

	<b>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,</b> <b>सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</b> <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b> <b>CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT&amp; SPL</b> <b>ECONOMIC ZONE, MUNDRA-370421</b>	
<b>A. File No.</b>	: CUS/ADJ/COMM/117/2022-Adjn -O/o Pr Commr-Cus-Mundra	
<b>B. Order-in-Original No.</b>	: MUN-CUSTM-000-COM-14-23-24	
<b>C. Passed by</b>	: Shri K. Engineer Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
<b>D. Date of order and Date of issue</b>	: 20.09.2023 20.09.2023	
<b>E. SCN No. &amp; Date</b>	: Gen/Adj/ADC/146/2022-Adjn dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn dated 14.02.2022	
<b>F. Noticee(s)/Co-noticee(s)</b>	: M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi-110009	
<b>G. DIN</b>	: 20230971MO0000717031	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा

शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs

Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

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

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

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक कितू पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंच आहरित ब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीय कृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

7. इस आदेश के दिरुद्ध अपील हेतु जहाँ शुल्क या शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

**ISSUE IN BRIEF:**

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

2. M/s. ZZEPL was importing Knitted Polyester Fabrics under Customs Tariff Heading 6006 and various other Electrical Goods such as Mosquito Bats, LED Rechargeable Search Lights, Fancy Mini Torches, Small Rechargeable Batteries, Decorative Disco LED Par Lights, Decorative Disco Focus Lights, Laser Lights, LED Rope Lights, Led Christmas Lights etc., of assorted sizes etc. under Chapter 94 and 85 of Customs Tariff Heading and subsequently, clearing the same into DTA to various DTA importers. While importing the goods M/s. ZZEPL filed Bills of Entry with KASEZ authority for clearance of the goods from Mundra Port to their unit in KASEZ. Subsequently, M/s. ZZEPL also filed DTA Bills of Entry in the name of various domestic buyers and cleared the goods on payment of Customs Duty.

3. Accordingly, a Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn- O/o Cummr-Cus-Kandla dated 08.09.2021 has been issued to Mis ZZEPL & others. Under the said SCN, M/s. Jia Lighting and Audio Equipment (IEC: 0516952030) is also one of the noticee as they are one of the domestic buyers of the goods imported by M/s ZZEPL.

4. Further, M/s. Jia Lighting and Audio Equipment has also imported and cleared similar goods i.e., "Decorative LED Par Light 54L" and "Decorative Disco LED Par Light Small" through Mundra Port. Details of such imports are as under:-

Table-A

Sl. No.	Bill of Entry No & Date	Description of goods	Quantity (In Pieces)	Declared price per Piece (In USD)	Declared Assessable value (In Rs.)
1	8507039 dt. 10.02.2017	Decorative LED Par Light 54L	4532	1.288333	4,03,366/-
2	8508332 dt. 10.02.2017	Decorative Disco LED Par Light Small	8120	0.811667	4,55,317/-
3	8687768 dt. 27.02.2017	Decorative LED Par Light 54L	4532	1.29	4,01,158/-
Total					12,59,841/-

5. Consequent to the above modus operandi adopted by M/s ZZEPL and the concerned DTA importers, in connivance with Chinese suppliers, it appears that M/s Jia Lighting and Audio Equipment, importer of "Decorative LED Par Light 54L" and "Decorative Disco LED Par Light Small" has also mis-declared/ undervalued the goods imported and cleared through Mundra port under the Bills of Entry as per above mentioned Table-A.

6. In continuation of the Show Cause Notice No. GEN/ADJ/COMM /218/2021-Adjn-O/o Cummr-Cus-Kandla dated 08.09.2021 issued to M/s. ZZEPL & others, the assessable value & Customs duty thereon of the items of Bills of Entry as per Table-A are also liable to be rejected and re-determined.

