

	<p style="text-align: center;">सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62, Email-adj-mundra@gov.in</p>	
A. File No.	:	GEN/ADJ/COMM/566/2023-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-13-25-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	14.07.2025. 14.07.2025.
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/566/2023-Adjn dated 30.08.2023.
F. Noticee(s) / Party / Importer	:	Shri Dirgesh Dedhia, Proprietor of M/s. Exemplar Trading, Plot No. 156, Ghanshyam Park, Baroi Road Mundra (Kutch)and Others.
G. DIN	:	20250771MO000000DB26

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 सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd 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, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

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

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

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

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- 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 paise 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.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

FACTS OF THE CASE IN BRIEF:

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

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

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

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

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

2.4. Since, the electronic cigarette found concealed in the above import consignment falling under HS code 85434000 and the import thereof is prohibited vide **notification 20/2015-2020 dated 26.09.2019**, used for concealment, the import consignment relating to container number **TLLU4615592** appeared liable to confiscation under the provisions of the Customs Act, 1962. Therefore, the whole consignment pertaining to Container No. TLLU4615592 was detained under panchanama dated 01/02.09.2022 and subsequently after detailed examination and valuation of the goods, the same was placed under seizure under provisions of Customs Act, 1962.

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

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

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

Table-1

Sr. No.	Container No.	Name of the importer	Date of panchnama	Goods declared in the BE/BL/IGM	Description of goods found actually during examination
1	NYKU084432	M/s Nikhat Enterprises	02.09.2022	Floor Clean Mop (Misc Item Non popular Brand) Shippers Desire To State Thaths Code 96039000	12 Carton of E-Cigarettes and other goods
2	TLLU4615592	M/s. M. M. Enterprises	01/02.09.2022 and 19.10.2022	Head Massager (Misc item Non Popular Brand) HS Code 90191020	107 Carton of E-Cigarettes, along with, Head massager, Exercise book, Hair straightener, Silicon Pop up toys
3	DFSU7686560	M/s. Rajyog Enterprises	03.09.2022	Hot water Bag (Misc. item Non Popular Brand)/Water Bottle/Plastic cube	Fidget Can Cube, Card Early Education Vice, Wate Bottle, Spinning Cube etc.
4	TEMU6643503	M/s. Aditi Trading Company	03.09.2022	Vegetable slicer, Foot pump, mobile holder, hair dryer etc.	Dancing cactus (Toys), Vegetable slicer, small water bottle, foot pump etc.
5	TEMU8505123	M/s Rajyog Enterprises	03/04.09.2022	Exercise Book (Misc item non popular brand)	Exercise Book (Misc item non popular brand), Rabit piano, Micky mouse twister car and other Toys of different kind
6	YMMU6620747	M/s. Skyblue Internation	03/04.09.2022	Exercise Book, Back Cover, Tampered glass	Exercise Books, Tempered Glass/Toughened

		al Trading Company			glass, Back Cover, Earphones
7	TCNU8506372	M/s. Exemplar Trading	06.09.2022	Water Bottle (Misc Item Non Popular Brand)Hs Code 392630	Kinoki Foot Pads, Dancing Cactus, Empty Cartons, Water Proof Tape, Water Bottle
8	SEGU4114778	M/s. Exemplar Trading	06.09.2022	Hair Straightener 851632 Hair Dryer (851631) Trimmer (851020)	Kemei Hair Trimmer/Clipper, Kemei Hair Dryer and Kemei Hair Straightener.
9	TXGU7069291	M/s. Rajyog Enterprises	19.09.2022	Massager Misc Item Non Popular Brand Hs Code 90191020 foot Brush Misc Item Non Popular Brand Hs Code 96032900	Bubble sensory fidget toys, pedicure paddle/brush, maxtop massager, body massager, ventilation back rest with lump support, mesh cushion support pad
10	TXGU5023882	M/s. Rajyog Enterprises	12.09.2022	Hair Clipper (Misc Item Non Popular Brand) HSCode 851030	Professional Hair clipper adjustable blade maxtop model: MP98
11	BMOU6923481	Aditi Trading Company	19.09.2022	Egg Poacher (Misc Brand Non Popular Brand) HS Code - 39241090	dancing cactus, Egg poacher/steamer, different types of toys, study book, learning machine,
12	SLSU8018922	M/s Sky Blue International Trading Co.	08.09.2022	Exercise Book (Misc Item Non Popular Brand) HS Code: 48202000	Exercise book, Tempered glass, Hair Straightener, Earphone
13	TRHU8455767	M/s Sky Blue International Trading Co.	24.09.2022	Hair Trimmer Misc Item Non Popular Brand HS Code 85103000	Earphone(AK-H/F(B)), Hair Straightener(SK-111), Earphone (SK-786 model HF)
14	SEGU4596469	M/s Sky Blue International Trading Co.	12.09.2022	Plastic Chocolate Mould (Misc Item Non Popular Brand)HS Code 392690	Plastic pop up toys, Dancing Cactus Toys
15	BMOU5987877	M/s. Rajyog Enterprises	17.09.2022	Exercise Book (Misc Item Non Popular Brand) HS Code: 48202000	Sank Magic Practice Copy Book, Mop Scratch Cleaning Mop, Card Early Education Device, Dancing Cactus can Sing and Dance, Xindong Nail Clippers, Nail Clipper

					kabee Brand & Bell Brand, FUR Star Monkey, I say what you said, Gyrate Octopus Fur Toys Series, Nail Cutter / Clipper Bell Brand
16	TGBU77 09478	M/s Sky Blue International Trading Co.	23.09.202 2	Hair Trimmer Misc Item Non Popular Brand HS Code 85103000	Earphone of different brand (opp, vivo, realme, boat, samsung etc.), Earphone unbranded, Mobile phone back cover (Assorted), I - phone/apple mobile phoneback cover, Hair Clipper/straightener, Magic practice book
17	TEMU76 94450	M/s Jym Global Trading company	12.09.202 2	Plastic Chocolate Mould (Misc Item Non Popular Brand)Hs Code 392690	Pop it toys, dancing cactus toys
18	TGBU51 60748	M/s. J. H. Enterprises	16/17.09. 2022	Floor Clean Mop (Misc Item Non popular Brand) HS Code 96039000	E-Cigarettes, silicone pop it toys, LCD writing pad, MOP, wired head/hand massager.

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

5.2. Apart from the E-Cigarettes recovered from the import goods pertaining to the container Nos. NYKU084432, TLLU4615592 and TGBU5160748, gross mis-declaration in respect of description, Classification, value, quantity and other material particulars was noticed during examination of the above import consignments. It was noticed that various import consignments concealing Toys were required to be classified under HS Code 9503 and import of the same was subject to fulfilment of **Policy Condition 2 of the Chapter 95 of the Customs Tariff**. As per the condition, the import of toys requires mandatory BIs compliance for import of the same into India. However, during investigation, no importer had produced any such compliance for import of the same.

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

6. During examination of the goods, representative samples were drawn from the import consignments in order to find out exact description, nature and value of the

imported goods. The samples so drawn were got examined by a Govt. approved Chartered Engineer Shri Kunal Ajay Kumar and he submitted his reports to DRI.

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

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

- Statement of Shri Parwej Alam, representative of the actual buyer Shri Mohammad Asif Sathi and Shri Sarfaraz Bhai was recorded on 02/03.09.2022, 04.09.2022.
- Statement of Shri Chuna Singh Rawat, Driver of the truck/trailer no GJ12 BV0610 laden with container TLLU4615592 recorded on 02.09.2022.
- Statement of Shri Jubair Ali S/o Shri Halim Shaikh, who was looking after the work of loading/unloading at the godown at Bhiwandi was recorded on 03.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Samir Sharma, G-Card Holder of Custom Broker firm M/s Al Cargo Services, was recorded on 05/06.09.2022, 08.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Akash Desai, General Manager of M/s. Empezar Logistics PVT. LTD., was recorded under Section 108 of Customs Act, 1962 on 08.09.2022.
- Statement of Shri Sushant Biltiwala, was recorded on 14.09.2022 Under Section 108 of the Customs Act, 1962.
- Statement of Shri Chhaju Ram Proprietor of M/s. Prince Logistics, was recorded on 14.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Mohammad Asif Sathi was recorded under Section 108 of the Customs Act, 1962 on 21.09.2022, 22.09.2022, 24.09.2022, 26.09.2022, 24.11.2022.
- Statement of Shri Mohammad Tahir Menn Proprietor of M/s. M.M. Enterprises, was recorded under Section 108 of the Customs Act, 1962, on 25.09.2022, 25.11.2022
- Statement of Shri Sarfaraj Kamani was recorded under Section 108 of the Customs Act, 1962, Gandhidham on 29.09.2022, 30.09.2022, 25.11.2022.
- Statement of Mrs. Nikhat Baig was recorded by the DRI on 11.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Baldevsinh Vala, Authorised Signatory of M/s. Kalpana Exim, was recorded on 05.09.2022, 06.09.2022, 07.12.2022, 08.12.2022, 09.12.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Mohamed Hanif Ismail Kapadia was recorded on 04.10.2022 under Section 108 of the Customs Act, 1962
- Statement of Shri Dirgesh Dhiraj Dedhiya, Proprietor of M/s. Exemplar Trading, was recorded under Section 108 of the Customs Act, 1962, on 22.11.2022.

- Statement of Mr. Venkat Jagan Peetani, Assistant General Manager Operations of M/s. Yang Ming Line India Pvt. Ltd., recorded on 23.03.2023.
- Statement of Shri Vipin Sharma was, recorded under Section 108 of the Customs Act, 1962 on 10.08.2023.
- Statement of Shri Amit Kumar Mishra was recorded on 16.08.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Suresh Kumar, the then appraiser was recorded on 17.08.2023 under Section 108 of the Customs Act, 1962.

