प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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DIN: 20250471MN000051085C

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-138/ICD-Khodiyar/O&A/HQ/2020-21
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-138/ICD-Khodiyar/O&A/HQ/2020-21 dated 19.01.2021
C	मूल आदेश संख्या/ Order-In-Original No.	:	**04/ADC/SRV/O&A/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**17.04.2025**
E	जारी करनेकी तारीख/ Date of Issue	:	**17.04.2025**
F	द्वारापारित/ Passed By	:	**SHREE RAM VISHNOI**, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	**M/S J. K. ENTERPRISE,** NO. 8, 1ST FLOOR, ASHOK CHAMBER, DEVJI-RATANSHI MARG, DANA BUNDER MASJID-E-MAHARASHTRA, MUMBAI – 400009
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

M/s. J. K. ENTERPRISE, No. 8, 1st Floor, Ashok Chamber, Devji-Ratanshi Marg, Dana Bunder, Masjid (E), Mumbai – 400009 (herein after referred to as "M/s. J K Enterprise" or "the Importer" or "the noticee" for the sake of brevity) holding IEC No. **0313080470**, imported following items from United Arab Emirates and filed the Bill of Entry No. 8074273 dated 04.07.2020 through their CHA M/s. Jayant & Co., Ahmedabad at ICD-Khodiyar with the details as given in Table-1 below:-

Table-1

Sr. No.	Description of the goods declared	Quantity declared in Kgs.	CTH declared	Unit price declared in USD (converted in Rs)	Value declared in Rs.	Basic Cus duty @ 30 %	Social Welfare Surchg @ 10 % of BCD in Rs.	IGST in Rs.
1	Maggi Cube	2304	21039040	61.12	142404.7	42721.4	4242.1	22727.8
2	Pop Pan Biscuits	240	19059020	38.20	9271.10	2781.3	278.1	2219.5
3	Langnese Honey	800	17029030	61.12	49446.1	14833.8	1483.4	11837.4
4	Instant Coffee Nescafe	1144.17	21011120	382.00	441990.0	132597.0	13259.7	105812.4
5	Choco confectionary Miniature Mars/Bounty/ Frutella/ snickers /twix	1822.40	18069010	76.40	140797.7	42239.3	4223.9	33707.0
6	Coffee mate Powder	600	21011190	68.76	41720.10	12516.0	1251.6	9987.8
7	Instant Coffee Davidoff	315	21011120	458.4	146020.4	43806.1	4380.6	34957.3
8	Dressing Sauce/Tabasco / Remia / Nestle	1632	21039040	45.84	75652.5	22695.7	2269.6	12074.1
					1047303	314191	31389	233323

2. During the course of assessment of the goods and scrutiny of the details declared in the Bill of Entry and respective documents like Invoice and Packing list no. MGT10421786 dated 15.06.2020, it was noticed that in the case of items like 'Instant Coffee Nescafe' (Sl. No. 04), 'Choco Confectionery Miniature – Mars /Bounty/Frutella/Snickers/Twix' (at Sr. No. 5) and 'Dressing Sauce/Tabasco/ Remia/Nestle' (at Sl. No. 08), different quantity based packages details, the number of cartons and total weight of cartons of each package type had been mentioned whereas in the Bill of Entry No. 8074273 dated 04.07.2020, the same contained total quantity and value of each item in a consolidated manner, based on per kilogram basis only.

3. It appeared that the importer did not declare the goods as per the specific packing- wise details like quantity of each type in every item in the Bill of Entry. The Importer had declared a single value of items by not declaring the flavours of the goods in the Bill of Entry in spite of the fact that in case of items like 'Instant Coffee Nescafe', the valuation of the goods varies with the flavour of the Coffee. It further appeared that the importer had declared a low value for each item when compared to the prevailing market rates.

4. On physical Examination of the goods, the observations were as per Table-2:

Table-2

Sr. No. in BoE	Item declared in the Bill of Entry	Items found on physical examination	Remarks
1	Maggi Cube	Maggi Cube in two flavours i.e. 'Veg' and 'Chicken'	the Importer had not declared specific flavour
4	Instant Coffee Nescafe	Instant Coffee Nescafe in different flavours of 'Gold' and 'Classic' and in packages of different quantities	the Importer had not declared specific flavour
7	Instant Coffee Davidoff	Found to be in three flavours like 'Rich Aroma', 'Fine Aroma' and 'Expresso 57'	the Importer had not declared specific flavour
8	Dressing Sauce/ Tabasco/ Remia / Nestle	From the description details on the label affixed on item 'Nestle', it was noticed that the said item is a 'Cream' and not 'Sauce'.	the Importer had mis declared the same

In view of the above, it appeared that the Importer has mis-declared the specifications of the goods imported in the Bill of Entry, like the Specific description of each flavour of each item, package-wise quantity details, etc., thereby had mis-declared the value of the goods.

5. On ascertaining the values of the goods covered under the said Bill of Entry, with the contemporary imports and value of the goods normally available in the market, it was noticed that the value of per unit declared by the Importer appeared to be very low. Therefore, as per the provisions of Rules 12 of Customs (Determination of Value of Imported goods) Rules, 2007, as amended, the value declared by the Importer was required to be rejected.

6. Since, the goods imported by the importer at ICD-Khodiyar, vide Bill of Entry No. 8074273 dated 04.07.2020 were appeared to be mis-declared and under-valued, they were placed under seizure under Panchnama dated 31.07.2020 in presence of Shri Harbhajan Singh Bansal, the G-Card Holder of M/s Jayant & Co., the Customs Broker, who also remained present on behalf of the Importer. The said seized goods provisionally released on furnishing of Bond for an amount of Rs. 35,00,000/- and Bank Guarantee of Rs. 18,00,000/- on the request of the importer.

7. Statement of Shri Harbhajan Singh Bansal, the Branch in-charge of Customs Broker M/s Jayant & Co., who filed the Bill of Entry and carried out the Customs clearing work on behalf of the Importer was recorded on 31.10.2020, he stated that:-

- The work of import clearance of the importer was done by him on the basis of Import documents like Invoice No. MGT10421786 dated 15.06.2020, its Packing list and Bill of lading No. JEA/KHY/20/25083 dated 19.06.2020 which were presented to him by Shri Devang Naresh Pandya, the Proprietor of the importer along with the KYC documents like address proof, PAN, IEC details, GST details and the Authority letter to carry out the work on behalf of him.
- He monitored the movement of container carrying the goods from Gateway Port to ICD-Khodiyar, scrutinized the documents, worked out all the required details to file the Bill of Entry in ICE GATE like arriving at the classification of the items imported, ascertaining the rate of Customs duty leviable, working out the assessable value, Customs duty and filed the Bill of Entry no. 8074273 dated 04.07.2020, on behalf of the Importer.
- The classification of the goods covered under the above Bill of Entry as per the Chapter sub-heading given under the Customs Tariff Act were arrived out by him.
- The value of the goods shown in the Bill of Entry No. 8074273 dated 04.07.2020 was worked out on the basis of value of the goods given by the supplier M/s. Mijwad General Trading LLC, Dubai's in the Commercial Invoice No. MGT10421786 dated 15.06.2020.
- He confirmed the facts of the Panchnama dated 31.07.2020, wherein the goods covered under the above-mentioned Bill of Entry were placed under seizure on the basis of undervaluation and mis-declaration of goods.

8. Statement of Shri Devang Naresh Pandya, the Proprietor of the importer was recorded on 31-07-2020, he stated that:-

- He was the proprietor of the importer, which is engaged in the Import and trading of Food stuff items like Chocolates, sausages, Coffee Powders of different brand and packages, Biscuits, etc. and its office is located at Office No. 8, 1st Floor, Ashok Chamber, Ratanshi Devji Marg, Bharuch Street, Masjid Bunder (East), Mumbai -400009.
- The firm imported the goods covered under invoice no. MGT10421786 dated 15.06.2020 and filed the Bill of Entry No. 8074273 dated 04.07.2020 through CHA M/s Jayant & Co. He had given the Import documents to Shri Harbhanjan Singh Bansal to carry out the Customs clearing work by filing Bill of Entry and carry out all other formalities like coordination and handling of the Container with CONCOR, examination of the goods, out of charge and clearance of the goods from ICD-Khodiyar.
- Shri Harbhajan Singh Bansal of M/s. Jayant & Co. filed the Bill of Entry No. 8074273 dated 04.07.2020 on behalf of his firm and worked out CIF (i.e. Cost + Insurance + Freight) value of the goods, Classification and identified the rate and amount of Customs duties payable on the goods covered under the above Bill of Entry.
- He confirmed the facts narrated by Shri Harbhajan Singh Bansal of M/s. Jayant & Co. in his statement dated 31.07.2020. He confirmed the facts of the Panchnama dated 31.07.2020, wherein the goods covered under the above-mentioned Bill of Entry were placed under seizure on the basis of undervaluation and mis-declaration of goods.
- Thereafter as per the Provisional release order, his firm had submitted a Bond dated 29.08.2020 for Rs. 35,00,000/- and a Bank Guarantee bearing of Rs. 18,00,000/- with the Deputy Commissioner of Customs, ICD-Khodiyar, and the goods covered under the Bill of Entry No. 8074273 dated 04.07.2020, were Provisionally released.

VALUATION OF GOODS:

9. Thereafter for valuation of goods, the comparable value of the goods available in the NIDB data was explored to arrive at correct valuation of the goods imported under the Bill of Entry in question. The details of the lowest valuation of the subject goods found as per each flavour available in the NIDB data has been considered in arriving at the value of the goods declared in the subject Bill of Entry. In case of items where the value from NIDB data was not available, approximate value was arrived at after considering the market rates and allowing the deduction from the market rate, as applicable taxes, expenses and profits.

10. It appeared that there was a substantial variation in the value declared by the importer in the subject Bill of Entry filed by them and the value worked out as discussed in foregoing para. The variation was found substantial in cases like goods declared at

Sr. No. 02, 03, 04, 05, 07 and 08 in the Bill of Entry i.e. the items namely Pop Pan Biscuits, Langnese Honey, Instant Coffee Nescafe, Choco Confectionery Miniature Mars/ Bounty/ Frutella/ Snickers/ Twix, Instant Coffee Davidoff and Dressing Sauce Tabasco/ Remia/ Nestle respectively. Therefore, it appeared that the Importer had grossly undervalued the goods imported under the Bill of Entry No. 8074273 dated 04.07.2020, with an intention to evade payment of appropriate Customs duty leviable thereon.

CLASSIFICATION OF GOODS:

11. It appeared that, the classification of the some of the items declared in the above-referred Bill of Entry, appeared to be doubtful. So, a detailed study with regard to classification was under taken:

11.1 'Langnese Honey' (mentioned at Sr. No. 03 of the subject Bill of Entry): The description of product mentioned in the labels affixed on packages of the said item revealed that 'Langnese Honey' was a natural form of Honey, without having any artificial edible items or flavours thereby classifiable under CTH 04090000 attracting Basic Customs Duty @ 60% adv, alongwith Social Welfare Surcharge @ 6% and IGST @ 5%. The Importer had however, classified the said goods under 'Artificial Honey' covered under CTH 17029030 of the Customs Tariff Act, 1975 attracting Basic Customs Duty @30 %, Social Welfare Surcharge @ 6 % and IGST @ 18%.