7. Therefore, the mis declared/under-assessed value of **Rs12,59,841/-** (Rs. Twelve Lakh Fifty Nine Thousand Eight Hundred and Forty One Only) declared by M/s. Jia Lighting and Audio Equipment at the time of clearance of goods i.e. "Fancy LED Strip Rope Light 50 Mtr", is required to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same is required to be re-determined to **Rs.8,64,81,379/-** (Rs. Eight Crore Sixty Four Lakh Eighty One Thousand Three Hundred and Seventy Nine only) as per ANNEXURE-A to Show Cause Notices Gen/Adj/ADC /146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022, under Section 14 of the Customs Act, 1962 read with Rule 3, Rule 9 and Rule 10 of the CVR, 2007.

8. Further, M/s. Jia Lighting and Audio Equipment hatched the conspiracy to import "Decorative LED Par Light 54L" and "Decorative Disco LED Par Light Small", by declaring lower values than the actual transaction values of the said goods to evade the Customs Duty, as indicated in ANNEXURE-A to Show Cause Notices Gen/Adj/ADC /146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn (

read with corrigendum dated 20.03.2023) dated 14.02.2022, and discussed in the foregoing paras of this notice and also in the relied upon Show Cause Notice. The differential amount between the actual value of Electrical Goods and the value shown in the commercial invoice, imported from said Chinese supplier were paid by them through non-banking channels / the Bank accounts of third parties with the Banks outside India. They had full knowledge and were instrumental in mis-declaration of the value of the goods at the time of their import. Thus, they had knowingly, consciously and deliberately declared incorrect low values in the impugned Bills of Entry at the time of imports and backed them up with false and fabricated documents, with the sole intention to evade the customs duty. The firm had indulged in the activities relating to the said undervaluation and mis-declaration of actual price of said imports, which resulted in evasion of Customs duty as detailed in ANNEXURE-A to the said two SCNs. All the aforesaid acts of omission and commission on the part of the importer have rendered the impugned imported goods liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962. Further, the firm/person had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Thus, as discussed at para above, M/s. Jia Lighting and Audio Equipment, had rendered themselves liable for penalty under the provisions of Section 112(a) & (b)/114A and 114AA of the Customs Act, 1962.

**9.** Therefore, Show Cause Notices Gen/Adj/ADC /146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn ( read with corrigendum dated 20.03.2023) dated 14.02.2022 were issued to M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi-110009 wherein they were called upon to show cause to the Commissioner of Customs, Custom House Mundra, having his office at Office of the Principal Commissioner of Customs, Custom House, 5B, Port User Building, Mundra Port, Mundra, Gujarat - 370421 as to why: -

(i) Total assessable value of **Rs 12,59,841/-** (Rs. Twelve Lakh Fifty Nine Thousand Eight Hundred and Forty One Only) declared by them/assessed at the time of clearance of goods i.e., "**Various Electrical Goods**", as mentioned in ANNEXURE-A to above show cause notices, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined to **Rs. 8,64,81,379/-** (Rs. Eight Crore Sixty Four Lakh Eighty One Thousand Three Hundred and Seventy Nine only) as mentioned in ANNEXURE-A to abovementioned two show cause notices, under sub-section (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for Bills of Entry, as mentioned in ANNEXURE-A to Show Cause Notices, Gen/Adj

/ADC/146/2022-Adjn ( read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ ADC/153 / 2022 - Adjn ( read with corrigendum dated 20.03.2023) dated 14.02.2022.

(ii) Differential Customs Duty amounting to **Rs. 1,85,15,174/-** (Rs. One Crore Eight Five Lakh Fifteen Thousand One Hundred and Seventy Four Only) on the goods imported i.e., **Various Electrical Goods**', under the Bills of Entry, valued (re-determined value) as detailed in ANNEXURE-A to Show Cause Notices, Gen/Adj/ADC /146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn ( read with corrigendum dated 20.03.2023) dated 14.02.2022, should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) The goods i.e. **Various Electrical Goods**' imported by them under the said Bills of Entry and further valued (re-determined value) as mentioned in ANNEXURE-A to Show Cause Notices, Gen/Adj/ADC /146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ ADC/153/ 2022-Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022, should not be held liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962.