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

Table 2

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

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

Table 3

Sr. No.	Container No.	Warehouse Bill of Entry No. & Date	SEZ to DTA Bill of Entry No. & Date
1	SEGU4114778	1011546 dated 29.08.2022	2013039 dated 30.08.2022
2	TCNU8506372	1011559 dated 29.08.2022	2013040 dated 30.08.2022

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

10. VALUATION OF THE GOODS

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

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

rejected in terms of **Rule 12 of CVR, 2007**. The value was required to be re-determined by sequentially proceeding in terms of **Rules 4 to 9 of CVR, 2007**.

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

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

Table 4

Sr. No.	Container No.	DTA Bill of Entry No. and dated	Declared description of Goods as per BE/BL/IGM	Actual Goods found during examination	Quantity found (pcs.)	Market price as per valuation report
1	SEGU4114778	2013039 dated 30.08.2022	Hair Trimmer	KEMEI Hair Clipper(Trimmer)	25440	30833280
			Hair Dryer	KEMEI Hair Dryer	2000	1098000
			Hair Straightener	KEMEI Hair Straightener	3000	1497000
2	TCNU8506372	2013040 dated 30.08.2022	Water bottle	Water bottle	2300	1147700
			Empty Carton box	Empty Carton box	24000	140000
			small waterproof adhesive tape	small waterproof adhesive tape	8712	3476088
			Foot pads	Foot pads	60000	720000
				Dancing Cactus Toys	24000	15600000

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

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

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

Table 5

S R N O.	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE)
1	M/s Exemplar	SEGU4114778	Hair Trimmer	27350	KEMEI Hair Clipper(Trimmer)	85102000	30440	30833280

2	Trading		Hair Dryer		KEMEI Hair Dryer	85102000		1098000
3			Hair Straightener		KEMEI Hair Straightener	85102000		1497000

11.1.2. Since the total quantity of **30440 pcs** Hair Straightener/Hair trimmer having market price of **Rs 3,34,28,280/-** are found mis-declared in respect of description and quantity at the time of filing Bills of Entry for the same before Customs officers thereof, hence these goods appeared to be liable for confiscation under Section 111(f), 111(m) of the Customs Act, 1962. The above quantity of hair Clipper/Trimmer/hair dryer include the excess quantity total **3090 Pcs.** of hair Straightener not included in the documents, are also liable to confiscation under Section 111(l) of the Customs Act, 1962. It further appeared that the importer and beneficial owners are liable to pay the applicable Customs Duty of **Rs. 1,46,95,072/-** for import of these goods valuing **Rs 3,34,28,280/-** as per **Annexure A to the SCN.**

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

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

Table 6

S R N O.	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE)
1	M/s Exemplar Trading	TCNU8506372	Water bottle	25380	Water bottle	39269099	2300	1147700
2			Empty Carton box	24000	Empty Carton box	48191010	24000	140000
3			small waterpro of adhesive tape	8712	Small water proof adhesive tape	39199090	8712	3476088
4			Foot pads	60000	Foot pads	30059090	60000	720000

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

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

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

Table 7

SR NO	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE)
1	M/s Exemplar Trading	TCNU850 6372	---	--	Dancing Cactus Toys	950300	24000	15600000

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

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

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

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

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

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

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

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

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

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

11.3.3. As mentioned above, M/s. Exemplar Trading have imported total Toys **24000 Pcs.** such as Cactus, having market price of **Rs. 1,56,00,000/-** without mandatory BIS compliance and by way of mis-declaration. Therefore, the said toys and also appear to have been imported in violation of the provisions of Condition 2 of Chapter 95, being the offending goods, should not be held liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962.

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

12.1. Role of Shri Dirgesb Dedhia

(i) Shri Dirgesb Dedhia is proprietor of firm M/s Exemplar Trading. It appeared that in lieu of getting easy money he allowed Shri Asif to import goods in his firm's name. Shri Baldevsinh clearly told him that Shri Asif was going to import slippers, hair straightener, cloth bag, mop, clipper, trimmer, water bottles, etc. at Mundra port through Mundra SEZ and also offered 3% commission of invoice value in

lieu of allowing his IEC of M/s. Exemplar Trading for import of the goods and he accepted the proposal.

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

12.2. Role and capability of Shri Asif Sathi

- i Shri Asif was the mastermind behind the entire racket of import of e-cigarettes, toys, and other mis-declared products/concealed products as highlighted vide **Table 1** hereinabove. He had planned the illegal import of the e-cigarettes by using front/benami/fake entities, remained behind curtain and thereby attempted to remain away from the eyes of enforcement agencies.
- ii He arranged IECs of various firms through other persons and planned the import of mis-declared/concealed/prohibited products in these IECs. He did this in partnership with Shri Sarfaraj and Shri Hanif who were also Mumbai based persons, similar to him. **He managed various godowns in Mumbai where the offending goods would be offloaded and sold to domestic buyers. For the customs clearance work, he took help of Shri Baldev whom he approached**

through Shri Tahir. He also used IECs of various firms as mentioned vide Table 14 to subject SCN.

- iii He clearly informed Shri Baldevsinh that he wanted to import prohibited goods such as Toys and e-cigarettes, apart from usual mis-declared/undervalued/counterfeit goods. Mr. Asif used to send him Bill of Lading through WhatsApp along with Invoice, Packing List etc., and based on these documents Bills of Entry were filed by Shri Sameer Sharma. Since the goods in the consignments were mis-declared/ prohibited/ restricted/ undervalued, hence depending upon the extent of mis-declarations he used to make payment of Rs. 15000/- to Rs. 50,000/- per IEC per Consignment to Shri Vishal, Shri Tahir and Shri Baldev. For clearance of consignment of e-cigarettes Shri Asif even paid a hefty amount of Rs 17 Lakh per container to Shri Baldevsinh.
- iv For payment of Customs duty for these import consignments and payment to foreign supplier, Shri Asif used to deposit cash or do bank transfer from domestic purchaser firms in accounts of these dummy firms, from where such payments used to be made.
- v Cleared goods were dispatched to his godown in Bhiwandi where Shri Parvez Alam was deputed by him for receipt, loading/unloading, storage, further dispatch work etc. He had indulged in importation of e-cigarettes/Toys multiple times and used to sell the same to various domestic buyers such as Raju bhai, Sohail bhai for e-cigarettes and Imran, Sagar, Rajguru, Sandeep for Toys.
- vi Shri Asif and his cartel had already imported and sold out 265 cartons of e-cigarettes in the month of July, 2022 and August, 2022 out of which left out quantity of 12 cartons containing 9600 pcs of e-cigarettes have been recovered by officers of DRI from the godown of smuggling syndicate at Bhiwandi under Panchnama dated 01/02.09.2022.
- vii From discussions in WhatsApp Group "Mm", it appeared that Shri Asif had planned the import of prohibited items such as Toys and e-cigarettes, undervalued and counterfeit items such as mobile accessories, and multiple mis-declared import consignments as mentioned in Table 3.
- viii After interception of various consignments pertaining to him by DRI, Shri Mohammad Asif Sathi insisted the shipper of Container No. TGBU5160748, being imported in name of firm J H Enterprises to attempted to revised the Bill of Lading changing discharge port from Mundra to Jebel Ali, Dubai instead of declared port of discharge i.e. Mundra but while attempting to divert the same, the said consignment was intercepted by the DRI. From this consignment 251 cartons of e-cigarettes were recovered.
- ix In view of the above, it appeared that Shri Asif has played an active role in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. e- Cigarettes. Mohammad Asif Sathi was aware that the business of e-cigarettes is prohibited in India since 2019 and even though he was running the organized smuggling syndicate, which deals in smuggling and distribution of Prohibited goods i.e. e- Cigarettes. It also appeared that Shri Asif was the mastermind behind import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3 to subject SCN.
- x **In the present case**, in respect of import of goods in name of **M/s.Exemplar Trading, Shri Asif** has acted as the mastermind of the smuggling cartel and his role remains the same as has been described in above paras. Thus, it appeared that Shri Asif has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appeared that Shri Asif has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and

omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962. Further it appeared that Shri Asif had used IECs of dummy firms for his own import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. **He has also forwarded incorrect documents for filing of Bills of Entry for these consignments with false declarations.** He has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appeared that **Shri Asif** is also liable to penalty under Section 114AA of the Customs Act, 1962.