11.2 'Dressing Sauce – Nestle' (mentioned at Sr. No. 08 of the subject Bill of Entry): The details mentioned in the labels affixed on the packages of 'Dressing Sauce – Nestle', revealed that the item was a cream, which was milk product. Thus, considering Supplementary notes No. 5(f) to the Chapter 21 of Customs Tariff Act, 1975, the said item was therefore classifiable under 21069060, attracting effective rate Basic Customs Duty @ 50 %, Social Welfare Surcharge @ 5 % and IGST @ 18 % and not under CTH No. 21039040 attracting Basic Customs Duty @ 30 %, SWS @ 3 % and IGST @ 12 %, as declared by the Importer in the Bill of Entry in question.

11.3 'Coffee mate Powder' (mentioned at Sr. No. 06 of the subject Bill of Entry: the said item was a type of milk based drink as is evident from the details of the product available on Wikipedia i.e.

> *"Coffee-mate Original is mostly made up of three ingredients: corn syrup solids, hydrogenated vegetable oil, and sodium caseinate. Sodium caseinate, a form of casein, is a milk derivative; however, this is a required ingredient in non-dairy creamers, which are considered non-dairy due to the lack of lactose. This makes Coffee-Mate non-vegan (but still vegetarian), due to the sodium caseinate being derived from milk. Coffee-mate Original also contains small amounts of dipotassium phosphate, to prevent coagulation; mono- and diglycerides, used as an emulsifier; sodium aluminosilicate, an anticaking agent; artificial flavor; and annatto color.'*

It appeared that the said item does not have any content of coffee or tea, but it is Milk product. In this case also taking into consideration, the Supplementary notes to the Chapter 21 of Customs Tariff Act, 1975, it is ascertained that the said item is classifiable under CTH 21069060, which covers Food materials, attracting effective rate of Basic Customs Duty @ 50 %, Social Welfare Surcharge @ 0 % and IGST @ 18 %.and not under CTH NO. 21011190, attracting Basic Customs duty @ 30 %, Social Welfare Surcharge @ 3 % and IGST @ 18 % as was classified by the importer.

12. It appeared that the value and duty of each item declared in the subject Bill of Entry was worked out (the details of which are given in the Annexure-A to the Show cause notice). The same was based on the values arrived out on the basis of the contemporary imports as per the NIDB data as well as the values worked on the basis of Market data, after allowing the deduction towards applicable taxes, expenses incurred & profit margins and correct classification ascertained for the items like 'Langnese Honey', 'Coffee mate Powder' and 'Dressing Sauce – Nestle', as discussed herein above. Thus, as per the details of Annexure-A, the total value of the goods covered under the subject Bill of Entry worked out to **Rs. 34,69,520/-** and the total amount of Customs Duties leviable thereon was **Rs. 21,74,442/-**. In view of the above, it appeared that the importer has purposefully mis-declared the value of all the items covered under the Bill of Entry No. 8074273 dated 04-07-2020 to avoid payment of appropriate Customs duties. Further, the Importer has also with complete knowledge mis-classified the items declared at Sr. No. 03, 06 and 08 i.e. Langnese Honey, Coffeemate Powder and Dressing Sauce – Nestle, with an intent to avoid payment of appropriate Customs duties.

13. In view of the above discussion, it appeared that the importer has violated the following provisions:

1) Section 46(4) of the Customs Act, 1962, in as much as the importer while presenting the Bill of Entry No. 8074273 dated 04.07.2020, made a wrongful declaration regarding the contents mentioned in the Bill of Entry.
2) Section 17 (1) of the Customs Act, 1962, in as much as the importer has not made proper assessment of the goods imported by them vide Bill of Entry No. 8074273 dated 04.07.2020, at ICD-Khodiyar. They have mis-declared and mis-classified the goods for the purpose of evading Customs Duties in the Bill of Entry.
3) Section 111 (m) of the Customs Act, 1962, in as much as they have not declared the truth of the contents in the bill of Entry No. 8074273 dated 04.07.2020. They have mis-declared the goods for the purpose of evading Customs duty payable thereon. Therefore, the subject goods are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962 and for the said act of omission and commission, the importer is liable for penalty under Section 112 (a) and (b) of the Customs Act, 1962.

14. The importer is also liable for penalty under the provisions of Section 114 A of the Customs Act, 1962, in as much as they have attempted to short-pay the Customs Duty payable by them on the goods imported under Bill of Entry 8074273 dated

04.07.2020, at ICD-Khodiyar, as per the provisions of Section 14 of the Customs Act, 1962, as amended.

15. It appeared that in the present case, Shri Harbhajan Singh Bansal, the Branch In-charge of M/s Jayant & Co., Ahmedabad branch, who were authorised by the Importer to carry out the Customs clearing work of the goods imported by them on their behalf, has failed to take all the necessary steps at the time of filing of the Bill of Entry No. 8074273 dated 04.07.2020, regarding proper declaration of the goods imported, its classification and valuation and thereby violated the provisions of Rule 10 of the Customs Brokers Licence Regulations, 2018, as amended and thereby rendered himself liable for penal action under the provisions of Section 112 (a) and (b) of the Customs Act, 1962.

16. It appeared that in the present case the importer which a proprietorship firm, and Shri Devang Naresh Pandya, as its proprietor have knowingly and intentionally mis-declared and undervalued the goods imported by them under Bill of Entry No. 8074273 dated 04/07/2020 and thereby rendered themselves liable for penal action under the provisions of Section 112 (a) and (b), and Section 114 AA of the Customs Act, 1962.

17. Therefore Show Cause Notice dated 19.01.2021 issued to M/s. J. K. Enterprise, as to why:

a) The goods imported and declared at Sr. No. 03 vide Bill of Entry No. 8074273 dated 04.07.2020 as “Langnese Honey” and classified under CTH 17029030 attracting Basic Customs duty @ 30 %, Social Welfare Surcharge @ 3 % and IGST @ 18 %, should not be correctly classified under CTH 04090000 of the Customs Tariff Act, 1975, attracting Basic Customs duty @ 60 %, Social Welfare Surcharge @ 6 % and IGST @5%.

b) The goods imported and declared at Sr. No. 06 vide Bill of Entry No. 8074273 dated 04.07.2020 as “Coffee Mate Powder” and classified under CTH 21011900 attracting Basic Customs duty @ 30 %, Social Welfare Surcharge @ 3 % and IGST @ 18 %, should not be correctly classified under CTH 21069060 of the Customs Tariff Act, 1975, attracting Basic Customs duty @ 50 % and IGST @ 18 %.

c) The goods imported and declared at Sr. No. 08 vide Bill of Entry No. 8074273 dated 04.07.2020 as “Dressing Sauce - Nestle” and classified under CTH 21039040 should not be correctly classified under CTH 21069060 of the Customs Tariff Act, 1975, attracting Basic Customs duty @ 50 % and IGST @ 18 %.

d) Total Customs duty of Rs. 21,74,442/- (i.e. Basic Customs Duty Rs. 13,23,525/- + Social Welfare Surcharge of Rs. 1,32,352/- + IGST of Rs. 7,18,565/-) leviable on the goods imported vide Bill of Entry No. 8074273 dated 04.07.2020, should not be recovered from them under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest as per the provisions of Section 28 AA of the Customs Act, 1962. Further, the total Customs duty of Rs. 6,79,862/-, (Rupees Six Lakhs Seventy Nine Thousand Eight Hundred and Sixty Two Only) already

paid by them should not be appropriated against the total liability of Customs duty on final assessment of the goods covered under Bill of Entry No. 8074273 dated 04.07.2020.

e) The goods imported by them vide Bill of Entry No. 8074273 dated 04.07.2020, totally valued at Rs. 34,69,520/-, imported at ICD-Khodiyar and placed under seizure under Panchnama dated 31.07.2020, should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962.

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

g) The bond for Rs. 35,00,000/- and Bank Guarantee for Rs. 18,00,000/- furnished by them for provisional release of the seized goods, should not be invoked and enforced for recovery of the above amounts of fine and penalty.

18. Shri Harbhajan Singh Bansal, the Branch In-charge of M/s. Jayant & Co., Ahmedabad branch, who were authorised by the Importer to carry out the Customs clearing work of the goods imported by them at ICD-Khodiyar on their behalf also issued Show Cause Notice as to why Penalty should not be imposed on them under Section 112 (a) & (b) of the Customs Act, 1962.

19. Shri Devang Nareshbhai Pandya, the Proprietor of the importer also issued Show Cause Notice, as to why Penalty should not be imposed on them under Section 112 (a) & (b) and Section 114 AA of the Customs Act, 1962

DEFENCE SUBMISSION & PERSONAL HEARING AT ORIGINAL ADJUDICATION PHASE:

20. Shri Harbhajan Singh Bansal Branch In-charge of M/s. Jayant & Co., (Ahmedabad Branch) submitted his defence reply dated 06.03.2021 interalia he stated:-

- Called upon to show cause as to why penalty should not be imposed on him under Section 112(a) and (b) of the Customs Act, 1962.
- The importer had submitted the purchase invoice, packing list along with the Bill of Entry and the above documents have been accepted by the assessing officer and the genuineness of the said documents have not been challenged at the time of assessment of aforesaid Bill of Entry except minor issues viz. consolidated weight reflected in Bill of Entry and detailed weights in packing list and invoice, nothing objectionable was noticed by the assessing officer.
- SCN issued based on that the importer did not declare the goods as per the specific packing wise details like quantity of each type in every item in the Bill of Entry and that the importer had declared a single value of items by not declaring the flavour of the goods in the Bills of Entry in spite of the fact that on case of items like 'Instant Coffee Nescafe", the valuation of goods varies with the flavour

of the coffee and that the importer had declared a low value for each item when compared to the prevailing market rates. on ascertaining the values of the goods covered under the Bill of Entry in question with the contemporary imports and value of the goods normally available in the market, it was noticed that the value per unit quantity declared by the importer appeared to be very low and therefore as per the provisions of Rule 12(3) of the Customs (Determination of Value of Imported goods) Rules, 2007 as amended the value declared by the importer was required to be rejected.

- In his statement, he stated that related to the import clearance of M/s. J K Enterprise, the import documents were presented to him by Shri Devang Pandya, Proprietor of the importer company along with KYC documents and authority letter to carry out the work and he had fulfilled all the formalities related to import of goods and that the value of the goods shown in Bill of Entry No. 8074273 dated 04.07.2020 was worked out on the basis of value of the goods given by the supplier M/s. Mijwad General Trading LLC, Dubai in the commercial invoice No. MGT 10421786 dated 15.06.2020. He had on behalf of his CHA firm had proceeded to file the Bill of Entry on the basis of purchase documents.
- The assessing officer has not doubted the statements given by him and the importer and it has nowhere been alleged that there was any malafide intention in the entire case.
- He denies all the allegations and averments made in subject demand notice, except, those which have been expressly admitted for this proceeding.
- The allegations related to valuation and classifications of goods imported have been made against the importer, hence, they will be submitting a detailed submission against the allegations and averments made against them.
- His firm have filed bills of Entry on behalf of the said importer and the value and classification of the goods declared in the Bill of Entry has never been objected by the assessing officers in the past. A copy of similar Bill of Entry filed by the above mentioned importer alongwith relevant documents is attached herewith.
- the value of the goods normally available in the market, however, the show cause notice has failed to place on records the basis of contemporary imports and values of the goods normally available in the market and in absence of any such supporting evidences, it is to submit that the entire allegations have been made purely on the basis of assumptions and presumptions.
- He say and submit that the assessing officer have not even taken pain in rejecting the documents viz. Invoice No. MGT10421786 dated 15.06.2020, packing list of the said invoice and Bill of Lading No. JEA/KHY/20/25083 dated 19.06.2020 produced by the importer and in absence of rejection of the above documents, the transaction value and classification of the goods cannot be amended by the assessing officers.
- The SCN has not appreciated facts of the present matter in its true spirit and in accordance with the law. The SCN has unlawfully and arbitrarily enhanced the value of the goods covered under the above bill of Entry and amending the classification and as such all the allegations are required to be discarded in

interest of justice, the same requires to be set aside forthwith and proposal for imposition of penalty is required to be set aside and dropped.