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

#### **PERSONAL HEARING AND WRITTEN SUBMISSION**

**10.** Personal hearings were fixed on 16.12.2022, 21.12.2022, 26.12.2022 and 05.07.2023 and informed to importer, M/s. Jia Lighting and Audio Equipment. However, M/s. Jia Lighting and Audio Equipment has not appeared on any of the PH.

#### **DISCUSSION AND FINDINGS**

**11.** I have carefully gone through the facts of the case. The case before me is to decide:

(i) Whether assessable value declared by importer/assessed at the time of clearance of goods is liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, if Yes, determination of re-determined value.

(ii) Whether duty is to be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962

(iii) Whether the goods are liable for confiscation under Section 111(d) and/or 111 (m) of the Customs Act 1962 or not.

(iv) Whether penalty should be imposed on M/s. Jia Lighting and Audio Equipment, under Section 112(a)/(b), 114A and/or 114AA of the Customs Act, 1962 or not.

**Rejection and redetermination of value:**

**12.** In terms of Section 2 (41) of the Customs Act, 1962, "value" in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14 of the Customs Act, 1962. Relevant provisions of Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (herein after referred to as the "**CVR, 2007**" for the sake of brevity) are reproduced herein below with regard to valuation of imported goods.

**Legal Provisions:**

**"Section 14 of the Customs Act, 1962:**

**"SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:**

*Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*

*Provided further that the rules made in this behalf may provide for,-*

*(i) the circumstances in which the buyer and the seller shall be deemed to be related;*

*(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*

*(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :*

*Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a*

*shipping bill of export, as the case may be, is presented under section 50.*

*(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.*

*Explanation. - For the purposes of this section -*

*(a) "rate of exchange" means the rate of exchange -*

*(i) determined by the Board, or*

*(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;*

*(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)."*

➤ **Rule 2(f) of the CVR, 2007:**

*"similar goods" means imported goods -*

*(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;*

*(ii) produced in the country in which the goods being valued were produced; and*

*(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,*

*but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;*

➤ **Rule 3 of the CVR, 2007:**

**3. Determination of the method of valuation.-**

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

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

*Provided that -*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

➤ **Rule 9 of the CVR, 2007:**

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

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

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

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

➤ **Rule 10 of the CVR, 2007:**

**10. Cost and services. -**

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

- (i) commissions and brokerage, except buying commissions;
- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iii) the cost of packing whether for labour or materials;

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely: -

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds and similar items used in the production of the Imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

**Explanation.-** Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includable referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include -

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- (b) the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

#### *Explanation-*

*The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.*

(3) *Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.*

(4) *No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.*

#### **➤ Rule 12 of the CVR, 2007:**

12. *Rejection of declared value. — (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods*

*cannot be determined under the provisions of sub-rule (1) of rule 3.*

➤ **Rule 13 of the CVR, 2007:**

**13. Interpretative notes.-**

*The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.*

**The Schedule**

**(See rule 13) Interpretative Notes:**

**Note to rule 9**

1. *Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.*
2. *The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.”*
13. Rule 3, inter-alia, of the **CVR, 2007** provides the method of valuation. Rule 3(1) of the CVR, 2007 provides that “Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10”. Rule 3(4) ibid states that “if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007”.

**14. Rejection of Value under Rule 12 of CVR, 2007 in respect of the goods declared as per Table-A above:**

14.1 I find that active role of M/s. Jia Lighting and Audio Equipment has been identified by the DRI in the imports made by them through Zip Zap Exim Pvt Ltd, KASEZ by declaring lower values than the actual transaction values of various LED lights to evade payment of appropriate Customs Duty. However, in the instance case, the LED light products in respect of M/s. Jia Lighting and Audio Equipment was not available for physical verification and Customs documents are manipulated / forged and cannot be relied upon to give exact description of goods in terms of physical characteristics, quality, brand, model, reputation etc.