12.3. Role and culpability of Shri Mohammed Tahir Menn

- i **Shri Mohammed Tahir Menn** is the owner and sole Proprietor of firm **M/s. M.M. Enterprises**, having office at Office No. 2, Ground Floor, Alfa Arcade, Opp. to Shifa/Khojani Hospital, Ashpura Ring Road, Sumra Dairy Char Rasta, Bhuj (Kutch). Shri Tahir was an active member of the smuggling cartel led by Shri Asif. He lent his own IEC i.e. of **M/s.MM Enterprises** to Shri Asif. He further created an IEC of **M/s. J H Enterprises** in name of **Shri Juma Hamir Halepotra**, caretaker of Asif's bungalow in Bhuj and gave it to Shri Asif. The said two IECs were used to import e-cigarettes.
- ii The cartel led by Shri Asif and in which Shri Tahir was an active member had already imported and sold out 265 cartons of e-cigarettes in the month of July, 2022 and August, 2022 out of which left out quantity of 12 cartons containing 9600 pcs of e-cigarettes have been recovered by officers of DRI from the godown of smuggling syndicate at Bhiwandi under Panchnama dated 01/02.09.2022. From various statements, WhatsApp chat conversations, it is crystal clear that Shri Tahir had actively participated in import of e-cigarettes in his firms.
- iii Shri Tahir was the person who had introduced Shri Baldevsinh to Asif for customs clearance and transportation work. Shri Tahir used to coordinate through Shri Baldevsinh for all the firms on behalf of Shri Asif. Along with Shri Baldevsinh, Shri Tahir was looking after crossing of containers/goods after customs clearance to avoid interception by enforcement agencies.
- iv From WhatsApp chat conversations it is crystal clear that he has been deeply involved with import of other goods like toys requiring BIS compliance, mobile phone accessories having mark/ logo of various brands like Boat, Realme, etc. infringing Intellectual Property Rights (IPRs), concealment and mis-declaration of goods with respect to quantity and other material particulars in gross violation of the provisions of Customs Act, 1962 and other allied Acts.
- v Shri Tahir has admittedly received substantial monetary benefits from the mastermind in lieu of facilitating the illegal import in the IEC of firms M/s. M.M. Enterprises & M/s.J H Enterprises and services provided by him for knowingly facilitating the illegal import, clearance, transportation etc. in the IECs of other firms viz. M/s. Rajyog Enterprises, M/s. Exemplar Trading, M/s. Aditi Trading Company, M/s. Skyblue International Trading Co., M/s. Nikhat Enterprises, M/s. Global Impex, M/s. JYM Global Trading Company etc.
- vi In view of the above, it appeared that **Shri Tahir** has played an active role in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. e- Cigarettes. Shri Tahir was aware that the business of e-cigarettes is prohibited in India since 2019 and even though he was involved in the organized smuggling syndicate, which deals in smuggling and distribution of Prohibited goods i.e. e- Cigarettes. It also appeared that Shri Tahir was deeply involved in the import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3 to subject SCN.

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

12.4. Role and culpability of Shri Baldevsinh Vala

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

which he instructed other members to keep the amount of restricted goods to the extent of 30%, vide which he informed the group members to make extra expenses for clearance of restricted/prohibited goods involving BIS, IPR issues etc.

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

12.5. Role and culpability of M/s Kalpana Exim

- (i) Investigation revealed that all the consignments in this case were forwarded for clearance by one Shri Baldevsinh Vala, Authorised Signatory of M/s. Kalpana

Exim, Mundra. Shri Abhalsinh Vala is the Proprietor of the firm M/s. Kalpana Exim, however, due to disturbance in his family life, Shri Baldevsinh was looking after overall business operations in this firm. Shri Abhalsinh Vala was part time assisting in preparing invoices and other related activities.

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

12.6. Role of Shri Mohamed Hanif Ismail Kapadia

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

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

12.7. Role of Shri Samir Sharma

- **Shri Samir Sharma**, G-Card holder in Customs Broker firm M/s. Al Cargo Services (CB License No. ANUPM4678FCH001) hatched a conspiracy with Shri Baldevsinh Vala, Shri Asif and other associated of the smuggling cartel to import mis-declared/ restricted/ prohibited/ undervalued goods as highlighted in Table 3 to the subject SCN.
- Shri Samir Sharma assured Shri Baldevsinh Vala for clearance of import consignments of offending goods from Customs. Neither the importer firm, nor their authorised representative provided the import documents to Shri Samir Sharma but the same were given to him by Shri Baldevsinh Vala, the forwarder who was not at all authorised by any of the importer firm. During investigation, most of the aforementioned IEC holders were not found or found non-existing. This clearly indicates Shri Samir Sharma has never met the IEC holders and hence verification of genuineness of the IEC holders was not done by him through his reliable sources. It is admitted fact by the mastermind and other concerned key persons that the IEC holders merely allowed their IECs to the mastermind of smuggling racket for getting money from him.
- Being a customs broker Shri Samir Sharma knew that away bills were part of the documents required at the time of exiting the consignments from SEZ to DTA while granting Delivery. Yet he connived with the smuggling cartel and submitted Eway Bills with SEZ Customs Authorities having names of unrelated parties such as M/s. Anjali Enterprises, M/s. Nikunj Enterprises, M/s. MD, M/s. Sapna International, M/s. ZU International etc.

- It appeared that Shri Samir Sharma was getting Rs. 2.5 lakh to Rs. 3 lakh per consignment in lieu of clearance of offending goods like toys requiring mandatory BIS compliance, mobile phone accessories infringing IPR, by way of mis-declaration.
- From various statements it is evident that Shri Samir Sharma was well aware about mis-declaration in the import consignment pertaining to Shri Mohammad Asif Sathi.
- In view of the above, it appeared that Shri Samir Sharma has played an active role in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. e- Cigarettes. It also appeared that Shri Samir Sharma was an active part of the cartel led by Shri Asif behind import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 1 to the subject SCN.
- **In the present case, role of Shri Samir Sharma in respect of import of goods in name of M/s.Exemplar Trading,** remains the same as has been described in above paras. Thus, it appeared that Shri Samir Sharma has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appeared that Shri Samir Sharma has willfully and deliberately indulged into conspiracy of clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.
- Further it appeared that Shri Samir Sharma filed Bills of Entry in name of IECs of dummy firms, including M/s. Exemplar Trading in this case, for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. He has also filed incorrect declarations in Bills of Entry for these consignments in return of monetary consideration. He has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appeared that Shri Samir Sharma is also liable to penalty under Section 114AA of the Customs Act, 1962.

12.8. Role of Shri Parvej Alam

- Shri Parvej Alam** was working for Shri Asif and Shri Sarfaraj and was in charge of their Godowns in Bhiwandi. He was arranging for unloading of containers arriving from various ports like Mumbai, Mundra etc. to the warehouses/godowns in Bhiwandi. He was also coordinating with Shri Baldevsinh for details of Trucks/containers departing from Mundra to the godowns. Based on instructions of Shri Asif, he was also dispatching imported goods including e-cigarettes and Toys to various domestic customers.
- It is evident that he was involved in transportation of e-cigarettes in container bearing number TLLU4615592 which left Mundra on 28.08.2022 in truck number GJ12 BV0610. On instructions of Asif, he reached ICD Sachin, Surat. From this container TLLU4615592 107 cartons of e-cigarettes along with the other items were recovered. He had also involved himself in handling the imported e-cigarettes in the past also i.e. first consignment of 125 carton e-cigarettes in July 2022 and second consignment of 140 cartons of e-cigarettes in August 2022. Out of the second consignment pertaining to August 2022, 12 cartons of e-cigarettes were kept hidden in at Godown No. 6 and 7, Madvi Complex, Anjur Phata, Narayan Talpatri Bhiwandi which was seized under

panchnama dated 01/02.09.2022 by DRI, Zonal Unit, Mumbai. It further appeared that being incharge of godowns of Shri Asif and Shri Sarfaraj, he was the main person who was aware about all the mis-declared/concealed/restricted and prohibited products being imported by the cartel led by Shri Asif.

- iii Hence, it appeared that Shri Parvej has assisted in smuggling of e-cigarettes in violation of provisions of Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019, in as much as he played an active role in removing, depositing, harbouring, keeping and dealing with Prohibited goods i.e. E-Cigarettes in India. It also appeared that Shri Parvej was well aware and had handled the unloading and dispatch of all mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 1.
- iv **In the present case role of Shri Parvej Alam in respect of import of goods in name of M/s. Exemplar Trading,** remains the same as has been described in above paras.
- v Thus, it appeared that Shri Parvej has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appeared that Shri Parvej has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.

12.9. Role and culpability of Shri Gaurav Sahay

- Shri Gaurav Sahay was an active member of the smuggling cartel being led by Shri Asif. He was an active member of WhatsApp Group "Mm". He was also into the business of lending dummy IECs to Shri Asif as is evident from chat conversations in the group. From Chats, it is evident that he had forwarded IEC of "Global Impex" to Shri Asif. He is also seen to be suggesting use of IEC of "Exemplar Trading" in the chats. In chat messages of WhatsApp group "Mm" Gaurav Sahay is actively asking details of BLs of consignments being imported by Asif and about details of "Notify party" that should be mentioned in the documents.
- Being active member of WhatsApp group "Mm", Gaurav Sahay was also privy to plans regarding import of prohibited goods such as e-cigarettes; restricted goods such as Toys; counterfeit mobile accessories etc. and other undervalued/mis-declared goods. Shri Gaurav Sahay was also receiving monetary benefits from Shri Asif and Shri Tahir had clearly mentioned that he had given Rs 1,00,000/- to Shri Gaurav Sahay for his work in clearing goods pertaining to Asif.
- Hence it appeared that Shri Gaurav Sahay is an active associate of cartel of smuggling of prohibited item e-cigarettes and other offending goods imported illegally at Mundra port by way of concealment and mis-declaration like toys requiring mandatory BIS compliance, and/or other goods involving gross undervaluation as mentioned in Table 3.
- **In the present case** role of Shri Gaurav Sahay in case of import of goods in name of M/s. Exemplar Trading, remains same as has been described in above paras. All the acts done by him as described above are in contravention to the provisions of Customs Act, 1962 and rules made there under. Thus, it appeared that Shri Gaurav Sahay has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys and other offending goods

which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and (b) of Customs Act 1962.