- In the entire show cause notice no allegation has been made against him or his CHA firm for contravention of any provisions of the Customs Act, 1962 and in absence of any allegation of contravention of the provisions of the Customs Act, 1962 or the rules made there under, no penalty can be proposed on him.
- He say and submit that the issue in the present case is rejection of value of goods and the said proposal has been made on assumptions and presumptions and without rejecting the supporting documents submitted by the importer company. Secondly, where the issue is related to rejection of value declared by the importer, then in such cases the goods cannot be held to be liable for confiscation.
- In the entire show cause notice there is no allegation on the importer or the CHA firm that they had knowledge that the goods imported under Bill of Entry No. 8074273 dated 04.07.2020 were liable for confiscation.
- No evidence indicating any knowledge on the part of Customs House Agent (CHA) or his employees of mis-declaration regarding description or value of goods has been placed on records at the time of issuance of impugned SCN. He being authorized signatory of CHA firm had given exculpatory statement deposing that he had relied upon the documents supplied by the importer and on examination nothing adverse was noticed by the examination officers so far as the description and quantity of the goods was concerned related to the above cargo.
- No other statement of any other person indicating knowledge of CHA or his employees in the entire issue has been placed on record. It is a settled law that where CHA has filed Bill of Entry on the basis of documents furnished by importer then in such case penalty cannot be imposed on the CHA firm. He rely on the following judgments in support of my submissions :

  a. Judgment of Hon'ble CESTAT, Chennai Bench in the case of Saffire Lithographers versus Commissioner of Customs, Tuticorin as reported at 2007 (215) E.L.T. 210 (Tri. – Chennai.)
  b. Judgment of Hon'ble CESTAT, Principal Bench, New Delhi in the case of HLPL GLOBAL LOGISTICS PVT. LTD. Versus COMMR. OF CUS. (GEN.), NEW DELHI as reported at 2018 (364) E.L.T. 427 (Tri. - Del.)
  c. Judgment of Hon'ble CESTAT, Principal Bench, New Delhi in the case of Rajesh Maikhuri Versus COMMR. OF CUStoms, Delhi as reported at 2018 (363) E.L.T. 274 (Tri. - Del.)
  d. Judgment of Hon'ble CESTAT, Principal Bench, New Delhi in the case of BRIJESH INTERNATIONAL Versus COMMR. OF CUS. (IMPORT & GENERAL), NEW DELHI as reported at 2017 (352) E.L.T. 229 (Tri. - Del.).
  e. Judgment of Hon'ble CESTAT, Principal Bench, New Delhi in the case of Sanjeev Kumar Versus COMMR. OF CUS. (IMPORT & GENERAL), NEW DELHI as reported at 2017 (347) E.L.T. 645 (Tri. - Del.).
  f. Judgment of Hon'ble CESTAT, Principal Bench, New Delhi as reported at 2016 (338) E.L.T. 721 (Tri. - Del.)

- The documents submitted by the importer have been accepted by the Department and there is no dispute related to the genuineness of the documents furnished by the importer for filing of Bill of Entry covered under the present matter.
- Similarly, the issue in the present matter relates to enhancement of value and change in classification of goods, which is not based on any concrete evidence but purely on assumptions and presumptions in as much as the NIDB data relied by the assessing officer have not been made a relied upon document in the present matter.
- He has filed the Bill of Entry only on the basis of documents provided by the importer and no malafide intention has been brought on records so far as his role or the role of CHA firm is concerned in the instant case. Thus, the proposal for imposition of penalty on him as an authorized person of CHA firm becomes completely illogical and baseless and as such deserves to be set aside in interest of justice.

20.1 M/s. J.K. enterprise and Shri. Devang Naresh Pandya, proprietor of M/s. J.K. Enterprise submitted their defence reply vide letter dated 03.05.2021 interalia they stated:-

- M/s. J.K. Enterprise is a sole proprietorship firm of Mr. Devang Pandya. it is a settled law that, the Proprietor and the concern are legally one and the same. The Proprietor is only carrying out business under a different name for convenience of business. In case of sole proprietary concern there is unity of interest between proprietary concern and the proprietor. In fact proprietor and the concern are same. They are not different persons/entity. Therefore, arraying both, the firm as well as the proprietor in same SCN amounts to double jeopardy. Under this legal position it is a humble request. Mr. Devang Pandya should be de-arrayed from the said SCN for all purposes.
- The said SCN challenges the Bill of Entry No 8074273 dated 04/07/2020 at ICD Khodiyar on two parameters i.e. Classification and Valuation. In para 7 of SCN it has been stated that, the correct value is worked out on the basis of NIDB Data and Market Rates and the amount of custom duties applicable at the rates applicable as the chapter sub heading identified by the office. It may be noticed that none of the 08 documents which are made as Relied upon documents in support of this contention of the department. The SCN has shown casual approach and has randomly moved further and self declared the valuation in Annexure B without relying and providing any demonstrable evidences. The SCN itself is not sure as to which items are revalued as per NIDB data and for which items market value is applied. In absence of any relied upon documents of any such NIDB data or market survey. They relied upon on the judgement dated 09/01/2020 of Hon'ble CESTAT Principal Bench New Delhi in case of H S Chadda Vs. Commissioner of Customs, New Delhi [Customs Appeal No.51768 of 2016] and other connected appeals. This case is an identical case to the instant SCN. At para no.17 it is held that;

"We find that it is trite law that since the goods were assessed by proper officer based on transaction value, onus lies on the Revenue to prove undervaluation, which it has failed miserably to do so since it did not show any contemporaneous import data of identical or similar items or NIDB data to indicate undervaluation and therefore the invoice value is required be accepted and the transaction value itself and hence could not have been discarded, as held by various judgements of the Hon'ble Supreme Court like CCE Vs Sanjivani Non-Ferrous Trading Pvt Ltd (2019) 2 SCC 378 and CC Vs South India Television Pvt Ltd (2007) 6 SCC 373."

- None of the procedure envisaged in Customs Valuation Rules 2007 read with Section 14 of Customs Act 1962 is followed in the instant SCN. The whole process is devoid of mechanism mandated in Rule 12 of the Valuation Rules. As such ground Rules are not followed and demonstrable evidences are not shown.
- Since there is no evidence produced in the Relied upon documents to challenge, there is nothing left to disprove it as such. However, they are submitting their comments on the aspect of valuation only to the literature of allegations made in the body of the SCN:-
- Hon'ble Supreme Court in the case of Anil Kumar Anand vs Commissioner Of Customs ... on 22 April, 2019 held that it is only when mannerism mandated in Rule 3 subject to Rule 12 of Customs Valuation (Determination of value of imported goods) Rules 2007, the officer has to move sequentially from Rule 4 to Rule 9 in determining the value of the goods. It is submitted that, there is no compliance of Rule 12 in the entire process. The proper officer has not communicated any doubt or did not call for any record from the Importer to check the authenticity of the doubt. So, in first place rejection of valuation made by the importer was mandatory which is never done by the proper officer in this case.
- It has been alleged that the importer did not declare the flavors of the goods in the BOE and importer had declared a low value of each item when compared to the prevailing market rates. In this connection it is to submit that, description of goods given in Bill of Entry is made for classifying the item in correct chapter heading for applying correct rate of duty. As per Customs Tariff for the given items there are no separate Chapter heads for different flavors. So it is not a material information for the cause. Secondly, when goods are bought in bulk we negotiate with the exporter in such a manner that we get all flavor pack for the same rate.
- In the current pandemic situation all over the world even non-perishable items are being sold for much lesser price. The ones they have imported are perishable one and in view of the lockdowns imposed the shelf life of these products was in danger. So exporters were inclined to take out stock at lesser price or the demanded price. It is fundamental of macroeconomics that the market value is decided on demand and supply ratio and also capacity and willingness to pay of the prospective buyers. The market is so volatile in the

pandemic that none of importer or exporter is in a position to anticipate pricing or supply. It all depends on transaction to transaction basis.

- As long as market rate is concerned the SCN is not clarifying as to market of which commercial level, of which quantity and shelf life was surveyed. First of all, SCN is not clear as to for which items NIDB is applied and for which items MV is applied. Hiding such vital evidences creates presumption under Sec. 114 illustration (g) of Evidence Act that the proofs if produced would be favorable to the notice. In the circumstances, it is submitted that the value declared by the importer holds good as all documents like Invoice, Packing list, and remittances remain unchallenged by the department. None of the document produced in support of the Bill of Entry which are produced by the importer are rejected by the department which necessarily inspires confidence and reliability to the transaction value.
- Filing of Bill of entry wherein classification and applicable duties was concerned, they had entrusted this to M/s. Jayant & Co, which is a Customs Broker firm. In statement dated 31/10/2020 Shri. Harbhajan Singh Bansal, who was branch in-charge of M/s. Jayant & Co., has stated that the said work of classification of items imported, ascertaining the rate of customs duty leviable and applicable customs duty was done by the customs brokers. Therefore, they did not pay much attention to classification aspect. They are small importers and believe in what an expert in the field suggest as long as classification is concerned. Now, since the matter is brought up to them they have carefully seen the classification and hereby admit that classification of "Langanese Honey" should be under CTH 4090000 (applicable duty @60%BCD+6%SWS+5%IGST) and not the one done by Customs Broker i.e.CTH 17029030 (BCD 30%+18% IGST+3%SWS). However, the transaction value of the consignment is correct in view of the submissions made above.
- As long as classification of "Dressing Sauce" is concerned."Dressing Sauce/Tabasco Sauce/Remia is correctly classified under Chapter Head 21039040. Further, as long as transaction value is concerned it is correctly stated in the bill of entry.
- As long as Nestle cream is concerned, it appears that classification stated in BOE and the one which is proposed by the department,i.e. Chapter heading 21039040 as contended in BOE and CHS 21069060 as contended by the department are not for milk products. Nestle cream is a purely milk extract with fat of 23% which is classifiable under Chapter 04 of Customs Tariff. For Cream with fat more than 10% the product is classifiable under CTH 04015000 of Customs Tariff. In this connection it is to submit that the product is classifiable under CTH 04015000 which attracts BCD @30%, 3% SWS & 0%IGST. Therefore, it is their submission that classification is not correctly stated in BOE , the rate of duty is paid in excess (duty paid is 30%BCD, SWS 3% and IGST 12%) which essentially shows that the classification stated in BOE was wrong. So there is no intention to avoid duty as such. Further, as long as transaction value is concerned it is correctly stated in the bill of entry.

