri Rupin Parikh have played vital role in abetting Shri Jaywant Thakkar to defraud the Govt. Exchequer. Further, I find that Customs House Broker M/s. Parikh Clearing Agency Pvt. Ltd. failed to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information available. Thus by their act of omission and commission, the Customs Broker have rendered themselves liable for penal action under Section 112 (a)(ii) of the Customs Act, 1962 and further Shri Rupin Parikh, Director admitted that he was looking after all the business activities of CHA firm M/s. Parikh Clearing Agency and therefore he is also liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

29. Further, I find that Shri Rupin Parikh was well aware that genuine/real importers were different and only IEC of a dummy importer was being used by Shri Jaywant Thakkar. Further, Shri Rupin Parikh was involved in such similar type of imports of mobile accessories in respect of two other firms viz. M/s. Max Enterprise and M/s. Shivani Enterprise using the same modus operandi. The Commissioner of Customs, JNCH vide Order No. CAO/No.73/2011/CAC/CC/BKS dated 24.10.2011 in the case of M/s. Max Enterprise has found that M/s. Parikh Clearing Agency was actively involved in similar case and have imposed penalty of Rs. 5 lakh. Therefore, I find that claim of the Shri Rupin Parikh that mere on the statement of Shri Jaywant

Thakkar, they should not be penalized is not tenable and the ratio of other case laws relied upon are not applicable to the present case.

30. I find that M/s. Parikh Clearing Agency P. Ltd and its Director Shri Rupin Parikh have contended that allegations against them are only supported by the statements of Shri Jaywant Thakkar and no other corroborative or documentary evidence is available in the present case and placed the reliance on the decision of Hon'ble CESTAT in the case of M/s. Prasanta Sarkar reported at 2007 (209) ELT 220 and Sushil Kumar Kanodia reported at 2007 (218) ELT 453, the Hon'ble CESTAT, Chennai ,M/s. Orient Enterprises, New Delhi reported at 1986 (23) ELT 507 and decision of Hon'ble High Court in the case of M/s. Saakeen Alloys Pvt. Ltd. reported at 2014 (308) ELT 655, M/s. Sun trek Aluminum Pvt. Ltd. reported at 2013 (288) ELT 500, Chhajusingh S. Kanwal reported at 2011 (272) ELT 202 and contended further that confessional statements solely in absence of any cogent evidence cannot make the foundation of levying excise duty on the ground of evasion of tax and furthermore, it has also been held that a solitary statement could not be said to be a cogent and convincing piece of evidence.

I find that aforesaid contention is not acceptable as it is an admitted fact that Shri Rupin Parikh, Director of M/s Parikh Clearing Agency has admitted in his statement that he did not know any of the importers and only Shri Jaywant Thakkar was contacting him for clearance of impugned goods and further, they have received E mail from Shri Jaywant Thakkar with clear instruction regarding non examination of rn1,tk1, jn2, kj39 cartons (123 shipment) on the same day on which Bill of Entry No. 678348 was filed on 08.07.2009 for M/s. Wireless Communication and further, Shri Jaywant Thakkar in his statement has admitted that Shri Rupin Parikh was knowing that he (Shri Jaywant Thakkar) was using the IEC of other importers. In this regard, I rely on the ratio of decision of Hon'ble Supreme Court rendered in the case of Naresh J Sukhawani Vs. Union of India reported in 1996 (83) ELT 258 (S.C.) wherein it has been inter alia held as under:

“3. The Joint Secretary to the Government, the revisional authority, has held that the evidence and the statement given by Mr. Dudani incriminates the petitioner. This was established with reference to the photographs and other intrinsic material. On that basis, he concluded that Mr. Dudani incriminated himself and the appellant in passing off foreign currency out of India, i.e., to Hong Kong. It was accordingly held that the contravention was established. It is contended that the statement of co-accused could be used only to corroborate other evidence as one of the circumstances under Section 30 of the Evidence Act. But it cannot be used as substantive evidence without corroboration from other independent evidence. Except the statement of Dudani, there is no other independent evidence. Mr. Dudani’s evidence cannot be pressed into service to arrive at the conclusion that the petitioner is involved in the passing off foreign currency out of India.

4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani’s statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine.”

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

:: ORDER::

31.1 I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on M/s. Parikh Clearing Agency Pvt. Ltd. 803, President House, Opposite C.N. Vidhyalaya, Ahmedabad under Section 112 (a)(ii) of the Customs Act, 1962.

31.2 I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on Shri Rupin Parikh, Director of M/s. Parikh Clearing Agency Pvt. Ltd., Ahmedabad under Section 112 (a)(ii) of the Customs Act, 1962.

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

SKS 11.09.2024
(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240971MN0000555B94

F. No. VIII/10-02/Commr./O&A/2010

Date: 11.09.2024

BY Speed Post A.D

To,

1. M/s. Parikh Clearing Agency Pvt. Ltd.
803, President House,
Opposite C.N. Vidhyalaya,
Ahmedabad
2. Shri Rupin Parikh, Director of
M/s. Parikh Clearing Agency Pvt. Ltd.
803, President House,
Opposite C.N. Vidyalay,
Ahmedabad

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, for information please.
2. The Additional Director General, DRI Zonal Unit, Ahmedabad.
3. The Deputy/Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
4. The Superintendent of Customs (Systems), Ahmedabad in PDF Format for uploading on the website of Customs Commissionerate, Ahmedabad.
5. Guard File.