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

12.11. Role and culpability of Empezar Logistics

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

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

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

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

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

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

- (v) From above regulations, it is crystal clear that there is no provision to create sub-id in name of CHA. Any such practice is without authority of law. Further the Warehousing Unit cannot shed its own responsibilities while filing correct declarations in Bill of Entry on the pretext that the CHA firm has filed the Bill of Entry. Further Shri Samir Sharma in his statement dtd. 08.09.2022 stated that the checklist for Bills of Entry filed by him are duly approved by M/s.Empezar Logistics before filing of the same.
- (vi) Hence it appeared that M/s.Empezar Logistics is responsible for filing incorrect details in the Bill of Entry filed in name of M/s. M. M. Enterprises pertaining to the said container. Further as per above regulations the Bill of Entry filed for DTA clearance should be having complete description of the goods such as make, model number, serial number, specification. Since in this case the DTA client was not filing the Bill of Entry and because the warehousing unit was getting the Bill of Entry filed using its own id/sub-id, hence the onus for filing correct declarations of the goods in the Bills of Entry falls on the warehousing Unit. It appeared that M/s. Empezar Logistics have failed to discharge their responsibility in this regard which had led to clearance of mis-declared/ undervalued/ prohibited goods.
- (vii) Further it was noticed during investigation that some of the import consignments of firms mentioned in Table 1 were being DTA cleared in same Containers without destuffing at the warehouse of M/s. Empezar Logistics Pvt. Ltd. Hence, it appeared that M/s. Empezar Logistics Pvt. Ltd. had failed to destuff the entire goods in the said consignment at its warehouse and thus failed to discharge the obligations entrusted on it under SEZ Act and rules thereunder.
- (viii) Further investigation has revealed that large numbers of mis-declared and undervalued consignments having restricted/prohibited/IPR violating goods were cleared into DTA from Empezar Logistics by the cartel led by Shri Asif and other members as mentioned above. In the present case of import of goods in name of M/s.Exemplar Trading, role of M/s. Empezar Logistics remains the same as has been described in above paras.
- (ix) Thus, it appeared that Empezar Logistics have done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appeared that Empezar Logistics has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a), Section 112 (b) and Section 117 of Customs Act 1962.
- (x) It also appeared that **M/s. Empezar Logistics** lent their ID to CHA Shri Samir Sharma for filing of incorrect Bill of Entry No 1011563 dtd.29.08.2022 for Container No. YMMU6620747 without authority of law. Incorrect description and values in Bills of Entries and wrong declarations were accordingly filed for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It appeared that M/s. Empezar logistics has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore they are liable to penalty under Section 114AA of the Customs Act, 1962.

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

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

Examination Order:-

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

Examination Report

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

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

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

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

- (i) The assessable value of total 30440 pcs of Hair Trimmer/Hairdryer/hair Straightener classified under HS Code 85102000, should not be determined as **Rs. 3,34,28,280/-** under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of **Rs. 1,46,95,072/-** should not be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, as given in **Annexure-A** to the notice.

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

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

Table-8

Sr. No.	Name	Penal provisions under Customs Act, 1962			
		(3)	(4)	(5)	(6)
(1)	(2)	(3)	(4)	(5)	(6)
1	Shri Dirgesh Dedia, proprietor of M/s. Exemplar Trading	112(a)	112(b)	114A	114(AA)
2	Shri Asif Sathi (Beneficial owner of the import goods)	112(a)	112(b)	114A	114(AA)
3	Shri Tahir Menn (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)
4	Shri Parvej Alam (Associate of beneficial owner)	112(a)	112(b)	-----	-----
5	Shri Baldevsinh Vala (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)
6	Shri Samir Sharma, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment)	112(a)	112(b)	-----	114(AA)
7	Shri Gaurav Sahay (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)
8	Shri Hanif Kapadia (Associate of beneficial owner)	112(a)	112(b)	-----	114(AA)
9	M/s Kalpna Exim	112(a)	112(b)	-----	114(AA)
10	M/s. Empezar Logistics Pvt Ltd.	112(a)	112(b)	117	114(AA)
11	Shri Vipin Sharma	112(a)	--	-----	---

EARLIER ADJUDICATION OF THE CASE

14. The subject case was earlier adjudicated and Order-in-Original No. MUN-CUSTM-000-COM-20-24-25 dated 27.08.2024 was issued by the Pr. Commissioner, Mundra Customs, in favour of the department, thereby ordering as follows:

ORDER

> IN RESPECT OF DUTIABLE GOODS:

- (i) I reject the declared value of impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN imported by M/s. Exemplar Trading (IEC No. BVIPD3861L), in terms of Rule 12 of CVR, 2007; and order to re-determine the value of the same as **Rs. 3,89,12,068/-** (Rs. 3,34,28,280/- + Rs. 54,83,788/-) in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- (ii) I order to confiscate the impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs 40,00,000/- (Rupees Forty Lakhs only)** under Section 125 of the Customs Act, 1962.
- (iii) I confirm the demand of Customs Duty of **Rs. 1,66,46,081/-** (Rs. 1,46,95,072/- (+) Rs. 19,51,009/-) (**Rupees One Crore Sixty Six Lakh Forty Six Thousand Eighty One only**) against impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (iv) I impose penalty of **Rs. 1,66,46,081/- (Rupees One Crore Sixty-Six Lakh Forty-Six Thousand Eighty-One only)** upon **Shri Dirgeshe Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 114A of the Customs Act, 1962. I hold that penalty under Section 112(a)(ii) of the Customs Act, also leviable from the importer, however, I refrain from imposing penalty upon them under Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112(ii) and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.
- (v) I impose penalty of **Rs. 1,66,46,081/- (Rupees One Crore Sixty-Six Lakh Forty-Six Thousand Eighty-One only)** upon **Shri Asif Sathi (Beneficial owner of the import goods)** under Section 114A of the Customs Act, 1962, however, I refrain from imposing penalty upon them under Section of Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.
- (vi) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Parvej Alam** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.

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

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

- 25.** I order for absolute confiscation of the impugned offending goods i.e. **24000 Toys** falling under HS Code 95030010 found concealed in the import consignments pertaining to **Container No. TCNU8506372** and having market price of **Rs. 1,56,00,000/-** imported under **Bills of Entry no. 2013040 dated 30.08.2022**, in violation of the provisions of Condition 2 of Chapter 95, under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as detailed vide **Annexure-B**.
- 26.** I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Dirgesh Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 112(a)(i) of the Customs Act, 1962.
- 27.** I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Asif Sathi (Beneficial owner of the import goods)** under Section 112(a)(i) of the Customs Act, 1962.
- 28.** I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- 29.** I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Parvej Alam** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- 30.** I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Baldevsinh Vala** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- 31.** I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 112(a)(i) of the Customs Act, 1962.
- 32.** I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Gaurav Sahay** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- 33.** I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Hanif Kapadia** (Associate of beneficial owner) under Section 112(a)(i) of the Customs Act, 1962.
- 34.** I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **M/s Kalpna Exim** under Section 112(a)(i) of the Customs Act, 1962.

35. I impose penalty of **Rs 1,00,000/- (Rupees One Lakhs only)** upon **Shri Vipin Sharma, the then Preventive Officer** under Section 112(a)(i) of the Customs Act, 1962.
36. I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 112(a)(i), of the Customs Act, 1962, for the reasons discussed hereinabove.
- 37. IMPOSITION OF PENALTY UNDER SECTION 114 AA OF THE CUSTOMS ACT, 1962:**
- i. I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Dirgesh Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 114AA of the Customs Act, 1962.
 - ii. I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Asif Sathi (Beneficial owner of the imported goods)** under Section 114(AA) of the Customs Act, 1962.
 - iii. I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
 - iv. I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Baldevsinh Vala** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
 - v. I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 114(AA) of the Customs Act, 1962.
 - vi. I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Gaurav Sahay** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
 - vii. I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Hanif Kapadia** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
 - viii. I impose penalty of **Rs 1,00,000/- (Rupees One Lakhs only)** upon **M/s Kalpana Exim** under Section 114(AA) of the Customs Act, 1962.
 - (ix) I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 114(AA) of the Customs Act, 1962, for the reasons discussed hereinabove.

CORRIGENDUM TO THE ORDER-IN-ORIGINAL

15. Corrigendum to the Order-in-Original No. MUN-CUSTM-000-COM-20-24-25 dated 27.08.2024 was issued on 14.11.2024 and the same is produced below:

"In the said Order-In-Original, at Para No. 23 (iii)

1. At Para No. 23 (iii) at page No. 63 of 67 is as under:

iii) I confirm the demand of Customs Duty of **Rs. 1,66,46,081/- (Rs. 1,46,95,072/- (+) Rs. 19,51,009/-) (Rupees One Crore Sixty Six Lakh Forty Six Thousand Eighty One only)** against impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.

May be read as

iii) I confirm the demand of Customs Duty of **Rs. 1,66,46,081/-** (Rs. 1,46,95,072/- (+) Rs. 19,51,009/-) **(Rupees One Crore Sixty Six Lakh Forty Six Thousand Eighty One only) against impugned goods i.e. 30,440 Pcs. of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total 95012 Pcs. of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962 which shall be recovered jointly and severally from Importer M/s Exemplar Trading and Beneficial Owner Shri Asif Sathi as discussed in para 16.7.**

2. All other contents of the said O-I-O shall remain unchanged.

CASE REMADED BACK FOR DE-NOVO ADJUDICATION

16. Aggrieved by the aforesaid Order-in-Original No. MUN-CUSTM-000-COM-20-24-25 dated 27.08.2024, the following noticees had filed appeal at Hon'ble CESTAT, Ahmedabad:

- i. Shri Dirgesh Dedhia (Appeal no. 10652/2024)
- ii. Shri Asif Sathi (Appeal no. 10651/2024)
- iii. Shri Parvej Alam (Appeal no. 10653/2024)
- iv. Shri Baldevsinh Vala (Appeal no. 10766/2024)
- v. Shri Samir Sharma (Appeal no. 10503/2024)
- vi. Shri Gaurav Sahay (Appeal no. 10818/2024)
- vii. Shri Hanif Kapadia (Appeal no. 10654/2024)
- viii. M/s Kalpana Exim through proprietor Shri Abhalsinh Vala (Appeal no. 10761/2024)
- ix. Shri Vipin Sharma (Appeal no. 10739/2024)

16.1 The appeals filed by Shri Baldevsinh Vala, Shri Samir Sharma, Shri Gaurav Sahay, M/s Kalpana Exim through proprietor Shri Abhalsinh Vala and Shri Vipin Sharma are still pending in Hon'ble CESTAT.