- As long as "Coffeemate Powder" is concerned, it appears that it appears that classification stated in BOE and the one which is proposed by the department, i.e. chapter headings i.e.21011190 as contended in BOE and CHS 21069060 as contended by the department are not applicable. In the Wikipedia which is also relied in the SCN, it is clearly stated that, "Coffee-mate Original is mostly made up of three ingredients: corn syrup solids, hydrogenated vegetable oil, and sodium caseinate. Sodium caseinate, a form of casein, is a milk derivative; however, this is a required ingredient in non-dairy creamers, which are considered non-dairy due to the lack of lactose.So, it is basically whitener."It may please be seen that the ingredient Sodium Caseinate is a milk derivative and it is a Milk Protein as stated by Nestle on the product label itself. Therefore, it is classifiable under CTH 21061000 which attracts BCD @40%, 4%SWS & 18%IGST. Further, as long as transaction value is concerned it is correctly stated in the bill of entry.
- To sum up above mentioned comments on a classification aspect, they say that; it is only in case of "Langanese Honey", the differential duty of Rs. 8,583/- is to be paid and in case of Nestle Coffeemate, the differential duty of Rs. 4,233/- is to be paid and that in case of Nestle Cream the duty of Rs. 10,247/- is paid in excess. They are ready to pay the net differential duty. The calculation is as below as per Table-3:

Table-3

Product	Accepted CTH	Declared Assessable value (Rs.)	Duty applicable @ (Rs.)	Total Duty payable (Rs.)	Duty already paid (Rs.)	Differential Customs duty (Rs.)
Langanese Honey	04090000	49,446	60% Basic 10% SWS 5% IGST	36,738	28,155	(+) 8,583
Nestle Coffeemate powder	21061000	41,720	BCD @40%, 4%SWS & 18%IGST	27,989	23,756	(+) 4,233
Nestle Milk Cream	04015000	56,740	30% BCD 3%SWS 0%IGST	17,533	27,780	(-) 10,247
					Total	(+) 2,569

- All the description, quantity of goods is correctly shown in Bill of Entry. As long as flavors are concerned it does not change chapter heading so were not required to mention. The order was of bulk of mix flavors, so they did not go in those detailing. Wrong classification was a bona fide error. Since they did not have expertise in this, They entrusted it to the Customs broker, and it appears that they have made a bonafide error. Now, when it was brought to their notice, they have applied mind and are inclined to correct it. There was no intention of avoiding any duty. It is a mistake which they are ready to rectify and also tender our apology for the same.
- As long as valuation is concerned it must be appreciated that they have provided the invoice. There is no challenge to the authenticity of the invoice. They are providing remittance details. Both these documents inspire authenticity of the transaction value. Secondly, the deal rates are dependent on many economic factors, like in the instant case, the product had a limited shelf life and due to pandemic, already considerable time was lost. So those dealers who had ready stock, were willing to clear the old stock in down market

prices. The price at which they got was competitive and again to sell this stock also they had to offer similar competitive price to their buyers.

- Last, but most important, is that the Proper officer has not disclosed the NIDB data or the market survey which they relied upon.
- In terms of para 10 of SCN it is to submit that;

(a) Violation alleged under Sec. 46(4) is not applicable since all the description of items stated in the Bill of Entry matched with the goods actually found. There was no discrepancy at all. The only allegation is that of not mentioning "flavors", but that does not change Ch heading. Also, authentic documents of the transaction i.e. invoice copy, packing list, remittance etc. is provided by the importer. None of these documents are under cloud.

(b) The self Assessment is proper since they have submitted all the authentic and unchallenged documents related to the transaction. As long as wrong classification is concerned it is a bona fide error. It may be appreciated that in one of the item, due to wrong classification, they have ended up paying higher customs duties. As stated earlier, it was entrusted to the customs license holder broker for the expertise it requires; therefore they did not look into it. It may be appreciated that description of the product is correctly mentioned by them. Now when it has come to their notice, they are willing to rectify it. Therefore, the mistake may be condoned as bona fide error. In the circumstances Sec. 17(1) is not applicable.

(c) All the items declared (w.r.t. quantity and description needed for classification) were correctly found in physical inspection. None of the transaction documents are challenged by the proper officer. In the circumstances, going ahead sequentially after Rule 3(2) of (Determination of value of imported goods) Rules 2007 was not required at all. Perhaps the department has not stated as to which Rules are applied for the valuation as such in the instant case. First of all, no Rule is mentioned and also no demonstrative evidences are produced. Therefore, the transaction value is correct and they maintain it. The onus of proving otherwise is on the proper officer which he failed by not producing an iota of demonstrable evidence. Re-Assessing duty without having any supportive evidences is nothing but an arbitrary act and abuse of power in hand. In case of any classification dispute, the description was correctly mentioned in BOE. There was nothing hidden in it which may be appreciated. Even otherwise, without having physical inspection also, this error could have been found out. So, Bill of Entry was beyond any doubt. Therefore, the goods are absolutely not liable for confiscation under sec 111(m) and penalty under Sec.112(a) and (b) is irrelevant. At the most, it could have been a case of routine provisional assessment and thus the act of seizure itself was needlessly stretched and not necessary.

(d) In terms of para 11, 11.1 and 11.2 it is to submit that, penalty under Sec.114A or 114AA is not applicable since there is no willful misstatement as detailed in the foregoing paras. All the documents are authentic, which inspires

authentic transaction. The differential duty of Rs. 2,569/- due to wrong classifications was not the work of the Noticee herein. So, even assuming this as bona fide error, it is not attributable to the notice no.1 or 2.

21. Opportunities to be heard in Personal were given to the notices. Shri Anil Gidwani (advocate) appeared on behalf of Shri Harbhajan Singh Bansal on 31.05.2021 and reiterated his earlier submission dated 06.03.2021. He has further stated that the noticee is customs broker and did not has any malafide intention for clearing of imported goods, being Customs Broker his job is only to verify credential of import documents as directed by importer. He further stated that it is settle law that penalty cannot be imposed in cases where the issue is related to classification and valuation of goods. In this regards he has relied upon case law of Saffire Lithographer & HL global logistics Pvt. Ltd.

21.1 Ms. Reshma K Gujaran, advocate appeared on behalf of M/s. J K Enterprises & Shri Devang Nareshbhai Pandya through virtual mode on 31.05.2021 and she reiterated her earlier submission dated 03.05.2021 and further submitted that SCN is issued against both M/s. J. K. Enterprise and Shri Devang Pandya, who is proprietor of M/s J. K. Enterprise. She stated that since J. K. Enterprise is a proprietary firm, it is settled law that proprietor & proprietorship firms cannot be treated separately. Regarding classification of imported items is concerned, she stated that in one item importer has landed up paying more customs duty due to wrongly classifying goods. The classification part was done by Customs Broker and importer has supplied only description of goods. So any wrong classification is just a bonafied error. She proposed that actual classification of goods should be

Langanese Honey 04090000
Nestle Cream 04015000
Coffee mate powder 21061000

With respect to valuation, she stressed upon that no demonstrative evidences are shown by the department for enhancement of Assessable value of goods. NIDB data or market value is neither produced nor listed in relied upon documents. In support of her defence she quoted case law of HS Chadha of CESTAT Principal Bench, New Delhi. She submitted that it is an identical case wherein transaction value was up held in absence of any demonstrable evidences. She also submitted that there is no mis-declaration or suppression by importer. The balance of convenience is in favour of the assessee (importer) and importer is not liable for any penalty.

ORIGINAL ADJUDICATION ORDER, APPEAL AGAINST THE OIO AND ORDER-IN-APPEAL:

22. The adjudicating authority vide Order-in-Original (OIO) No. 41/JC/AKM/ O&A/2021-22 dated 30.06.2021 passed the following order:-

(i) Rejected the classification of the goods imported and declared at Sr. No. 03 vide Bill of Entry No. 8074273 dated 04.07.2020 as "Langnese Honey" under CTH 17029030 and held that it correctly classifiable under CTH 04090000 of the Customs Tariff Act, 1975, attracting duty at appropriate rate.

(ii) Rejected the classification of the goods imported and declared at Sr. No. 06 vide Bill of Entry No. 8074273 dated 04.07.2020 as "Coffee Mate Powder" under CTH 2101900, and held that it correctly classifiable under CTH 21069060 of the Customs Tariff Act, 1975, attracting duty at appropriate rate.

(iii) Rejected the classification of the goods imported and declared at Sr. No. 08 vide Bill of Entry No. 8074273 dated 04.07.2020 as "Dressing Sauce - Nestle" under CTH 21039040,and held that it correctly classifiable under CTH 21069060 of the Customs Tariff Act, 1975, attracting duty at appropriate rate.

(iv) Confirmed the demand of total Customs duty of Rs. 21,74,442/- (Rs. Twenty One Lakhs Seventy Four Thousand Four Hundred Forty Two Only) leviable on the goods imported vide Bill of Entry No. 8074273 dated 04.07.2020, under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest at appropriate rate as per the provisions of Section 28 AA of the Customs Act, 1962 and ordered to appropriate the total Customs duty already paid amounting to Rs. 6,79,862/-, (Rupees Six Lakhs Seventy Nine Thousand Eight Hundred and Sixty Two Only) against the total liability of Customs duty.

(v) Held that goods imported vide Bill of Entry No. 8074273 dated 04.07.2020, totally valued at Rs. 34,69,520/-, liable to confiscation under Section 111(m) of the Customs Act,1962 and allowed the same to be redeemed on payment of redemption fine of Rs.3,00,000/- (Rupee Three Lakhs only) under Section 125 (1) of the Customs Act,1962, in lieu of Confiscation.

(vi) Imposed penalty of Rs. 21,74,442/- (Rs. Twenty One Lakhs Seventy Four Thousand Four Hundred Forty Two Only) on the importer under section 114A of the Customs Act,1962 and refrained them for penalty under section 112(a) of the Customs Act, 1962 as per proviso to Section 114A of Customs Act, 1962.

(vii) Imposed penalty of Rs.1,00,000/- (Rs.One Lakhs only)on the importer under section 114AA of the Customs Act,1962.

(viii) The bond for Rs. 35,00,000/- and Bank Guarantee for Rs. 18,00,000/- furnished by the importer at the time of provisional release of the seized goods, should be invoked and enforced for recovery of the confirmed govt. dues.

(ix) Imposed penalty of Rs.50,000/-(Rs. Fifty Thousand only) on Shri Harbhajan Singh Bansal, the Branch in charge of M/s Jayant & Co.(the Custom broker) under Section 112 (a) of the Customs Act, 1962.

(x) Refrained from imposing any penalty upon Shri Devang Nareshbhai Pandya, the proprietor of the importer under Section 112 (a) & (b) and Section 114 AA of the Customs Act, 1962.

23. Being aggrieved by the above said order, the noticee M/s. J. K. Enterprise filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad against the said OIO, which vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-137-23-24 dated 07.08.2023, upheld the classification of 'Coffee Mate Powder' and "Dressing Sauce-Nestle' and remanded the matter back to adjudicating authority for providing the Contemporaneous data to the noticee and for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee. During appellate proceedings, the noticee had accepted the classification of 'Langanese Honey' as per the adjudicating authority.