14.2 From the evidences on record, I find that the price declared by presenting undervalued invoices in respect of Bills of Entry filed by M/s. Jia Lighting and Audio Equipment for procurement of subject imported goods were incorrect and the actual paid value of imported goods was different and higher. Hence, the same cannot be considered as the correct value/s for imported goods for the purpose of Section 14 of the Customs Act, 1962.

14.3 I find that as there is a reasonable doubt regarding the truth and accuracy of the value declared, as discussed with evidences in the foregoing paras, the same is liable to be rejected in terms of Rule 12 and the actual transaction value cannot be ascertained on the basis of Rule 3 of the Customs Valuation Rules, 2007, the value is required to be determined by proceeding sequentially through Rule 4 to 9.

**15. Value re-determination in terms of proceeding sequentially from Rule 4 to 9 of CVR, 2007 in respect of the goods declared as per Table-A above:**

15.1 As the Current SCN was issued on the basis of the investigation conducted by the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad in case of M/s. ZZEPL, the evidences as provided in that investigation are relied upon to reject and re-determined the value.

15.2 Shri Gagan Bajaj, Proprietor of M/s Jia Lighting & Audio Equipment Co., Delhi in his statement given to DRI on 20.02.2018 has admitted his involvement in clearance of goods/transaction of payments and undervaluing the goods. His confession in the said statement is as under:-

- They used to import electrical items such as Decorative Disco LED Par Lights, LED Focus Lights and their spare parts from Chinese supplier viz. M/s Knowhow Electronic Company Ltd and sell the same in domestic market;
- Shri Vaibhav Baid, Director of M/s ZZEPL had approached him to make- import of aforesaid electronic goods from China through M/s ZZEPL (SEZ unit) since the cost overhead for unit in SEZ was less as compared to direct import from regular ports and it was decided between Shri Gagan Bajaj and Shri Vaibhav Baid that the electronic goods would be imported in the name of M/s ZZEPL in the SEZ and cleared into DTA to M/s Jia Lighting & Audio Equipment Co.;
- For the said arrangement, they had paid approx Rs. 30,000/- per container to them (M/s ZZEPL) which also included their (M/s ZZEPL's) profit margin/commission;
- That customs duty at the time of import from SEZ unit to OTA was borne by M/s Jia Lighting & Audio Equipment Co. for their consignments;
- He used to interact with Mr Feng for the imports from the said Chinese supplier M/s Knowhow Electronic Company Ltd, whom he met in exhibition in China, for confirming the type of items, quantity and their prices of the imported item;
- For the said imports from the said Chinese supplier M/s Knowhow Electronic Company Ltd, in M/s Zip Zap Exim Pvt Ltd. KASEZ and subsequently clearing the same to them in

their firm M/s Jia Lighting & Audio Equipment Co, under DTA Bill of Entry, instructions were issued to the overseas supplier to make two different set of invoices one showing the actual price and another showing lower price as informed by them (Shri Gagan Bajaj and Shri Vaibhav Baid);

- Invoice showing original price was signed and sent back to the supplier whereas the invoice with lower value was directly sent to M/s ZZEPL by the overseas supplier for presenting it to customs for clearance purpose;
- That the bill of entry for DTA clearance was filed by M/s ZZEPL after the goods were brought into the SEZ area and Shri Gagan Bajaj was informed by Shri Vaibhav Baid / Shri Gajraj Singh Baid about the Customs duty amount; that M/s Jia Lighting & Audio Equipment Co. transferred the duty amount to the account of M/s ZZEPL who used to pay the customs duty on their behalf;
- The payment of differential amount to the overseas suppliers over and above declared value was sent to the overseas supplier through channels other than banking channel, and payment of value which was declared before the customs at the time of Import was sent through the account of M/s ZZEPL;
- He had imported the aforesaid electrical goods from China, through M/s ZZEPL (SEZ unit) by resorting to undervaluation; that he was ready to pay the differential duty on account of such undervaluation.