16.2 But in case of appeals filed by Shri Dirgesh Dedhia, Shri Asif Sathi, Shri Parvej Alam and Shri Hanif Kapadia, Hon'ble CESTAT passed a combined Final Order No. 13094-13108/2024 dated 05.12.2024. The order dated 05.12.2024 is produce below:-

"In view of the above discussions and findings, we pass the following order:-

*1. The penalties imposed upon SHRI HANIF KAPADIA, SHRI PARWEJ ALAM and SHRI DIRGESH DEDHIA under Section 112, 114A and 14AA of the Customs Act, 1962 **are set aside**, consequently their appeals bearing Nos. C/10642-10644/2024, C/10648-650/2024, C/10653/2024 and C/10654 are allowed.*

2. In respect of the appeals, other than the appeals mentioned at Sl.1 above, the matter is remanded to the Adjudicating Authority for passing a fresh denovo order complying the following directions:

16 C/10642-10654,10719,10720/2024-DB

(i) The Chartered Engineer's certificate and value of the subject imported goods worked out on the basis of said certificate are hereby rejected.

(ii) The value of subject imported goods shall be assessed on the basis of contemporaneous import/NIDB data after providing the details/ documents to the appellants. Only in cases where contemporaneous value based on NIDB is not available, the value shall be determined as per Valuation Rules sequentially and by deductive method on the price and the details/ documents of such price shall be first provided to the appellant.

(iii) The issue of penalty and the redemption fine in the matter being remanded is kept open.

*(iv) Since the goods involved live consignments and the appellant have to suffer heavy demurrage and detention charges, in the interest of justice, the Adjudicating Authority shall pass the *denovo* order within a period of 4 weeks from the date of this order.*

The appeals are disposed of in above terms."

MISCELLANEOUS APPLICATION FOR TIME EXTENSION

17. Hon'ble CESTAT, vide Final Order No. 13094-13108/2024 dated 05.12.2024, provided 4 weeks' time to pass the Adjudication Order. Department filed miscellaneous application on 23.01.2025 in Hon'ble CESTAT seeking 3 months' time for completion of Adjudication proceedings. Accordingly, Hon'ble CESTAT vide Miscellaneous Order No. 10222/2025 dated 28.03.2025 provided 3 months' time for Adjudication. The relevant portion of order is produced below:

"We allow the same but with the caveat that the appellants will be provided an opportunity to look into the valuation which has been taken and the source of the same and whether the compliance with the Tribunal order has been done or not? Subject to the above caveat, we are inclined to permit time to the department to complete re-adjudication process by 23rd April, 2025 and that after affording opportunity to the appellants to have a look into the valuation arrived at by the department and also the source of such valuation."

17.1 Further, miscellaneous application was filed by the department on 22.04.2025 in Hon'ble CESTAT seeking further time for personal hearing and issuance of O-i-O within one week from final Personal Hearing. Accordingly, Hon'ble CESTAT vide order dated 24.04.2025 fixed next date of hearing in the matter on 15.07.2025. The relevant portion is produced below:

"The documents as desired by the party have been provided by the department, which relates to the process of valuation adopted by the department and the party has also raised its objection in written reply seeking some cross-examination. The learned AR seeks one-week time for the order to be passed (after the submission of final reply including the cross-examination if any accorded by the Adjudicating Authority). Accordingly, the matters to come up on July 15, 2025."

RE-VALUATION BY DRI AS PER HON'BLE CESTAT ORDER DATED 05.12.2024

18. As per directions of Hon'ble CESTAT regarding method to be adopted for valuation of impugned goods, letter was sent to DRI, Gandhidham for providing NIDB and contemporaneous import basis revaluation or if not available, deductive method basis. Accordingly, DRI sent its report consisting of valuation of some items as per contemporaneous data (NIDB) and of some items as per market survey. The list of documents provided by the DRI are **1.** Committee Report on market survey, **2.** E-mails to 4 importers, **3.** List of Bills of Entry relied upon for contemporaneous data (NIDB), **4.** Online links to price references, **5.** Calculation sheet after re-valuation of all the

impugned goods, **6.** Calculation sheet for goods where market survey adopted and **7.** Whole Sale Price Index. The gist of report sent by DRI in case of M/s Skyblue International Trading Co. is produced below:

Table-9

Container no.	Item found on examination	CTH	Value/unit (in Rs.)	Based on NIDB/committee report
SEGU41 14778	KEMEI Hair Clipper(Trimmer)	85102000	365.14	NIDB
	KEMEI Hair Dryer	851631	531.30	NIDB
	KEMEI Hair Straightener	85102000	60.71	NIDB
TCNU85 06372	Water bottle	39269099	204.80	NIDB
	Empty Carton box	48191010	4.82	NIDB
	small waterproof adhesive tape	39199090	17.66	NIDB
	Foot pads	30059090	7.67	NIDB
	Dancing Cactus	950300	28.70	NIDB

Accordingly, the said DRI report was sent to the Noticees for response as mandated by Hon'ble CESTAT vide order dated 05.12.2024.

WRITTEN SUBMISSION AND PERSONAL HEARING

19. Noticee on receiving the DRI report, submitted reply 17.04.2025 and 25.04.2025. Accordingly, personal hearing in the matter was granted to the noticees on 13.06.2025. Shri Hardik Modh, Consultant, representing Noticees, appeared for personal hearing through virtual mode on 13.06.2025. During the personal hearing, he reiterated the submissions as made in the reply dated 17.04.2025 and 25.04.2025 wherein he inter alia stated that:

Valuation Done By The Department In Accordance With Nidb Data Is Not Reliable

- i. The Customs authority proposed to rely upon the following Bills of Entry filed by the other importers for arriving the value of disputed consignments. Reasons for not relying upon the said value declared in Bills of Entry are narrated herein below:

Table-10

<u>Bill of Entry relied upon by DRI</u>	<u>Imported goods</u>	<u>Reasons for discarding the valuation, as per noticee</u>	<u>Remarks by noticee</u>
9994277 dated 13.08.2022	Hair Trimmer	• 1500 pieces of Hair Trimmer were imported whereas in the disputed consignment 25440	• Other importers imported consignments of Hair Clipper / Trimmer from China declaring the value ranging from 3.60 USD per

		<p>pieces of Hair Trimmer were imported;</p> <ul style="list-style-type: none"> • Quality and specifications of the imported goods and the disputed goods have not been examined; 	<p>Dozen to 8.4 USD per Dozen. Copies of relevant Bills of Entry are attached herewith.</p>
2083916 dated 20.08.2022	Hair Dryer	<ul style="list-style-type: none"> • "Babila" brand Hair Dryer were imported whereas in the disputed consignment, the goods were not of "Babila" brand; • Quality and specifications of the imported goods and the disputed goods have not been examined; 	<ul style="list-style-type: none"> • Other importers imported consignments of Hair Dryer from China declaring the value ranging from 9 USD per Dozen to 12 USD per Dozen. Copies of relevant Bills of Entry are attached herewith.
9750464 dated 27.07.2022	Hair Straightener	<ul style="list-style-type: none"> • Only screenshot was provided and complete copy of Bill of Entry not provided; • Supplier name not mentioned in the screenshot; • Quality and specifications of the imported goods and the disputed goods have not been examined; • "Declared Value" was taken instead of "Assessed Value" by Committee. 	<ul style="list-style-type: none"> • Other importers imported consignments of Hair Straightener from China declaring the value ranging from 3.6 USD per Dozen to 6 USD per Dozen. Copies of relevant Bills of Entry are attached herewith.
9847658 dated 03.08.2022	Water Bottle	<ul style="list-style-type: none"> • Value of Water Bottle having quantity / size of 2700 ML was taken by department whereas the disputed consignment contains water bottle of having quantity / size of 750 ML; • 48 pieces of Water Bottle were imported whereas in the disputed consignment 2300 pieces of Water Bottle were imported; 	<ul style="list-style-type: none"> • Other importers imported consignments of Water Bottle from China declaring the value ranging from 1.2 USD per Dozen to 3 USD per Dozen. Copies of relevant Bills of Entry are attached herewith.