23.1 Shri Harbhajan Singh Bansal, the Branch in charge of M/s Jayant & Co. paid the penalty imposed upon him and did not prefer to appeal against the OIO.

24. Being aggrieved by the above said OIA, M/s. J. K. Enterprise filed an appeal before the Honb'le CESTAT, Ahmedabad against the said OIA, which vide its final Order no. FO/C/A10448//2024-CU(DB) dated 20.02.2024, upheld the decision of the Commissioner of Customs (Appeals), Ahmedabad and remanded the matter back to adjudicating authority for passing fresh adjudication order.

SUBMISSION AND PERSONAL HEARING BEFORE THE DENOVO ADJUDICATION AUTHORITY:

25. The noticee submitted a written reply vide letter dated 14.02.2025 wherein they submitted that:

- At the outset it is to submit that M/s. J. K. Enterprise is a sole proprietorship firm of Mr. Devang Pandya and it is a settled law that, the Proprietor and the Proprietorship firm are legally one and the same entity. The Proprietor is only carrying out business under a different name for convenience of business- In case of sole proprietary concern there is unity of interest between proprietary concern and tlle proprietor. Therefore, Noticee No-1 and Noticee No.2 are not different persons/entity, hence arraying both, the firm as well as the proprietor in same SCN amounts to

double jeopardy. under this legal position it is a humble request that the Noticee No.2 i.e. Mr. Devang Pandya should be de-arrayed from the said SCN for all purposes. It may be appreciated that in the OIO dated 30/6/2021 passed by the Original authority, the said preposition was upheld by the department and that penalty levied against Mr Devang Pandya were dropped.

- Assuming without admitting the re-classification made by the department in three products, the amount is quite trivial and therefore, to buy peace, the Noticee no. 1 had accepted classification part of SCN contended by the department without going into merit of it.
- The Commissioner [A) has set aside the impugned order of enhancement of the assessable value for want of evidences. It was observed by Commissioner [A] that in absence of any such information on enhancement of the assessable value in the case file, the assessable value declared by the appellant should be accepted.
- At para 7 of the SCN it has been mentioned that, the correct value is worked out on the basis of NIDB Data and Market Rates. It may be noticed that none of the 08 documents which arc made as "Relied upon documents' (RUDs) are admissible as demonstrative evidence to enhance valuation. Annexure A is authored by the department and it cannot be called as evidence as such and as a matter of fact! it is appraised by Hon'ble Commissioner Appeals.
- Apparently none of the procedure envisaged in Customs Valuation Rules 2007 read with Section 14 of Customs Act 1962 is followed in the instant SCN. The whole process is devoid of mechanism mandated in Rule 12 of the Valuation Rules. As such ground Rules are not followed and demonstrable evidences arc not shown, rather; no evidences are shown for enhancement of valuation and therefore transaction value holds good.
- the SCN has shown casual approach and has randomly enhanced valuation of goods and tabulated in Annexure A. This Annexure A is very vague and prepared on the surmises. There is no clarity as to which items are revalued as per NIDB data and for which items market value is applied. Moreover, it is on record that the department could not produce admissible NIDB data and Market survey at original adjudication stage as well as at appellate stage. Both these documents, if at all they existed, were always in possession and control of the department and that the department had elected not to make them Relied upon documents. They relied upon the judgment of Hon'ble CESTAT, Principal Bench New Delhi in the case of H S Chadda vs Commissioner of Customs, New Delhi [Customs Appeals No. 51768 of 2016] and other connected appeals. The enhancement of valuation in the current SCN needs to be dropped since it also has same infirmities which were challenged and sustained before the Principal Bench of Hon'ble CESTAT.

- Even these documents viz. NIDB data are in itself do not qualify as evidence/s to enhance value as such. They relied on the judgment of Sedna Impex India Pvt Ltd. Vs. C C Mundra in CUSTOMS Appeal No. 70726 of 2018-DB before Hon'ble CESTAT Ahmedabad Bench order dated 06.03.2023.
- The abovementioned Case laws are making it amply clear that NIDB data, though produced, is not the criteria or it is not an evidence to enhance assessable value. That in the present case even NIDB data is not produced at all. No evidences of Market Rate are produced and no any demonstrable evidences are produced. Therefore, the balance of convenience is in favor of the Noticee/s. The case is of "No evidence case".
- It has been alleged that the importer did not declare the flavors of the goods in the BOE and importer had declared a low value of each item when compared to the prevailing market rates. It may be appreciated that, the description of goods in Bill of Entry is made for classifying the item/s in correct chapter heading for applying correct rate of duty. The Customs Tariff does not have any provision or specific classification as such for different flavors. So it is not a material information for the cause. Secondly, when goods are bought in bulk we negotiate with the exporter in such a manner that we get all flavor pack for the same rate. Secondly, in the pandemic period even non-perishable items are were sold for much lesser price. The ones we have imported are perishable one and in view of the lockdowns imposed, the shelf life of these products was in danger. So, exporters were inclined to take out stock at lesser price or the demanded price. It is fundamental of macroeconomics that the market value is decided on demand and supply ratio and also capacity and willingness to pay of the prospective buyers. The market was so volatile in the pandemic that none of importer or exporter was in a position to anticipate pricing or supply. It all depends on transaction to transaction basis.
- Assuming without admitting that the department might have any such data/record, hiding such vital evidences creates presumption under Sec. 114 illustration [g] of Evidence Act that the proofs if produced would be favorable to the noticee. The SCN cannot travel beyond its boundary now and that department has always elected not to make these documents Relied upon, and therefore presumption applies.
- As long as providing the NIDB data or report of Market survey is concerned, it is to submit that at para no. 31 of OIO dated 30.06.2021 F. No, VIII/10-138/ICD-Khodiyar/O&A/HQ/2020-21 issued by Jt. Commissioner of Customs, Ahmedabad, the Ld. Joint commissioner has categorically slated that NIDB data is available on public portal and hence need not be given to the Noticee. However, the Noticee have proved in the appellate that the NIDB data is a secured data and it is a password protected data and is available only to customs officers. Therefore, it may be noticed that when department had opportunity to provide these documents they choose to hide it.

Moreover, the erstwhile original adjudicating authority was silent on the part of report of market surveys. All these actions are louder and suggest that the data or report of Market survey was never with the department during the stage of investigation and that if at all it is there it is favorable to the Noticee and therefore not relied upon by the department.

- It is mandated by law that new evidences cannot be produced at later stage. It is only in certain circumstances that the court allows incorporation of new evidences. It is a settled law that if any party wants to add new evidences it has to satisfy certain conditions. It must be proved that those documents/material was not in control and possession of the person earlier or that the person did not have opportunity to present it earlier. It may be appreciated that both these conditions are not satisfied in the case of the department. Therefore, adducing any new documents now at this stage shall amount to crossing boundary of the SCN and a new cause of action arises wherein laws of limitation applies.
- Assuming without admitting that the said data was available with the department at investigation stage, in such case these documents shall be categorized as Un-relied upon documents. The Un-relied upon documents are those which are either irrelevant to the case or arc unfavorable to the department in the present case, the department had opportunity at various stages to present the data/reports, if they really had it with them at the investigation stage. They choose not to produce any, which essentially means that such data/market survey was never available with the department at all or it was favorable to the assessee.
- In the circumstances, it is submitted that the value declared by the importer holds good as ail documents like Invoice, packing List, remittances remain unchallenged by the department None of the document produced in support of the Bill of Entry which are produced by the importer are rejected by the department which necessarily inspires confidence and reliability to the transaction value.
- Therefore, it is to submit that the SCN is not supported by any admissible and demonstrative evidences and in absence of evidences to the contrary, the transaction value declared by the noticee holds good. Hence it is prayed that enhancement of value of all 08 products may be rejected, demand of customs duty be dropped, and proposal for confiscation be rejected, and goods released to the noticee and penalties invoked may be dropped.

26. Personal Hearing in the matter was held on 14.02.2025 and the same was attended by Ms. Reshma K. Gujaran, advocate of the noticee. She re-iterated their written submission dated 14.02.2025 and requested to reject the enhanced value.

27. In compliance to the decision of the Commissioner of Customs (Appeals), Ahmedabad, NIDB data relied upon was provided to the noticee vide letter dated 11.03.2025, in response to which the noticee submitted the following:

- At the outset we would like to mention that the alleged SCN does not have any data (soft copy or hard copy) as "Relied upon" by the department as no such data can be found in the list of RUDs.
- If the department wish to make this newly made excel sheet as RU, there is no proper procedure followed to induct this excel sheet in the list of RUDs.
- The attachment is an editable sheet containing various tables and the sheet is not signed by the competent authority or there is no reference or trace of it being part of the original case file.
- The direction of the Commissioner Appeal in order dated 07.08.2023 is quite clear that if anything is available in the case file then it to be provided to the noticee. In utter defiance to this order of Commissioner (A) as well as Hon'ble CESTAT an undated and unsigned excel sheet is sent, the source and contents thereof are unauthenticated as per the procedure laid down by the law and therefore inadmissible as evidence (RUD).
- Till the date of personal hearing, the noticee did not get any data available in the case file. It makes it crystal clear that the original case file did not have any such record. Now, after nearly one month after Personal Hearing when order was awaited, the noticee is being given an email attaching an excel file claiming it to be a document (undated, unsigned and unauthenticated) retrieved from the original case file, is nothing but an afterthought and an endeavor to fill up the lacuna in the case from department side. Any document to be admissible like other evidence, needs to be authenticated meaning they must be proven to be what they claim to be. SCN never claimed that the NIDB data relied upon was a soft copy of excel sheet SCN also says that it relied upon market survey for some items where NIDB data was not available. The attached excel sheet shows contents of data of products in question selectively done without any market survey. It is a material contradiction and per se inadmissible as RUD.
- The excel sheet is undated, unsigned and there is no any reference of it being part of the original case file. It was not made as RUD in any further stage of adjudication, appeal and tribunal, the department was unable to comment on it.
- the department claims that the value was enhanced on the basis of NIDB data and for some items market rates are taken by applying deduction mechanism to market rate which items is neither specified in the SCN nor specified even at this stage of Proceedings.
- The noticee provided item wise submission as under:-
- Item No. 1 – Maggi Cube –

  (a) The data for Maggi Cube is from Row no.L9 to 32 in the Excel Sheet Out of which entries at Row 21, 26, 28, 31 and 32 are in Kilogram. Rest all other pricing is per "Carton" rate, and hence not applicable at all.

  (b) With respect to Row 21 - CTH is different hence not applicable.

  (c) With respect to 31 and 32- the description is different than the product of the noticee and not comparable.

  (d) None of the data (From Row N0.19 to 32) provided is matching with the price contended by the department i.e. Rs. 76.56 per kg. Therefore the data provided

does not support the price proposed by the department in Annexure A to the SCN for the product "Maggie Cube".