15.3 From the data retrieved from mobile of Sh Manoj Madaan, Authorized person of M/s. Daiwik Enterprises which was another entity involved in similar duty evasion and was part of the DRI investigation, evidences were procured by DRI in the form of guarantee letter from various DTAs, Payment Confirmation through banking channel and payment confirmation from non-banking channels wherein payment amount are different from the amount declared before customs authority. These payments were made by DTA importer to foreign supplier directly.

15.4 Further, from the e-mail messages received by Shri Manoj Madaan on his email ID i.e. manojmadaan1987@gmail.com received from the concerned shipping lines, it is evident that the shipping line is notifying all the updates directly to DTA importer instead of M/s ZZEPL, Kasez.

15.5 In view of the above paras, it is evident that:

- i) the goods are imported by DTA importers keeping M/s ZZEPL, Kasez in loop for name sake only for avoiding EDI port and routing the import through SEZ; and
- ii) Resorting to huge undervaluation in import of various electronics goods.

15.6 Chartered Engineer – B.G. Bhatt & Co inspected the various electrical and electronic items which were detained by DRI under detention memo dated 09.01.2018 during investigation and submitted a valuation report dated 06.07.2018 containing the estimated FOB values for the electrical and electronic items imported by M/s. ZZEPL, KASEZ.

15.7 Further, during the course of recording of statement of Shri Vinod Kumar Bhasin, Authorized person of M/s GGS Overseas, New Delhi and Authorized person of M/s V K Ventures on 15.05.2019 and statement of Shri Pawan Kumar Chotia of M/s Pride India Enterprises and M/s Bharat Enterprises on 29.05.2018 other entities who were part of the same investigation and importing same items, they confirmed that the value calculated in report of Chartered Engineer – B.G. Bhatt & Co. dated 06.07.2018 is very near to actual transaction value. They further confirmed the actual transaction value of the various electronics goods. The re-determined values were indicated against relevant items in respective annexures i.e. **Annexure E-1, E-2, S-2 and 'B' in respect of various 'Electrical Goods'** attached to the SCN in case of M/s ZZEPL, Kasez.

15.8 Considering the evidences available from the investigation in case of M/s. ZZEPL, the value is required to be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007.

15.8.1 There are no identical or similar goods of neutral importers whose true and correct values are available and which can be considered to be arm's length transaction values for the purpose of Section 14(1) of Customs Act, 1962 and Rule 3(1) of CVR, 2007 and therefore cannot be applied to determine the true transaction value of the concerned undervalued goods which were imported by M/s. Jia Lighting and Audio Equipment.

15.8.2 The following other aspects are also relevant for not using their values in terms of Rules 4 and 5:

- o There have been multiple types of **LED Light Products** imported by M/s. Jia Lighting and Audio Equipment and their identical nature in all respects cannot be compared with other goods imported in India by neutral importers.
- o The value of **LED Light Products** supplied by the foreign suppliers to other neutral importers in India or abroad cannot be applied in the instant case with reference to rule 4 and 5 keeping in mind the significant variations in terms of physical characteristics, quality, brand, model, reputation etc. Likeness in characteristics/ quality/ usability and interchangeability cannot be established.
- o It also appears that all the goods as mentioned in Table-A do not fulfill the criteria for determining value under rule 4 and 5 of Customs Valuation (Determination of Value of imported goods) Rules, 2007 read with its

interpretative notes as there have not been demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments to be made under these rules. It appears that in the absence of proper objective measure, recourse of re-determining value under rule 4 and 5 of the said rules is not appropriate.