		<ul style="list-style-type: none"> • Quality and specifications of the imported goods and the disputed goods have not been examined; 	
9958148 dated 10.08.2022	Empty Carton Box	<ul style="list-style-type: none"> • BOE relied by the department is of Mobile box (not of reputed brand) (use for Mobile phone charger) whereas the disputed consignment contains corrugated boxes which are used as packing material; 	<ul style="list-style-type: none"> • Other importers imported consignments of Empty Carton Box from China declaring the value ranging from 0.65 USD per Kg to 0.75 USD per Kg.
9904825 dated 06.08.2022	Small Waterproof Adhesive Tape	<ul style="list-style-type: none"> • Quality and specifications of the imported goods and the disputed goods have not been examined; 	<ul style="list-style-type: none"> • Other importers imported consignments of Small Waterproof Adhesive Tape from China declaring the value ranging from 0.15 USD per Kg to 0.20 USD per Kg.
7864268 dated 14.03.2022	Foot Pads	<ul style="list-style-type: none"> • 10 pieces of Foot Pads were imported whereas in the disputed consignment 60,000 pieces of Foot Pads were imported; • Quality and specifications of the imported goods and the disputed goods have not been examined; 	<ul style="list-style-type: none"> • Other importers imported consignments of Foot Pads from China declaring the value ranging from 0.50 USD per Dozen to 0.60 USD per Dozen.
7738400 dated 04.03.2022	Dancing Cactus	<ul style="list-style-type: none"> • Only screenshot was provided and complete copy of Bill of Entry not provided; • Supplier name not mentioned in the screenshot; • Quality and specifications of the imported goods and the disputed goods have not been examined; • 5000 pieces of Dancing Cactus were imported whereas in the disputed 	<ul style="list-style-type: none"> • Other importers imported consignments of Dancing Cactus from China declaring the similar price as declared by the Noticee. Copies of relevant Bills of Entry are attached herewith.

		consignment 24000 pieces of Dancing Cactus were imported; • "Declared Value" was taken instead of "Assessed Value" by Committee.	
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Noticee requires Cross Examination of the DRI Committee Members and Shop Keepers

ii. It is submitted that the following DRI officers were nominated and involved in the market survey:

- (1) Shri Vikas Kashyap
- (2) Shri Praveen Kumar
- (3) Shri Ajeet Singh
- (4) Shri Saurabh Sharma

Further, the above-named DRI officers made an inquiry with the following 4 shops on 07.04.2025 at Gandhidham:

- 1) M/s. New Laxmi Toys, Gandhidham
- 2) M/s. Leaf Gift and Stationery, Gandhidham
- 3) M/s. Regal Gift Corner, Gandhidham
- 4) M/s. A-One Toys & Sports, Gandhidham.

Considering the above facts, it is requested to grant cross-examination of above named committee members and shop keepers to bring the correct facts on record as to the nature of the goods examined, manner of determination of value, questionnaires placed before the shop keepers for valuation and their responses, Commercial level details like quality, quantity, type, whether under a contract, physical characteristics, brand, reputation, country of origin, time of import, stock lot sale, manufacturers sale, etc. The Noticee has elaborately provided the reasons in their letter dated 17.04.2025 (as annexed above) and therefore, they shall be granted an opportunity to cross examine the above-named Committee Members and shop keepers in the interest of justice.

It is settled law that the department should enforce the presence of witness, basis which the allegations are made against the assessee. Reliance is placed on the following decisions to support the aforesaid contention:

- Andaman Timber Industries Vs. CCE, 2016 (15) SCC 785
- Mansa Cigarettes Pvt. Ltd. Vs. CCE, Vadodara reported in 2019 (370) E.L.T. 1609 (Tri. - Ahmd.)
- Commissioner of CCE, Lucknow Vs. Premier Alloys Ltd, reported in 2019 (366) E.L.T. 659 (All.)
- Mahek Glazes Pvt. Ltd. Vs. Union of India, 2014 (300) E.L.T. 25 (Guj.)
- M/s. Gujarat Narmada Valley Fertilizers and Chemicals Ltd. (GNFC) Vs. Union of India, 2020 (1) TMI 1204

The Noticee submits that in terms of Section 138B of the Customs Act, it is an obligation upon the Adjudication Authority to examine the witnesses before relying upon their statements / reports. In the case of **G-Tech Industries Vs. Union of India - 2016 (339) ELT 209 (P&H)**, it was held in para 16, 17 and 18 as under:

"16. Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise officer, unless and until he can legitimately invoke clause (a) of Section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

17. In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination.

18. It is only, therefore,-

(i) after the person whose statement has already been recorded before a Gazetted Central Excise officer is examined as a witness before the adjudicating authority, and

(ii) the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence, that the question of offering the witness to the assessee, for cross-examination, can arise."

In the case of **Kellogg India Pvt. Ltd. v. Union of India**, 2006 (193) E.L.T. 385 (Bom), it was held that:

"An incriminating material sought to be used against a person without giving opportunity to such person of cross-examination of author of such document amounts to an ex parte proceeding, i.e., deciding matter without giving opportunity of hearing to other side and that is how denial of cross-examination was held bad."

"Transaction Value" Has To Be Considered For Valuation Of Imported Goods In Terms Of Rule 3 Of Customs Valuation (Determination Of Value Of Imported Goods) Rules, 2007

DISCUSSION AND FINDINGS

20. I have gone through the facts of the case, records, documents placed before me and Hon'ble CESTAT order dated 05.12.2024. Personal hearing was attended by, shri Hardik Modh, Authorized Representatives of the Noticees on the scheduled date i.e. 13.06.2025 and written submissions dated 17.04.2025 and 25.04.2025 were made by the Noticee.

20.1. After carefully considering the facts of the case, written submissions made by the Noticee, record of Personal Hearing along with previous adjudication order MUN-

CUSTM-000-COM-20-24-25 dated 27.08.2024 and CESTAT order dated 05.12.2024, I find that the main issue to be decided before me is the valuation of impugned goods as per directions of Hon'ble CESTAT order dated 05.12.2024.

21. Now I proceed to examine the valuation proposed by DRI as per Hon'ble CESTAT order dated 05.12.2024 and submission of the notices regarding said valuation.

21.1 The Noticee submitted that the contemporaneous value (NIDB) of impugned goods provided by the DRI is very high and similar goods cleared through customs at much lower value and Noticee submitted the reference Bills of Entry in support of it. I have gone through the valuation provided by DRI and submission given by the Noticee and the comparison of the same is produced below:

Table-11

Sr.No.	Item	Quantity	Value proposed by DRI (value in Rs)	Value relied upon by Noticee (value in Rs.)	Remarks
1	KEMEI Hair Clipper(Trimmer)	25440	365.14	25 (BE8802341 dt. 23.05.22, Mumbai port) - 58 (BE-5675042 dt. 25.04.23, Mumbai port)	Value relied upon by Noticee is very much low.
2	KEMEI Hair Dryer	2000	531.30	62.67 (BE-3981141 dt. 30.12.22, Mumbai port) - 73.8 (BE-2795787 dt. 16.02.21, Mumbai port)	Value relied upon by Noticee is very much low.
3	KEMEI Hair Straightener	3000	60.71	22.14 (BE-2795787 dt. 16.02.21, Mumbai port) -40.2 (BE-2724874 dt. 03.10.22, Mumbai port)	Value relied upon by Noticee is low.
4	Water bottle	2300	204.80	no value submitted	Only DRI value is available but noticee contested that bottle referred by DRI is of higher capacity.

5	Empty Carton box	24000	4.82	no value submitted	Only DRI value is available
6	Small Waterproof Adhesive Tape	8712	17.66	7.95 (BE-7638050 dt. 01.09.23, Mumbai port)	Value relied upon by Noticee is low.
7	Foot pads	60000	7.67	no value submitted	Only DRI value is available
8	Dancing Cactus	24000	28.70	no value submitted	Only DRI value is available

Now, I proceed to discuss the same below:

SR. NO. 5, 7 & 8 OF TABLE-11.

21.2 From above, it is observed that the assessable value of the impugned goods viz. Empty Carton box (Sr. No. 5 of Table-11), Foot pads (Sr. no. 7 of Table-11) and Dancing Cactus (Sr. no. 8 of Table-11), as proposed by the DRI, is liable to be accepted, inasmuch as the noticees failed to furnish any value for the same.

SR. NO. 1 of TABLE-11

21.3 I find that in case of KEMEI Hair Clipper (Trimmer) (Sr. no. 1 of Table-11), the value proposed by the DRI is Rs. 365.14 per piece, whereas the value relied upon by the Noticee is Rs. 58 per piece. In view of the significant disparity between the two values, it becomes imperative to undertake a thorough verification of both claims. The impugned goods imported by the Noticee are produced below:



Accordingly, the price and other specifications of the above KEMEI Hair Clipper (Trimmer) was verified from the Amazon website and it was found that the price is ₹1249 per piece. The relevant details are reproduced below:



KEMEI 809 Km-Pg A White & Black Rechargeable Man's Trimmer And Electric Hair Clipper Rechargeable Professional Electric Hair Clipper and Hair Trimmer, 120-Minute Run Time for The Razor Unisex-Adults

Price: ₹1,249

(Incl. of all taxes)

(MSRP starts at ₹110 per month, ₹100 approx. ₹100)

(MSRP starts at ₹110 per month, ₹100 approx. ₹100)

(MSRP starts at ₹110 per month, ₹100 approx. ₹100)

(MSRP starts at ₹110 per month, ₹100 approx. ₹100)

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(MSRP starts at ₹110 per month, ₹100 approx. ₹100)

(MSRP starts at ₹110 per month, ₹100 approx. ₹100)

After making appropriate deductions towards the Internet platform commission, retailer's margin, wholesaler's margin, importer's profit margin, and other incidental expenses such as warehousing, transportation, customs clearance, along with applicable duties including IGST, Basic Customs Duty (BCD), and Social Welfare Surcharge (SWS), the assessable value has been computed to approximately 40% of the prevailing retail price. This calculation yields an assessable value of approximately Rs. 499.6/- per piece. In view of the foregoing, I find that the impugned goods are of reputed trimmer brand i.e KEMEI and value relied upon by the noticee is of unbranded Hair trimmer, therefore, the same is to be rejected, further, the value proposed by the DRI, i.e. Rs. 365.14 per piece, is already on the lower side when compared to the value arrived at through the above deductive method. Accordingly, the value proposed by the DRI merits acceptance for the purpose of assessment.