- Item No. 2 – POP PAN Biscuits – No data/entries are found in the given excel sheet with respect to this product.
- Item No. 3 – Langanese Honey - The data is from Row 51 to 52. Entire data is for the product "Honey Valencia", which is not the product of the Noticee. The product of the noticee is "Langanese honey" which is a natural product and specifically classified under CTH 4090000 in the Customs Tariff. Therefore, it is to submit that the description of the product is not matching with that of the product of the Noticee. Secondly the price in data is Rs.S4.29 per kg whereas the department has proposed for price of Rs.399 per kg. Therefore, the data provided does not support or validates claim of the department of value being Rs 399 per kg.
- Item No. 4 – Nescafe Gold 12 x 47.5 – Reference data is from Row 59 to 118. Except Row 59 to 64, 70-72, 78-79, 91-92, 102, 107,110 to 118 all other entries are in unit measurement "Carton". Therefore, per carton rate cannot be applied to per kg rate. Moreover none of the entry "in kilogram" matches to the "Price" proposed by the department None of these entries matches to the "description" of the product i.e. Nescafe gold 12x47.5. Hence the data provided is irrelevant and it does not support price proposed by the department for enhancing the valuation of product " Nescafe Gold 12x 47.5.
- Nescafe Classic 24 X 50 - No data provided for the product "Nescafe Classic". None of the entries matches to the 'price' proposed by the department.
- Nescafe Classic 24 X 100 - No data provided for the product "Nescafe Classic". None of the entries matches to the 'price' proposed by the department.
- Item No. 5 – Choco Confectionery Miniature – Mars /Bounty /Frutella /Snickers /Twix - Reference data is at Row 8 to 11 of the excel sheet The product descriptions given in the various entries do not match at all. The product of the noticee is "Choco confectionery Miniature" classified under CTH 18069010, It is different than Chocolate products classified under CTH 18069090 in the given data' The reference data pertains to CTH 18059090 for 'Other" products wherein contents, class and exact description is unascertained. The product of the Noticee is classified in specific CTH. The data under reference which is of different CTH is irrelevant and not comparable. It is general rule of classification that if the product is not classifiable under CTH 18069010, 18069020, 18069030, 18069040 then only it is classified under "other" category i.e. CTH 18069090. When the product of which data is mentioned, is classified under this "Other" category, then it becomes very much a broader concept and therefore the actual goods which might have been imported under this CTH, in absence of any information on what it was exactly, cannot be compared with the ones which noticee has imported which is classified under a specific CTH.
- Item No. 6 – Coffeemate Powder - Reference is from Row 39 to 44 of the excel sheet. The product description is not matching with any of the entries. The product of the noticee is "Coffeemate POWDER" classifiable under CTH

21011160. Whereas the reference data products are classified under CTH 21011190 and 21039040. Moreover, Row 41 to 44 pricing is per "Carton" and therefore not at all applicable / comparable. In Row 39 and Row 40 the price is Rs.77.55/- which is not matching with the one proposed by the department hence the proposed value of the department is not justifiable at all.

- Item No. 7 – Instant Coffee Davidoff- fine aroma, Rich aroma, Expresso 57 - Reference is from Row 144 to 148 of the excel sheet All the CTH of the entries are different than what the Noticee has imported' The Noticee has imported " instant coffee Davidoff- fine aroma' rich aroma and expresso 57" , however the data under reference is absent about the variety of Instant coffee Davidoff mentioned in the given entries' It was the primary contention of the SCN that the Noticee did not declare the flavours and that according to the flavours' the price changes (please refer para 3.1 table of SCN)' The SCN contended that the packaging had three flavours viz. Fine aroma' rich aroma and expresso 57, but the data provided has conveniently ignored the department's own contention and has not given any cogent and comparable data for these flavours. Moreover, the data given in the Excel sheet is not comparable since CTH is different and no data provided as contended in the SCN.
- Item No. 8 – Dressing Sause/Tobasco/Remia/Nestle - Reference is front Row 129 to 136 of the excel sheet. CTH+ of all the data is altogether different. Product description of the entries in the data is not matching. The data is for ‘Remia Mayonnaise' and "Remia salad dressing" which is specifically classified under CTH 21039030. Whereas the product of the noticee is classified under CTH 21039040 tariff description i.e. 'mixed condiments and mixed seasoning", which is an altogether different product Secondly all prices arc given in unit "Carton" whereas the SCN proposes per kg rate. So, the price is not comparable at all. Moreover, the data does not provide pricing for 50 ml bottles and/or 250 Gram, which has been imported by the noticee. Hence, the data is not comparable on any count.
- Nestle Cream - There is no data given for 'Nestle Cream' classified by the department under CTH 21059060. From Row 155 to 171 of the excel sheet some random data is provided wherein the CTH nos. and the description of the products are very much different and therefore not comparable at all. In Row no 157, it shows rate of Rs. 694.05. However, it has description "Peach 150 Nestle (for sample and R&D purpose) and it is only for 6 kg. In absence of any further description and documents it is not even clear whether it is a cream. On face of it, it is quite different than 'Nestle cream’ which is a natural product. Without prejudice. The quantity in that entry is only for 6 kg. Which cannot be compared for quantity of 1224 kg Imported by the noticee. Which is a well settled rule / law. Therefore, it is to submit that the data shown is not comparable and irrelevant.
- It is a well settled law that only reference to NIDB data is not an evidence and that the department cannot enhance the value only on that basis. In the given data there are various discrepancies on various counts such as -Unit of

measurement, quantity size, insufficient and incomparable descriptions of the products, no matching of prices with the prices proposed, altogether different CTH which validates that the products imported under this given data are quite different. The SCN had proposed enhancement of valuation on the basis- of contemporaneous imports and market rates. However, the department has not produced any demonstrable and independent evidences other than providing this impugned Excel sheet. The vital discrepancies noticed in the given data are reasonable enough to disqualify it to have any evidentiary value attached to it.

- It is the right of noticee to get a fair judicial process. Improvisation of the evidences at every stage of judicial process makes SCN totally unreliable. In the circumstances it is prayed that in absence of any evidences to the contrary, it is prayed to accept transaction value of the goods.

DISCUSSION & FINDINGS:

28. I have carefully gone through the facts of the case, defense submissions made by the noticee, oral submission made during Personal hearing, Order-in-Appeal, Order of the Hon'ble CESTAT, Ahmedabad and evidence available on the records.

28.1 I find that the Commissioner of Customs (Appeals) vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-137-23-24 dated 07.08.2023, upheld the classification of **'Coffee Mate Powder'** and **'Dressing Sauce- Nestle'** and remanded the matter back to adjudicating authority for providing the Contemporaneous data to the noticee and for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee. During appellate proceedings, the noticee had accepted the classification of **'Langanese Honey'** as decided by the adjudicating authority.

28.2 In view of the above, I will not discuss on the classification issue as it is already settled at the appellate stage and hold that the declared classification in respect of **'Langanese Honey', 'Coffee Mate Powder'** and **'Dressing Sauce- Nestle'** by the noticee is not proper and the said items to be re-assessed under the classification as proposed by the show cause notice.

28.3 Further, I find that there was no separate penalty imposed on the proprietor Shri Devang Naresh Pandya vide the original adjudicating order and I accept the submissions of the noticee in this connection and will refrain from imposing any separate penalty on Shri Devang Naresh Pandya. Further, I find that Shri Harbhajan Singh Bansal, the Branch in charge of M/s Jayant & Co. paid the penalty imposed upon him and did not prefer to appeal against the OIO. Therefore, I will not discuss his role in the matter any further.

28.4 Now, the issues to be decided before me are:

a) Whether the value of the imported goods vide Bill of Entry No. 8074273 dated 04.07.2020 declared by the noticee is liable for rejection and the value may be re-determined as per Customs Valuation Rules, 2007 in light of NIDB data and market survey reports?

b) Whether Total Customs duty of Rs. 21,74,442/- is recovered from them under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest as per the provisions of Section 28 AA of the Customs Act, 1962?

c) Whether the goods imported by them vide Bill of Entry No. 8074273 dated 04.07.2020, totally valued at Rs. 34,69,520/-, imported at ICD-Khodiyar and placed under seizure under Panchnama dated 31.07.2020, are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962?

d) Whether Penalty under the provisions of Section 112 (a) and (b), Section 114A and Section 114AA of the Customs Act, 1962 is imposable upon them?

28.5 Now I proceed to decide whether the value of the imported goods vide Bill of Entry No. 8074273 dated 04.07.2020 declared by the noticee is liable for rejection and the value may be re-determined as per Customs Valuation Rules, 2007 in light of NIDB data and market survey reports.

28.5.1 I find that during assessment/appraisement of the Bill of Entry No. 8074273 dated 04.07.2020, it was observed from the documents like Invoice and Packing list no. MGT10421786 dated 15.06.2020 that invoice / packing list mentioned item wise details such as different quantity based package details, the number of cartons and total weight of cartons of each package type etc., however in the Bill of Entry, total quantity and value of each item in a consolidated manner was declared based on per kilogram basis only. I find that the importer had declared a low value for each item when compared to the prevailing market rates, on ascertaining the values of the goods covered under the said Bill of Entry, with the contemporary imports and value of the goods normally available in the market. I find that the Commissioner of Customs (Appeals, Ahmedabad in Para 9.1 of the said OIA stated that:

9.1 Considering the facts and circumstances of the case, it is observed that during the course of assessment of the Bill of Entry, it was noticed that the description of the goods mentioned in the Bill of Entry is not matching with description of goods as mentioned in Invoice and Packing list. Further, on physical examination of goods, it was noticed that the appellant, in three cases, has mis-declared the classification of the goods, whereas, in some cases, they have mis-declared the description of the goods such as 'Nestle Cream' was declared as 'Dressing Sauce'. It was further observed that the appellant have not declared the description of packages and flavours of the individual items. Department, after conducting 100% examination of the said goods, prepared chart showing description of the said goods, on the basis of description shown in the label of individual packages, as recorded in Table-2 of the Panchnama dated 31.07.2020. The description of the goods, quantity and flavours, as described under Table-2 of the Panchnama, are not under dispute. It is contended that the flavour of the goods do not affect the classification, rate of duty and valuation of the goods. I do not agree with the contention of the appellant, while flavour of goods may or may not affect the classification and rate of duty, but in common parlance, price of every product of a particular company varies according the flavour of the product. As the appellant had not declared the price of the goods separately and properly for each and every imported product, the department was left with no option but to determine the assessable value of the goods. It will not be out of context to refer to the observations of the Hon'ble Supreme Court, in case of Varsha Plastics Pvt. Ltd. [2009 (235) E.L.T. 193 (S.C.)], that once transaction value is rejected, the Customs authority has to proceed to determine the value of goods by following Customs Valuation Rules. It is further held that that contemporaneous import of the same goods obviously provides the best guide for determination of value of the import of goods but in the absence of evidence of contemporaneous import, reference to foreign journal for finding out correct international price of imported goods may not be irrelevant because ultimately the Assessing Authority has to determine value of the imported goods. The

Therefore, I find that as per the provisions of Section 14 of the Customs Act, 1962 read with the Rule 12 of Customs (Determination of Value of Imported goods) Rules, 2007, as amended, the value declared by the Importer was required to be rejected and to be re-determined under the provisions of Customs Valuation (Determination of Price of imported Goods) Rules, 2007.

28.5.2 Section 14 is reproduced below:-

"14. Valuation of goods. *-*

"(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, ***the value of the imported goods and export goods shall be the transaction value of such goods****, that is to say,* ***the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation****, or as the case may be,*

...

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

2[(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may

not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50."

28.5.3 Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007.

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

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

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

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

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

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

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

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

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

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

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

(f) the fraudulent or manipulated documents."