15.8.3 It also appears that the value in respect of the above referred 'Electrical Goods' cannot be re-determined as per Rules 7 and 8 of CVR, 2007 due to the following reasons:

- o It appears that deductive or computed value as discussed in Rule 7 and 8 respectively of the said Rules respectively cannot be determined in instant case for the reason that deduction like profits and general expenses as prescribed under rule 7 are not ascertainable in instant case. It also appears that as per the requirement of rule 8, cost or value of materials in producing the imported goods along with profit and general expenses are also not ascertainable in instant case.
- o Fabrication/manipulation of import documents from origination stage i.e. at foreign suppliers' end is also indicated in some cases. Hence, it appears that application of deductive and computed value method in absence of all relevant details would not be possible.

15.9 Residual method for determining transaction value is adopted where the value of imported goods cannot be determined under the provisions of rule 4 to 8 and then value has to be derived under rule 9 using reasonable means consistent with the principles and general provisions of CVR, 2007 and on the basis of data available in India. In the instant case since Rules 4 to 8 are not applicable for re-determination of value, hence, Rule 9 of CVR, 2007 has to be resorted to.

15.9.1 Factors considered for Redetermination of Assessable value under Rule 9 of CVR, 2007:

- A. Since goods were not physically available, value of the same has been determined using reasonable means consistent with the principles and general provisions of CVR, 2007.
- B. DRI, during the investigation of case of M/s ZZEPL (SCN No. GEN /ADJ /COMM / 218 / 2021 - Adjn - O/o Cummr - Cus - Kandla dated 08.09.2021), get the goods inspected from Chartered Engineer - B.G. Bhatt & Co. Vide their report dated 06.07.2018, Chartered Engineer - B.G. Bhatt & Co. estimated the value of "Decorative LED Par Light 54L" and "Decorative Disco LED Par Light Small" which are given in Table-B below. DRI has proposed the same value in SEZ Bill of entry number as mentioned in Table-B below in respect of the goods imported by M/s. Jia Lighting and Audio Equipment.
- C. As the goods with same specification had been imported by the DTA importers in case of M/s ZZEPL and the value of the goods stand corroborated with secondary evidences and the same have also been admitted by concerned DTA importers,

therefore, value should be considered for the import of similar goods imported at Mundra port under Rule 9 of CVR, 2007.

Table-B

Import B/E No/ Date	Buyer name & IECode- by zip zap	Item Description	Goods Measurment Unit	Corresponding Rate (in USD/given unit) as finalised in Investigation in respect of M/s Zip Zap by DRI	Currency	Basis of Re-determined Unit value of Goods (CE stands for Chartered Engineer and ST stands for Statement)
0009863/ 22.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE LED PAR LIGHT 54L	PCS	31.06	USD	CE Certificate dtd 06.07.18.
8841/ 07.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE LED PAR LIGHT 54L	PCS	31.06	USD	CE Certificate dtd 06.07.18.
0009807/ 22.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE LED PAR LIGHT 54L	PCS	31.06	USD	CE Certificate dtd 06.07.18.
0008832/ 07.06.17.	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18
8593/ 02.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18
0009861/ 22.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18
0008715/ 06.06.17	DAIWIK ENTERPRISES- 0516952030	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18
0008830/ 07.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18

15.10 In the instant imports, I find that "Interpretative Notes" as specified under Rule 13 of the said rules is relevant here. Interpretative Note to Rule 9 specifies that the methods of valuation to be employed under rule 9 may be those laid down in rule 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule.

15.11 I find that considering the reasonable flexibility as provided under Rule 9, various LED Light Products imported at KASEZ under Bill of entry mentioned in Table-B above are similar to the various LED Light Products imported at Mundra Port under Bill of Entry mentioned in Table-A above.

15.12 Therefore, I find that the declared value is liable to be re-determined under Rule and Rule 9 of CVR,2007 and the re-determined value of various LED Light Products is as per annexure-A to the current two SCNs.

**Duty demand under section 28(4) of customs act, 1962**

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

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

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

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

**17.** From the comparison shown in detailed manner in above paras, it is apparent that M/s. Jia Lighting and Audio Equipment suppressed the actual transaction value.