SR. NO. 2 OF TABLE-11

21.4 Further, in respect of the goods, namely KEMEI Hair Dryer (Sr. no. 2 of Table-11), the value proposed by the DRI is Rs. 531.3 per piece, whereas the value relied upon by the Noticee is Rs. 73.8 per piece. In view of the significant disparity between the two values, it becomes imperative to undertake a thorough verification of both claims. The impugned goods imported by the Noticee are produced below:



Accordingly, the price of the above KEMEI Hair Dryer was verified from the Tatacliq website and it was found that the price is ₹749 per piece. The relevant details are reproduced below:



Home > Electronics > Personal Care > Hair Dryer > Kemei KH-08

Kemei

Kemei KH-08 (2000 W) Hair Dryer (Pink)

₹749 from ₹1199. 40% off

Multiple of 10 items

[Share your opinion](#)

Get this for only ₹637

Available Offers

15% Discount on American Express Credit Cards EMI

Offer Price ₹637

Use Code: TC15AMX | Min Purchase: ₹7500

15% Discount on Canara Bank Visa Credit Cards

Offer Price ₹637

Use Code: TC15CB | Min Purchase: ₹2500

12% Discount on RBL Bank Credit Cards EMI

Offer Price ₹659

Use Code: TC12RBL | Min Purchase: ₹5000

After making appropriate deductions, the assessable value has been computed to approximately 40% of the prevailing retail price. This calculation yields an assessable value of approximately Rs. 299.6 per piece. In view of the foregoing, the value relied upon by the Noticee, i.e., Rs. 73.8 per piece, appears to be unreasonably low. Accordingly, the fair value of Rs. 299.6 per piece, as determined through the deductive method, merits acceptance for assessment purposes.

SR. NO. 3 OF TABLE-11

21.5 Further, in respect of the goods, namely KEMEI Hair Straightener (Sr. no. 3 of Table-11), the value proposed by the DRI is Rs. 60.71 per piece, whereas the value relied upon by the Noticee is Rs. 40.2 per piece. In view of the significant difference between the two values, a fair and reasonable assessable value is required to be ascertained. Accordingly, the photograph of the impugned goods imported by the Noticee is referred to and the same is produced below:



Accordingly, the price of the aforementioned KEMEI Hair Straightener was verified on the Meesho website, where it was found to be Rs. 257 per piece. The relevant details are reproduced below for reference:



Rammi KM - 809A PROFESSIONAL Rammi km 329 Temperature Control KM 329 Straightener Hair Straightener (Multicolor)

₹257

4.1★ (1000+ Reviews)

Free Delivery

Select Size

Free Size

Product Details

After making appropriate deductions, the assessable value has been computed to approximately 40% of the prevailing retail price. This calculation yields an assessable value of approximately Rs. 102.8 per piece. In view of the foregoing, I find that the value proposed by the DRI, i.e., Rs. 60.71 per piece, is already on the lower side when compared to the value arrived at through the above deductive method. Accordingly, the value proposed by the DRI merits acceptance for the purpose of assessment.

SR. NO. 4 OF TABLE-11

21.6 Further, in the case of the Water Bottle (Sr. no. 4 of Table-11), the value proposed by the DRI is Rs. 204.80 per piece. The Noticee has not relied upon any alternate value but has submitted that the reference value adopted by the DRI pertains to a bottle with a capacity of 2.7 litres, whereas the impugned goods are of a lower capacity. In this regard, the entry no. 55 in BE no. 9847658 dt. 03.08.2022 referred by DRI is produced:

55	39269099	8976525 WATER BOTTLE 2700ML #1575-2700 (MADE OF 15% PP+80%PC+5% SILICONE) (48 PCS) (EMPTY)	2.530000	48.000000	NOS	121.44
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From the above, it is evident that the capacity of the water bottle in the aforementioned Bill of Entry is 2.7 litres. However, the Noticee has not provided any clear or specific declaration regarding the exact capacity of the impugned water bottle under import. Accordingly, for the purpose of comparison and proper appreciation, the photograph of the impugned goods imported by the Noticee is referred to and the same is produced below:



As per the online listing available on the Amazon website, similar goods bearing the same design and print as the impugned goods are of a capacity of 1 litre and are being sold at a price of ₹299 per piece. The relevant extract of the said online listing is produced below for reference:



After making appropriate deductions, the assessable value has been computed to approximately 40% of the prevailing retail price. This calculation yields an assessable value of approximately Rs. 40 per piece. In view of the foregoing, I find that the value proposed by the DRI, i.e., Rs. 17.66 per piece, is already on the lower side when compared to the value arrived at through the above deductive method. Accordingly, the value proposed by the DRI merits acceptance for the purpose of assessment.

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

- (i) M/s. Exemplar trading have imported Hair Trimmer, Hair Dryer and Hair Straightener vide BE no. **2013039 dated 30.08.2022** having total quantity 30,440, against declared quantity of 27,350 ; is re-determined and value of the goods arrived at **Rs. 1,00,70,492/-**. Further importer has imported water bottle, Empty Carton Box, Small Waterproof Adhesive Tape, Foot Pads (except Toys) in BE no. **2013040 dated 30.08.2022**, and the value of the goods is re-determined to be **Rs. 10,12,634/-**. Accordingly, the Chartered Engineer has arrived at value of **Rs. 1,10,83,126/-** for these goods. Therefore, the same are liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962. Accordingly, the importer and beneficial owners are liable to pay the applicable Customs Duty of **Rs. 44,26,988/-** for goods valuing at **Rs. 1,00,70,492/-** and Customs Duty of **Rs. 3,11,410/-** for goods valuing at **Rs. 10,12,634/-** as per Annexure A.
- (ii) **I find** that the importer and beneficial owners are liable to pay the applicable Customs Duty of **Rs. 47,38,398/-** (Rs. 44,26,988/- + Rs. 3,11,410/-) for import of total **dutiable goods** pertaining to BE no. 2013039 and 2013040 both dated 30.08.2022.

22.1 IMPORT OF TOYS BY WAY OF MIS-DECLARATION AND UNDERVALUATION:

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

Table 12

Sr. No.	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (re-valuation)

1	M/s Exemplar trading	TCNU8 506372	-	-	Dancing Cactus	950300	24000	68890 8
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22.2 Requirement of BIS Certification for import of 'Toys' and violations of provisions of SEZ Act, 2005 and rules made thereunder;

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

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

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

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

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

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

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

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

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

22.3 In view of above, I find that **M/s. Exemplar trading** have imported total **24000 toys**, having value of **Rs. 6,88,908/-** without mandatory BIS compliance and by way of mis-declaration. Therefore, the said toys have been imported in violation of the provisions of Condition 2 of Chapter 95; being offending goods, should be held liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962.

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

23.1 I find that the importer had mis-declared the value of the goods at the time of filing of Bills of Entry. The subject import consignments have been imported and it has been observed during the investigation that the declared value of the import goods appeared to be gross undervalued. Investigation carried out by the DRI showed that the subject import consignments have been mis-declared in respect of value thereof in order to evade the applicable Customs Duty. Therefore, the importer by way of resorting to mis-declaration and undervaluation of subject goods as mentioned in Annexure-A to this order evaded total **Customs Duty of Rs. 47,38,398/- (Customs Duty of Rs.**

44,26,988/- against impugned goods i.e. total 30,440 pcs of Hair Trimmer, Dryer and Hair Straightener vide BE no. 2013039 dated 30.08.2022, having **assessable value of Rs. 1,00,70,492/-** (+) **Customs Duty of Rs. 3,11,410/-** against impugned goods i.e. water bottle, empty carton, waterproof tape etc.(Except Toys) vide BE no. 2013040 dated 30.08.2022 having **assessable value of Rs. 10,12,634/-** and the same is liable to be demanded under Section 28(4) of the Customs Act, 1962.

23.2. I find that the investigation carried out by the DRI also revealed that total **24000 Toys** i.e. Dancing Cactus falling under **HS Code 950300** were found concealed in the import consignments pertaining to **Container No. TCNU8506372** and was found concealed having value of **Rs. 6,88,908/-**; imported evidently in violation of the provisions of Condition 2 of Chapter 95 and being offending goods, are liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as detailed vide.

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

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

25. With regards Cross Examination sought by the Noticees:

25.1 In this connection, from the records available before me, I find that the DRI Gandhidham formed a committee comprises of DRI officers and this committee visited different shopkeepers and obtained sales price of different impugned goods and these prices are in line with the retail price of similar goods available online. In view of this, I am of the opinion that, as no new facts evolve out of the cross-examination of DRI officers or Shopkeepers, in the instant case there remains no scope of ambiguity for a man of prudence.

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

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

Therefore, I find that cross examination in the instant case is not necessary.

25.3 It is true that as per 138B(2) the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

25.4 Therefore, I observe that no purpose would be served to allow cross examination of such person as same would only unnecessarily protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case.

26. Role and culpability of Shri Dirgesb Dedhia, Prop. of M/s. Exemplar trading

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

	Contain er Number	DTA Bill of Entry No. and dated	Declared description of Goods as per BE/BL/IGM	Goods found during examination	Quanti ty	Value (re- valuation) (in Rs.)
1	SEGU41 14778	2013039 dated 30.08.202 2	Hair Trimmer,	KEMEI Hair Trimmer	25440	9289162
			Hair Dryer,	KEMEI Hair Dryer	2000	599200
			Hair Straightener	KEMEI Hair Straightener	3000	182130
2	TCNU85 06372	2013040 dated 30.08.20 22	Water Bottle	Water bottle	2300	282900
			Empty Carton Box	Empty Carton Box	24000	115680
			Small Waterproof Adhesive Tape	Small Waterproof Adhesive Tape	8712	153854
			Foot Pads	Foot Pads	60000	460200
				Dancing Cactus Toys	24000	688908

(ii) I find that during visit carried out by the DRI officials under Panchnama dated 16.09.2022 at the declared premises of M/s. Exemplar trading, no business activities were noticed there.