28.5.4 I further rely on the Judgment of Hon'ble Tribunal, in the case of ***M/S. SAMRAT ENTERPRISES V/S CC (IMPORT), MUMBAI REPORTED AT 2000 (122) E.L.T. 423 (TRIBUNAL) IN THE CEGAT COURT NO.1, NEW DELHI***, wherein Hon'ble Tribunal held that "*Rejection of invoice value and the assessment of the goods at the value of comparable goods was justified when the value declared is very low to hide from Customs authorities the full details about the brand name quality etc."* I also find support for my findings from the Judgment of Hon'ble Tribunal, in the case of ***JAISINGH JHAVERI V/S CC,COCHIN REPORTED AT 2005 (181) E.L.T. 56 (TRI-BANG)***, wherein Hon'ble Tribunal held that *"Declared price was abnormally reduced as compared to ordinary competitive price and department not bound to accept the same.*" I also find relevant the judgment of the Hon'ble Tribunal, Ahmedabad in the matter of ***KUMAR IMPEX VS. CC JAMNAGAR (PREV.) vide Order No. A/11108/2023 DATED 03.05.2023*** wherein it was held that:

"4.4 Clause iii (a) of the said explanation clearly prescribes that wherever a significantly higher value of identical or similar goods is noticed in comparable transactions at roughly the same time the declared value can be rejected. In the instant case it is notice that the declared assessable value was USD 1.2/-kg and contemporaneous imports were noticed that USD 2.1 to 2.85 USD kg. As can be seen from the tables in para 2.4 above.

4.5 It is also notice that the products has been described as Polyester Knitted Fabrics in all these entries in table in para 2.4. The quantity imported by the appellant is 21540 kgs.,and the quantity imported against bill of entries No. 2198984 dated 1.01.2021 and 2198928 dated 01.01.2021 is 23905 kg.,and 24265 kg., is comparable. All the imports were made from China. In this background, we find that the imports are comparable in all respects.

5. In the above factual scenario, we do not find any error in the impugned order rejecting the declared value and accepting the lowest of the contemporaneous import value of identically described goods falling under the identical heading imported at roughly the same time. The appeal is consequently dismissed."

28.5.5 I find that as per Sub Rule 4 of Rule 3 of Customs Valuation (Determination of Price of imported Goods) Rules, 2007, if the value cannot be determined under the provisions of Sub Rule (1) the value shall be determined by proceeding sequentially through Rules 4 to 9 of Customs Valuation (Determination of Price of imported Goods) Rules, 2007. As value could not be determined under rules 3, 4 or 5 of the said rules, recourse needs to be taken to Rule 7 of Customs Valuation

(Determination of Price of imported Goods) Rules, 2007. Application of said rule 7 requires knowledge of a number of factors with exactitude e.g. (i) the transaction details wherein similar/identical goods were sold in the greatest aggregate quantity to persons who are not related to the sellers in India (ii) deductions, namely commission, costs of transport etc. In view of these limitations, I find that rule 7 too cannot be applied. Further, it is also not possible to follow rule 8 of Customs Valuation (Determination of Price of imported Goods) Rules, 2007, for redetermination as the costs of the product under consideration at the exporting country end are not known. In view thereof, I hold that recourse needs to be taken to residual method or the best judgment method, i.e. rule 9 of Customs Valuation (Determination of Price of imported Goods) Rules, 2007, wherein the value is required to be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

28.5.6 I find that the assessing officer have investigated through the NIDB Data for item no. 1, 4 (Nescafe Gold 12x47.5), 5, 6, 7 and 8 and found value declared by the importer was much lower than the contemporary NIDB data. I also find that in respect of item no. 2, 3, 4 (Nescafe Classic 24x50 and 24x100), NIDB data could not be found and prices were arrives at based on market research/survey data as given in Table-4 below:

Table-4

S. NO.	ITEM DESCRIPTION (including the Flavours noticed)	VALUE DECLARED BY THE IMPORTER IN THE BoE		QUANTITY AS PER THE DETAILED PACKING LIST	VALUE WORKED OUT ON THE BASIS OF NIDB DATA /MARKET RATE IN **Rs.**
		In $	In Rs.		
1	MAGGI CUBE	0.8	61.12	2304	**76.56**
2	POP PAN BISCUITS	0.5	38.2	240	**130**
3	LANGNESE HONEY	0.8	61.12	800	**399**
4	INSTANT COFFEE NESCAFE	5	382		
	NESCAFE GOLD - 12 X 47.5			798.57	**970.32**
	NESCAFE CLASSIC - 24 X 50			225.6	**566.85**
	NESCAFE CLASSIC - 24 X 100			120	**566.85**
5	CHOCO CONFECTIONERY MINIATURE - MARS/BOUNTY /FRUTELLA/ SNICKERS/TWIX	1	76.4	1822.4	**252.85**
6	COFFEEMATE POWDER	0.9	68.76	600	**141.71**
7	INSTANT COFFEE DAVIDOFF	6	458.4	315	**1529**
	FINE AROMA				
	RICH AROMA				
	EXPRESSO 57				
8	DRESSING SAUSE/ TABASCO /REMIA/ NESTLE	0.6	45.84		
	6 X 12 X 60 ML			108	**232.8**
	6 x 250 GM			300	**232.8**
	NESTLE (cream)			1224	**694.05**

28.5.7 Now, I discuss the price of each item and contentions of the noticee. I find that the noticee has contended that they have been supplied an excel sheet which is not

part of RUDs of the aforesaid SCN, however I find that the said excel sheet is the NIDB data in respect of said Bill of Entry and maintained in the system due to Covid-19 period and not a new evidence. The same has been provided to the noticee in compliance to the order of the Commissioner of Customs (Appeals), Ahmedabad.

28.5.8 I find that the noticee has contended that data provided to them in respect of item no. 1 – 'Maggi Cube' does not support the price proposed by the department, however I find from the NIDB data for the identical item imported during the contemporary period, the contemporaneous import from UAE under the BoE No. 7638493 dated 11.05.2020 has the minimum value as Rs. 882.05 Per carton (24x24x20g) or Rs. 76.56 per kg, which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 61.12 per kg and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. . I hold the value in respect of item no. 1 to be Rs. **76.56** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.9 I find that the noticee has contended that data provided to them in respect of Item No. 4 – 'Nescafe Gold 12 x 47.5' does not support the price proposed by the department and per carton rate cannot be applied to per kg rate. however I find that the noticee themselves had declared per kg rate in the Bill of Entry by converting it from the per carton rate and the same formula has been adopted by the proper officer while deriving value from the NIDB data for the identical item imported during the contemporary period. I find that the contemporaneous import under the BoE No. 7941479 dated 18.06.2020 has the minimum value as Rs. 1702.32 Per Kg. or Rs. 970.32 per carton (12x47.5g), which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 382 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 4 to be Rs. **970.32** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.10 I find that the noticee has contended that data provided to them in respect of Item No. 5 – 'Choco Confectionery Miniature – Mars /Bounty /Frutella /Snickers /Twix' does not support the price proposed by the department as the classification of the contemporaneously imported goods is different than the classification of item no. 5. However I find that the goods are identical from the description and the contemporaneous import under the BoE No. 7625540 dated 09.05.2020 has the minimum value as Rs. 252.85 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the

imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 76.4 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 5 to be Rs. **252.85** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.11 I find that the noticee has contended that data provided to them in respect of Item No. 6 – 'Coffee mate Powder' does not support the price proposed by the department, however I find from the NIDB data for the identical item imported during the contemporary period, the contemporaneous import under the BoE No. 7750024 dated 26.05.2020 has the minimum value as Rs. 850.26 per unit or 141.71 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 68.76 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. . I hold the value in respect of item no. 6 to be Rs. **141.71** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.12 I find that the noticee has contended that data provided to them in respect of Item No. 7 – 'Instant Coffee Davidoff- fine aroma, Rich aroma, Expresso 57' does not support the price proposed by the department as the data provided has conveniently ignored the department's own contention regarding change in value according to the flavours, however I find that the noticee has not declared separate quantity of the different flavours and the proper officer picked the minimum value in mix of all the flavours from the NIDB data for the identical item imported during the contemporary period, the contemporaneous import under the BoE No. 7911965 dated 16.06.2020 has the minimum value as Rs. 1529 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 458.4 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 7 to be Rs. **1529** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.13 I find that the noticee has contended that data provided to them in respect of Item No. 8 – 'Dressing Sause/Tobasco/Remia/Nestle' does not support the price proposed by the department and per carton rate cannot be applied to per kg rate. however I find that the noticee themselves had declared per kg rate in the Bill of Entry

by converting it from the per carton rate and the same formula has been adopted by the proper officer while deriving value from the NIDB data for the identical item imported during the contemporary period. I find that the contemporaneous import under the BoE No. 7958848 dated 20.06.2020 has the minimum value as Rs. 232.8 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 45.84 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 8 to be Rs. **232.80** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.14 I find that the noticee has contended that data provided to them in respect of Item No. 8 – 'Nestle Cream' does not support the price proposed by the department. I find that the contemporaneous import under the BoE No. 8079432 dated 04.07.2020 has the minimum value as Rs. 694.05 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 45.84 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 8 ('Nestle Cream') to be Rs **694.05** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.15 I find that the noticee has contended that that no data has been provided to them in respect of 'Nescafe Classic 24 X 50', 'Nescafe Classic 24 X 100'. However, I find that the contemporaneous import under the BoE No. 7564950 dated 01.05.2020 has the minimum value as Rs. 566.85 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 382 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of these items to be Rs **566.85** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

28.5.16 I find that the noticee has contended that no data has been provided to them in respect of item no. 2 – 'POP PAN Biscuits', item No. 3 – 'Langanese Honey'. I find that no NIDB data for the identical item imported during the contemporary period was available, hence the proper officer conducted market research and found that on verification of declared values of the imported goods with contemporaneous import price data, the values declared by the importer were on lower side. Hence I find that the proper officer has rejected the declared value in terms of Section 14 read with Rule 12 and re-

determined the same as per market research after reducing trade discount and profit margins etc. I further rely upon the Judgment of ***MRITYUNJAY TRADING PVT LTD V/S COMMISSIONER OF CUSTOMS (PORT), KOLKATA -2009 (244) E.L.T. 441 (TRI-KOLKATA)***.The Appellate Tribunal in its impugned order had held that,

> *"the Customs authorities have taken the trouble of conducting necessary enquiries and have determined the value of the exported goods on a rational basis which also has been disclosed to the appellants. Moreover, the Customs authorities have used the price of two comparable brands to make such determination after allowing trade discount, profit margin etc. Hence, we are of the view that the valuation done by the lower authorities is in order and the same needs no interference and therefore the appeal is rejected.*

28.5.17 To summarize the above, the following Table-5 may be referred:-

Table-5

S. NO.	ITEM DESCRIPTION	LOWEST VALUE (Rs.)	Reference BE No. in NIDB	BE DATE
1	MAGGI CUBE	76.56	7638493	11.05.2020
2	POP PAN BISCUITS	130	As per market	
3	LANGNESE HONEY	399	As per market	
4	INSTANT COFFEE NESCAFE			
	NESCAFE GOLD - 12 X 47.5	970.32	7941479	18.06.2020
	NESCAFE CLASSIC - 24 X 50	566.85	7564950	01.05.2020
	NESCAFE CLASSIC - 24 X 100	566.85	7564950	01.05.2020
5	CHOCO CONFECTIONERY MINIATURE - MARS/BOUNTY/FRUTELLA/SNICKERS/TWIX	252.85	7625540	09.05.2020
6	COFFEEMATE POWDER	141.71	7750024	26.05.2020
7	INSTANT COFFEE DAVIDOFF	1529	7911965	16.06.2020
8	DRESSING SAUSE/TABASCO/REMIA/NESTLE			
	6 X 12 X 60 ML	232.80	7958848	20.06.2020
	6 x 250 GM	232.80	7958848	20.06.2020
	NESTLE (cream)	694.05	8079432	04.07.2020

28.5.18 In view of the above, I hold that the values arrived at by the proper officer for re-assessing the above said Bills of Entry are correct and proper in terms of Section 14 of the Customs Act, 1962. I also hold that contemporaneous import price data has been disclosed to the importer at this stage in compliance to the order of the Commissioner of Customs (Appeals), Ahmedabad.