**18.** It is reasonable to assume that the mis-declaration of value has been done by M/s. Jia Lighting and Audio Equipment wilfully with sole purpose of executing this modus of undervaluation and evasion of customs duty.

**19.** Therefore, the undervaluation restored by importer is wilful and with suppression of the actual value.

**20.** I find that it is appropriate to invoke section 28(4) of the customs act to demand the duty in the instance case.

**Whether the goods are liable for confiscation under Section 111(d), 111(m) of the Customs Act 1962 or not**

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

*"(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

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

**22.** On plain reading of the above provisions of the Section 111(d) of the Customs Act, 1962 it is clear that any goods which are

imported and in violation of regulation prescribed by the law in force or any prohibition in force in respect of the said goods are imposed or non-fulfilment of any sanction imposed by the proper officer will be liable to confiscation.

**23.** I find that the restrictions/prohibitions are governed by Foreign Trade Policy and ITC (HS) based Import/export policy. Para 2.03 of the **Foreign Trade Policy 2015-2020 provides:**

***“2.03 Compliance of Imports with Domestic Laws***

*(a) Domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.”*

**24.** I find that DGFT has issued General Notes regarding Import Policy for ***Compliance of Imports with Domestic Laws***. Note 2A of the General Notes regarding Import Policy Provides:

***“2. Indian Quality Standards:***

*(C) Import policy for electronics and IT Goods: The import of Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the “Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time, is prohibited unless they are registered with the Bureau of Indian Standards (BIS) and comply to the ‘Labelling Requirements’ published by BIS, as amended from time to time, or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No. 3022 dated 11.09.2013.”*

25. I find that the Central Government, in exercise the power conferred by sections 10(1)(p) of Bureau of Indian Standards Act, 1986, issued Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012. LED Light Products are covered under Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 Under standard Code IS:16102 and IS:10322.

**26.** By virtue of Para 2A of general note regarding import policy, para 2.03 of the Foreign Trade Policy 2015-2020 and Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, I find that the BIS certification is required for import clearance of LED light products.

**27.** Now, Section 2(33) and section 11 of the Customs Act, 1962 are relevant in deciding the prohibition and both the sections are reproduced below:

*2(33) —prohibited goods means any goods the import or export of which is subject to any prohibition under this Act*

*or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;*

*11. Power to prohibit importation or exportation of goods.—(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.*

**27.1** In view of the above, it is clear that goods notified under section 11 of Customs Act, 1962 and goods where prohibition imposed under other law are the goods which are considered prohibited while applying provisions of Customs Act, 1962.

**27.2** Section 3 of Foreign Trade (Development and Regulation) Act, 1992 is also relevant here, section 3(3) of FTDA is reproduced below:

*3(3) All goods to which any Order under Sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited Under Section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.*

**27.3** The goods where any condition, restriction or prohibition imposed under section 3 of FTDRA, 1992, may be deemed as a prohibition imposed under Customs Act, 1962 if any of the condition not fulfilled. Therefore, as per definition under section 2(33) and section 11 of the Customs Act, 1962, the goods, where import conditions are not fulfilled, becomes prohibited under customs act, 1962.

**28.** In the instance case, I find that the importer failed to produce any BIS registration certificate for the LED Light Products, therefore, the goods become restricted under import policy. By the virtue of section 3(3) of Foreign Trade (Development and Regulation) Act, 1992, due to above mentioned restriction under import policy, the goods under import deemed to be prohibited goods under Section 11 of the Customs Act, 1962. Therefore, the LED Light Products without BIS certificate are prohibited under customs act, 1962.

**29.** Therefore, I find that the goods as mentioned in Table-A are LED Light Products and these are prohibited and liable for confiscation under section 111(d) of customs act, 1962.

**30.** Further, on plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods

which are imported by way of the misdeclaration, will be liable to confiscation.

**31.** I find that the importer has imported various LED Light Products by way of misdeclaration in terms of value, under the import consignment covered under bill of entry mentioned in Table-A, therefore, the goods mentioned in Table-A are liable for confiscation under section 111(m) of customs act, 1962.