(iii) I find that investigation carried out by the DRI revealed that Shri Dirgesb Dedhia, Prop. of M/s. Exemplar trading provided signed documents to Shri Asif Sathi and others to use the same for import of offending goods.

(iv) I find that M/s. Exemplar trading have willingly and deliberately indulged into conspiracy of importing and clearance of prohibited goods i.e. Toys and other offending goods. Further, the importer knowingly concerning themselves in removing, depositing, harbouring, keeping, concealing, selling and dealing with prohibited goods and others mis-declared goods which resulted in contravention of the prohibition of Customs Act, 1962 and Rules made there under. Thus, the aforementioned acts and omission on part of the importer has rendered the impugned goods liable for confiscation under Section 111 of the Customs Act, 1962. In view of above, I find that the importer has rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

(v) Therefore, I hold that the aforesaid acts of suppression of facts and willful mis-statement by the importer had led to evasion of Customs duty of **Rs. 47,38,398/- (Rs.**

44,26,988/- (+) Rs. 3,11,410/-; thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the said Customs duty was evaded by reason of willful mis-declaration and suppression of facts with a malafide intention. Therefore, the impugned imported goods such as Hair Trimmer/Hairdryer/hair Straightener, Waterproof Adhesive Tape, Water Bottle, Foot Pads, Empty Cartons valued at **Rs. 1,10,83,126/- (Rs. 1,00,70,492/- + Rs. 10,12,634/-)** is liable for confiscation under Section 111(f) and Section 111(m) of the Customs Act, 1962. Further, the impugned **'Toys'** misdeclared as 'Exercise Book', 'Plastic Cube, total valued at **Rs. 6,88,908/-** imported by M/s. Exemplar trading in violation of provisions of Conditions 2 of Chapter 95, are liable to be confiscated under Section 111(d), Section 111(f), Section 111(m) of the Customs Act, 1962. With regards impugned dutiable goods, I find that Shri Dirgesh Dedhia, Prop. of M/s. Exemplar trading is therefore liable to penalty under Section 112(a)(ii) and 114A of the Customs Act, 1962 in respect of impugned dutiable goods. With regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that Shri Dirgesh Dedhia, Prop of M/s. Exemplar trading are liable to penalty under Section 112(a)(i) of the Customs Act, 1962.

(vi) In the present case, M/s. Exemplar trading had lent its IEC to Shri Asif Sathi, Shri Safaraz, Shri Tahir etc. This IEC of M/s. Exemplar trading was used by Shri Asif Sathi and others for their own import, and they have used KYCs of this firm for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It reveals that M/s. Exemplar trading has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, Shri Dirgesh Dedhia, Prop of M/s. Exemplar trading is liable to penalty under Section 114AA of the Customs Act, 1962.

27. Role and Culpability of Shri Asif Sathi

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

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

(iii) I find that Shri Tahir in his statement dated 24.09.2022 confirmed that Shri Asif requested him to import goods on IEC of M/s. M.M. Enterprises and offered him monetary benefits in lieu of providing his IEC. I find that Shri Tahir in his statement dated 25.09.2022 while explaining the chats in the group "Mm", revealed the role of Shri Asif as mastermind in importing e-cigarettes, fake /copy products violating IPR, Toys etc.

(iv) I find that Shri Mohammad Asif Sathi in his statement dated 21.09.2022 confessed that he imported various items at Mundra port and cleared the same through Mundra SEZ in the IECs of various firms including M/s. Exemplar Trading which were formed in the name of other persons on payment of fixed amount to such IEC holders depending upon the gravity of mis-declaration/concealment/nature of cargo in the consignment. Shri Mohammad Asif Sathi also confessed in his statement that Shri Baldevsinh of forwarder firm M/s. Kalpana Exim, Mundra used to manage to change/forged/fabricate documents received from overseas suppliers by showing different description and quantity. I find that Shri Mohammad Asif Sathi in his said statement also explained the procedure of documentation and payment to overseas supplier which was said to have been done by cash collected from the buyers and deposited in the Bank accounts of dummy IEC holder firms for subsequently making payment to the suppliers' Bank account from the dummy firm;

(v) I find that the investigation carried out by the DRI revealed that for Customs clearance and transportation of goods Shri Asif Sathi acted hand in gloves with Shri Baldevsinh.

(vi) In view of above, I find that in the present case of import of goods in name of M/s. Exemplar Trading, Shri Asif has acted as the mastermind of the smuggling cartel and his role remains the same as has been described in above paras. Thus, such acts and omission on part of Shri Asif have rendered impugned goods liable for confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112 of Customs Act 1962. With regards impugned dutiable goods, I find that Shri Mohammad Asif Sathi is therefore liable to penalty under Section 112(a)(ii) and 114A of the Customs Act, 1962 in respect of impugned dutiable goods. With regards offending goods i.e. Toys for which BIS Certification is mandated by law, I find that Shri Mohammad Asif Sathi is liable to penalty under Section 112(a)(i) of the Customs Act, 1962.

(vii) I find that Shri Asif Sathi had used IECs of dummy firms for his own import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/ undervaluation. He has also forwarded incorrect documents for filing of Bills of Entry for these consignments with false declarations. He has knowingly and intentionally made/signed/used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it is beyond doubt that Shri Asif Sathi is also liable to penalty under Section 114AA of the Customs Act, 1962.

28. In view of Discussion and Findings Supra, I Pass the following Order:

ORDER

28.1 IN RESPECT OF DUTIABLE GOODS:

- (i) I reject the declared value of impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN imported by M/s. Exemplar Trading (IEC No. BVIPD3861L), in terms of Rule 12 of CVR, 2007; and order to re-determine the value of the same as **Rs. 1,10,83,126/-** (Rs. 3,34,28,280/- + Rs. 54,83,788/-)

in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

- (ii) I order to confiscate the impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs 12,00,000/- (Rupees Twelve Lakhs only)** under Section 125 of the Customs Act, 1962.
- (iii) I confirm the demand of Customs Duty of **Rs. 47,38,398/-** (Rs. 44,26,988/- (+) Rs. 3,11,410/-) **(Rupees Forty Seven Lakh Thirty Eight Thousand Three Hundred and Ninety Eight Only)** against impugned goods i.e. **30,440 Pcs.** of Hair Trimmer, Hair Dryer and Hair Straightener classifiable under HS Code 851020 and total **95012 Pcs.** of Empty Carton Box, Small waterproof adhesive tape, Foot Pads classifiable under various HSN, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (iv) I impose penalty of **Rs. 47,38,398/- (Rupees Forty Seven Lakh Thirty Eight Thousand Three Hundred and Ninety Eight Only)** upon **Shri Dirgesh Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 114A of the Customs Act, 1962. I hold that penalty under Section 112(a)(ii) of the Customs Act, also leviable on the importer, however, I refrain from imposing penalty upon them under Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112(ii) and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.
- (v) I impose penalty of **Rs. 47,38,398/- (Rupees Forty Seven Lakh Thirty Eight Thousand Three Hundred and Ninety Eight Only)** upon **Shri Asif Sathi (Beneficial owner of the import goods)** under Section 114A of the Customs Act, 1962, however, I refrain from imposing penalty upon them under Section of Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.

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

- (i) I order for absolute confiscation of the impugned offending goods i.e. **24000 Toys** falling under HS Code 95030010 found concealed in the import consignments pertaining to **Container No. TCNU8506372** and having market price of **Rs. 6,88,908/-** imported under **Bills of Entry no. 2013040 dated 30.08.2022**, in violation of the provisions of Condition 2 of Chapter 95, under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as detailed vide **Annexure-B**.
- (ii) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Dirgesh Dedhia**, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 112(a)(i) of the Customs Act, 1962.
- (iii) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Asif Sathi (Beneficial owner of the import goods)** under Section 112(a)(i) of the Customs Act, 1962.

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

- i. I impose penalty of Rs 50,000/- (Rupees Fifty Thousand only) upon Shri Dirgesh Dedhia, Proprietor of M/s. Exemplar Trading (IEC No. BVIPD3861L) under Section 114AA of the Customs Act, 1962.
- ii. I impose penalty of Rs 50,000/- (Rupees Fifty Thousand only) upon Shri Asif Sathi (Beneficial owner of the imported goods) under Section 114(AA) of the Customs Act, 1962.

29. 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.



(Nitin Saini)

Commissioner of Customs,
Custom House, Mundra.

Dated: 14.07.2025

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

To (Noticees),

1. Shri Dirgesh Dedhia,
Proprietor of M/s. Exemplar Trading,
Plot No. 156, Ghanshyam, Baroi Road Mundra (Kutch)
(email-dirgeshdd2007x@gmail.com and exemplartrading1@gmail.com).
2. Shri Asif Sathi (Beneficial owner of the import goods),
Flat No. 4104, 41st Floor, B-Wing, Orchid Enclave, Belasis Road, Mumbai
Central, Mumbai-400008 (email id- asifsathi@gmail.com).

Copy to: -

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

Copy To: -

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 2) The Additional Director, DRI, Gandhidham Regional Unit, Plot No.5866, Ward-5A, Near Vinayak Hospital, Adipur, Kutch-370205 (Email:driganru@nic.in), for information.
- 3) The Specified Officer, Mundra Special Economic Zone, Gandhidham.

- 4) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 6) The Deputy/Assistant Commissioner (ED), Customs House, Mundra.
- 7) Notice Board.
- 8) Guard File.