28.6 Now I proceed to decide whether Total Customs duty of Rs. 21,74,442/- is recovered from them under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest as per the provisions of Section 28 AA of the Customs Act, 1962.

28.6.1 I find that Total Customs duty of Rs. 21,74,442/- has been proposed to be recovered under Show Cause Notice under Section 28(4) of the Customs Act, 1962, attributable to the mis-declaration, mis-classification and under-valuation. I find from

the foregoing para no. 28.2 that the declared classification in respect of **'Langanese Honey', 'Coffee Mate Powder'** and **'Dressing Sauce- Nestle'** by the noticee is not proper and the said items to be re-assessed under the classification as proposed by the show cause notice.

28.6.2 I further find from the foregoing paras that the values arrived at by the proper officer for re-assessing the above said Bills of Entry are correct and proper in terms of Section 14 of the Customs Act, 1962 and that the noticee is liable to pay Customs duty as per re-assessed values. I find that the noticee misclassified and undervalued their imported goods, which establishes intent to evade the payment of Customs Duty and therefore differential duty is rightly demanded under Section 28 (4) of the Custom Act. Therefore, I find that proposed differential duty of **Rs. 21,74,442/-** is required to be recovered along-with interest under Section 28AA of the Customs Act, 1962.

28.6.3 **I**t is well known that with the introduction of the Self-Assessment Scheme, the onus is on the importer to comply with the various laws, to determine his tax liability correctly and to discharge the same. Section 17 of the Customs Act, effective from 8.4.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46 of the Act shall self-assess the duty leviable on such goods. Under self-assessment, the importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by Section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Importer is squarely responsible for self-assessment of duty on imported goods and filing all declaration and related documents and confirming these are true, correct, and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty **or avoid compliance of conditions of notifications,** Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied acts.

28.6.4 I find that non declaration of accurate information had warranted to the exploring of public domain and market survey and on the basis of data available in India, NIDB data and data available in the market were obtained for valuation of the goods, which in turn confirmed the apprehensions or doubts raised by the department, as it resulted into mis--declaration of value of the imported goods from declared value and thereby duty amount chargeable and recoverable on goods imported as per valuation on the above . In the case before me, as I have recorded hereinabove, that the importer have failed on several counts in respect of furnishing accurate, correct, true information and thereby have violated provision of Section 46 of the Customs Act, 1962. There cannot be any other intention but to evade payment of Customs duty for such violation of the provision of the Customs Act, 1962. Thus, the importer had suppressed

the correct description as well as value of the goods imported. This again is violation of provision of Section 46 of the Customs Act, 1962.

28.6.5 I find that the importer has purposefully mis-declared the value of all the items covered under the Bill of Entry No. 8074273 dated 04.07.2020 to avoid payment of appropriate Customs duties. Further, the Importer has also with complete knowledge mis-classified the items declared at Sr. No. 03, 06 and 08 i.e. Langnese Honey, Coffee Mate Powder and Dressing Sauce – Nestle, with an to intent avoid payment of appropriate Customs duties.

28.6.7 Therefore, I hold that the noticee is liable to Customs duty payment of **Rs. 21,74,442/-** which is recoverable under the provisions of Section 28(4) of the Customs Act, 1962 from them as they have resorted to mis-classification of the imported goods. I find that the total Customs duty of Rs. 6,79,862/-, already paid by them is also liable to be appropriated against total liability of Customs duty on final assessment of the goods covered under Bill of Entry No. 8074273 dated 04.07.2020.

28.6.8 Further, the importer is also liable to pay interest at the appropriate rate on the duty as provided under Section 28AA of the Customs Act, 1962.

28.7 Now I decide whether the goods imported by them vide Bill of Entry No. 8074273 dated 04.07.2020, totally valued at Rs. 34,69,520/-, imported at ICD-Khodiyar and placed under seizure under Panchnama dated 31.07.2020, are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

28.7.1 The Notice has also proposed for confiscation of imported goods under Section 111(m) of the Customs Act, 1962. The said provision reads as under:-

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

28.7.2 I find that in terms of Section 17 of the Customs Act, "self-assessment" has been provided for the duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit, or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the noticee and aforesaid fact came to light only subsequent to the in-depth investigation. I find that the said importer

is liable to pay differential Customs duty as they had imported the goods by wrongly classifying the goods and undervaluing the value of imported goods for evading Customs Duty. Thus, I find that the noticee have violated the provisions of Section 46 (4) of the Customs Act, 1962 and these acts on part of the noticee, I hold the imported goods valued at **Rs. 34,69,520/-** are liable to confiscation under Section 111(m) of the Customs Act, 1962.

28.7.3 I find that the goods seized vide panchanama dated 31.07.2020, initially assessed and released provisionally on execution of bond of Rs. 35,00,000/- and bank Guarantee of Rs.18,00,000/- as per the request of the importer. As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

"***125 Option to pay fine in lieu of confiscation*** –

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

28.7.4 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of ***M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as under:

"….

….

….

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, , by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ….", brings out the*

*point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant**.** The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

….

….”

28.7.5 I also find that Hon’ble High Court of Gujarat by relying on this judgment, in the case of ***SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.),*** has followed the dictum as laid down by the Madras High Court. In view of the above, I find that subject goods can be allowed to be redeemed on payment of redemption fine under Section 125 of the Customs Act, 1962, hence redemption fine in lieu of confiscation is imposable on the said imported goods.

28.8 Now I decide whether Penalty under the provisions of Section 112 (a) and (b), Section 114A and Section 114AA of the Customs Act, 1962 is imposable upon them.

28.8.1 Section 112 reads as follows:

*“**SECTION 112. Penalty for improper importation of goods, etc.-***

Any person, -

*(a) **who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111,** or abets the doing or omission of such an act, or*

…

shall be liable, -

…

[2] [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher

…”

28.8.2 I find from the foregoing Paras that the noticee is liable to pay differential Customs duty as they had imported the goods by wrongly classifying them and undervaluing the imported goods, therefore, the goods were liable to confiscation under Section 111(m) and the importer is liable for penalty under Section 112(a) of the Customs Act, 1962.

28.8.3 I find that the importer had contravened the provisions of the Customs Act, 1962, with intent to evade payment of applicable Customs duty. The deliberate effort to mis-declare the description of goods and the value of imported goods and to mis-lead the department into hoodwinking to circumvent correct amount of Customs duty is utter disregard to the requirement of law and breach of trust deposed on them. Such outright act in defiance of law appears to have rendered themselves liable for penal action as per the provisions of Section 114A. I further find that in view of the proviso to section 114A of Customs Act, 1962, that where any penalty has been levied under this section, no penalty shall be levied under section 112 or 114. Thus I refrain from imposing on them penalty under 112(a) of the Customs Act, 1962.

28.8.4 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

> ***Section 114AA of the Customs Act, 1962***:
> *"114AA. Penalty for use of false and incorrect material.—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

28.8.5 I find that the noticee in spite of being fully aware of the products purchased/imported, deliberately declared the classification of few goods under wrong C.T.H. and under-valued all the imported goods at the time of filing the said Bill of Entry in order to evade customs duty. Further, I find that they have failed to declare the actual details to the Customs Authorities for assessment. Thus, I find that the noticee has deliberately withheld from disclosing to the Department, the true classification and value as discussed in foregoing paras. Hence, for the said act of contravention on their part, the noticee is liable for penalty under Section 114AA of the Customs Act, 1962.

28.8.6 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of ***PRINCIPAL COMMISSIONER OF CUSTOMS, NEW DELHI (IMPORT) VS. GLOBAL TECHNOLOGIES & RESEARCH (2023)4 CENTAX 123 (TRI. DELHI)*** wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".*

28.9 I also find that the ratio of case laws cited by the noticee in their submission are not squarely applicable in this case.

29. Therefore, I pass the following order -

ORDER

(i) I confirm the demand of total Customs duty of Rs. 21,74,442/- (Rs. Twenty One Lakhs Seventy Four Thousand Four Hundred Forty Two Only) leviable on the goods imported vide Bill of Entry No. 8074273 dated 04-07-2020, under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest at appropriate rate as per the provisions of Section 28 AA of the Customs Act, 1962 and order to appropriate the total Customs duty already paid amounting to Rs. 6,79,862/-, (Rupees Six Lakhs Seventy Nine Thousand Eight Hundred and Sixty Two Only) against the total liability of Customs duty.

(ii) I hold that goods imported vide Bill of Entry No. 8074273 dated 04.07.2020, totally valued at Rs. 34,69,520/-, liable to confiscation under Section 111(m) of the Customs Act,1962. However, I allow the same to be redeemed on payment of redemption fine of Rs.3,00,000/- (Rupee Three Lakhs only) under Section 125 (1) of the Customs Act,1962, in lieu of Confiscation.

(iii) I impose penalty of Rs. 21,74,442/- (Rs. Twenty One Lakhs Seventy Four Thousand Four Hundred Forty Two Only) on the importer under section 114A of the Customs Act,1962. I refrain them for penalty under section 112(a) of the Customs Act, 1962 as per proviso to Section 114A of Customs Act, 1962, as discussed.

(iv) I impose penalty of Rs.1,00,000/- (Rs. One Lakhs only)on the importer under section 114AA of the Customs Act,1962.

(v) I order to invoke and enforce the bond for Rs. 35,00,000/- and Bank Guarantee for Rs. 18,00,000/- furnished by the importer at the time of provisional release of the seized goods, for recovery of the confirmed govt. dues.

30. The Show Cause Notice No. VIII/10-138/ICD-Khodiyar/O&A/HQ/2020-21 dated 19.01.2021 is disposed of in terms of the para above.

Signed by
Shree Ram Vishnoi
Date: 17-04-2025 16:41:05

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

DIN: 20250471MN000051085C
F. No. VIII/10-138/ICD-Khodiyar/O&A/HQ/2020-21 Date: **17.04.2025**

To,
M/s. J. K. ENTERPRISE,
NO. 8, 1ST FLOOR, ASHOK CHAMBER,
DEVJI-RATANSHI MARG, DANA BUNDER
MASJID-E-MAHARASHTRA,
MUMBAI – 400009
Copy for information and necessary action to -

1. The Principal Commissioner, Customs, Ahmedabad (attn. RRA Section)
2. The Deputy Commissioner, Customs, ICD Khodiyar, Gandhinagar.
3. The Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate.
4. Guard File