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

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

31.2 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

31.3 I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripalspat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal

to redemption of such non-existent goods does not have any legs to stand.

31.4 In this regard, I find that the goods imported mentioned in Table-A, were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A *ibid* covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of imported goods mentioned in Table-A.

**Liability of Penalty under Section 112(a), Section 114A and/or 114AA of the Customs Act, 1962.**

32. I find that section 112(a) stipulates the penalty for improper importation of goods on any person who in relation to goods does or omits to do any act, which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omissions of such an act.

33. In the instant case it is pertinent to mention that the importer has imported the subject goods in violation of Section 111 of the Customs Act, 1962. For the said violation, the goods are liable to confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that for these acts and omissions, the importer is liable for penal action under Section 112(a) of the Customs Act, 1962.

34. I find that M/s. Jia Lighting and Audio Equipment, suppressed the actual transaction value and willfully mis-declared the value with sole purpose of executing this modus of undervaluation and evasion of customs duty, therefore, liable to pay duty under section 28 of the customs act, 1962.

35. I find that section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also be liable to pay penalty under section 114A. I find that for these acts and omissions, the importer is liable for penal action under Section 114A of the Customs Act, 1962.

36. However, I find that as per 5<sup>th</sup> proviso of section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under section 112 is not imposable.

37. I find that there is a mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112(a) of customs act, 1962.

38. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. In the instance case, the importer knowingly or intentionally imported the impugned goods to evade the custom duty and policy conditions of BIS and importer was involved in importation of illegal goods. Therefore, I find that for these acts and omissions, the importer is

liable for penal action under Section 114AA of the Customs Act, 1962.

**ORDER**

**39.1** I reject the declared assessable value of **Rs 12,59,841/-** (Rs. Twelve Lakh Fifty Nine Thousand Eight Hundred and Forty One Only) for the goods mentioned in Table-A under Rule 12 of CVR, 2007 and order to re-determine the same as **Rs. 8,64,81,379/-** (Rs. Eight Crore Sixty Four Lakh Eighty One Thousand Three Hundred and Seventy Nine only) in terms of Rule 9 of the CVR, 2007 read with section 14 of Customs Act, 1962.

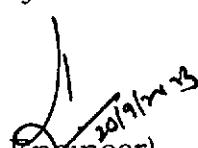
**39.2** I confirm the demand of **Rs. 1,85,15,174/-** (Rs. One Crore Eight Five Lakh Fifteen Thousand One Hundred and Seventy Four Only) for the goods mentioned in Table-A under section 28(4) of Customs Act, 1962 along with applicable interest under section 28AA of Customs Act, 1962.

**39.3** I order to confiscate the impugned goods mentioned in Table-A under Section 111(d) & 111(m) of the Customs Act 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962.

**39.4** I impose a Penalty of **Rs. 1,85,15,174/-** (Rs. One Crore Eight Five Lakh Fifteen Thousand One Hundred and Seventy Four Only) on M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi-110009 under Section 114A of the Customs Act, 1962.

**39.5** I impose a Penalty of **Rs. 30,00,000/-** (Rupees Thirty lakhs only) on M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi-110009 under Section 114AA of the Customs Act, 1962.

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

  
(K. Engineer)  
Commissioner of Customs  
Custom House Mundra

**BY SPEED POST/BY EMAIL/BY HAND/ NOTICE BOARD OR BY OTHER LEGALLY PERMISSIBLE MEANS:**

**To (The Noticee):**

M/s. Jia Lighting and Audio Equipment,  
1964, Outram Lines, Kingsway Camp,  
Delhi-110009

**Copy for information and further necessary action / information/ record to:**

- a. The Chief Commissioner of Customs, CCO, Ahmedabad.**
- b. The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra**
- c. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.**
- d. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.**
- e. Notice Board**
- f. Guard File**