

	<p style="text-align: center;">सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</p> <p style="text-align: center;"><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b></p> <p style="text-align: center;"><b>CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT</b></p> <p style="text-align: center;"><u>Phone No.02838-271165/66/67/68</u> <u>FAX.No.02838-271169/62,</u> <u>Email-adj-mundra@gov.in</u></p>	
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<b>A. File No.</b>	:	<b>GEN/ADJ/ADC/390/2025-Adjn-O/o Pr. Commr- Cus-Mundra</b>
<b>B. Passed by</b>	:	Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>C. Noticee(s) / Party / Importer</b>	:	<b>M/s. Vinayak Impex (IEC No. BATPS4800C)</b>
<b>D. DIN</b>	:	20250271MO0000555B82
<b>E. SCN Date</b>	:	10.02.2025

**SHOW CAUSE NOTICE UNDER**  
**(UNDER SECTION 124 OF THE CUSTOMS ACT, 1962)**

**M/s. Vinayak Impex (IEC No. BATPS4800C)** having its registered address at Radha Residency, Phase 4A, 303 Tata Power, Deshmukh Homes, Kalyan, Thane – 421 203 (hereinafter referred to as 'the importer') had filed bill of entry for SEZ import Z type (warehouse), declaring the goods as '*Display Panel for Computer LCD 17", 22", 23.6", 24"* at Mundra SEZ (INAJM6) under CTH 85299090. The said Z type bills of entry (warehouse) was filed by the warehousing unit M/s. Holistic Global Corporation, Adani Port & SEZ Ltd, Mundra on behalf of the importer. Further, for the clearance of said goods the bill of entry for DTA clearance T type (home consumption) was filed by M/s. Holistic Global Corporation, Adani Port & SEZ Ltd, Mundra on behalf of the importer. Details are as under:

**TABLE – I**

Sl. No.	Bill of Entry No & Date (Z Type/ Warehouse Bill of Entry)	Bill of Entry No. & Date (T Type/ DTA sale/ Bill of Entry)	Container No.	Assessable Value declared in Bill of Entry in Rs.	Quantity declared in Bill of Entry in Pcs
1.	4644740 dated 22.07.2024	4778192 dated 30.07.2024	YMLU8378979	11,99,765/-	6340
<b>Total</b>				<b>11,99,765/-</b>	<b>6340</b>

**2.** Intelligence developed indicated the possible mis-declaration and/or concealment with an intention to clear the restricted / prohibited goods.

**3. Details of Examination: -**

**3.1.** Following the intelligence, the consignments imported vide Bills of Entry mentioned in Table-1 (**RUD-1**) were put on hold and examined under Panchnama dated 02.08.2024 (**RUD-2**) drawn at M/s. Holistic Global Corporation, Plot No. 3, Block-D, Section 12 N, FTWZ Zone in east of Steinweg

plot, Adani Port & SEZ Ltd., Taluka Mundra, District-Kutch, Gujarat 370 421 in the presence of two independent panchas and Shri Rahul Gupta (Aadhar No. 360204283746), authorised representative of M/s. Holistic Global Corporation as well as the importer M/s. Vinayak Impex, Thane, Mumbai. Shri Rahul Gupta submitted the authority letter received from M/s. Holistic Global Corporation & M/s. Vinayak Impex, Mumbai (**RUD-3**).

**3.2.** During the examination of the goods imported vide Bill of entry No. 4644740 dated 30.07.2024 (Container No.YMLU8378979), it appeared that some display panels were thick and some were thin. It appeared that some display panels were LCD and some display units were LED while the item description in the Bill of Entry No 4644740 dated 30.07.2024 was declared as "Display Panel for Computer LCD". Further, the number of pieces of display panels was inventorized and total number of 12548 display panels were found in 20 pallets. However number of pieces of display unit declared in Bill of entry No. 4644740 dated 30.07.2024 was 6340. Thus, total 6208 display panels were found excess in quantity.

#### **4. Inspection as well as samples collection by empanelled Chartered Engineer-**

Whereas, during the course of examination, it was not ascertainable whether the imported goods is LCD or LED, therefore, upon request, Shri Bhasker G Bhatt, empaneled Chartered Engineer, Mundra inspected the goods imported vide aforesaid Bills of Entry mentioned in Table-1 and collected the samples under Panchnama dated 10.08.2024 (**RUD-4**) in presence of independent panchas and Shri Rahul Gupta (Aadhar No. 360204283746), who handled Customs related works of M/s. Holistic Global Corporation, APSEZ, Mundra and was an Authorised representative of M/s. Holistic Global Corporation, APSEZ, Mundra. He collected 11 samples randomly of Display panels in all sizes.

#### **5. Inspection and Valuation done by the Customs Empanelled Chartered Engineer and govt. approved Valuer:-**

**5.1.** M/s. G. G. Bhatt & Co., Ahmedabad, customs empaneled Chartered engineer & govt. approved Valuer submitted his report vide ref no. BB/H-10/24/VI dated 12.08.2024 (**RUD-5**) along with his observation and opinion in r/o goods imported vide bills of Entry mentioned in Table-1.

#### **5.2. As per the report:**

*The Panel were of 17" and 20". Both panels were showing stains of stickers of previous usage. Communicating cable was cut or not available. There were camouflaged black stickers affixed on the old manufacturer's stickers. There were stains of cable pasting in all 11 samples. Both samples were verified for the type of the panels where it was found that the panels were affixed with the sticker conveying it as LCD Panel with Fluorescent lamp containing mercury needs to be handle as per local regulation. The sticker of original manufacturer CHIMEI INNOLUX, in one of the 20" panel pasted with the sticker of OBOE ECO RoHS Compliant NKG was camouflaged, the old sticker of chime Innolux it was verified from open source over internet and found that the TFT LCD panel was manufactured by CHIMEI INNOLUX. The serial number was also differing. Number of LCD/ LED Panels declared in the invoice was lesser than the actual panels received by 20 Pallets. The panel was further inspected by opening it was*

found that it was carrying blackened burnt marks on both ends of Fluorescent lamp kept inside the LCD panel, which shows that the LCD panel was use earlier (old & used). The frame of the panels was also showing stains / scratches of previous usage. The rates declared were cross checked by market inquiry as well as explored from the public domain of made in china make Display panels for computer, lowest rate with bulk discount was considered for the rate of new which was depreciated as per the circular 07/2020 for olds and used for the calculation of the depreciation; that the rates on public domain convey that the rates are common for the sizes 17", 18.5", 19", 19.5", 20", 20.1", 21.5", 22", 23", 23.6", 23.8" & 24" recorded during panchnama as on 02.08.2024; that rates of LED panels are higher to LCD panels but he has considered same for LED and LCD panels.

**5.3. Opinion:** The consignment of the

- Received cargo by 20 pallets is of old and used refurbished Display panels for computer LCD and there are LED panels also received; 11 samples were drawn out of which two were inspected in detail.
- The cargo of the imported LCD/LED panels declared qty. is lesser than the actual received. 12548 panels
- The original manufacturer's printed stickers with the bar code were camouflaged by black or white coloured stickers with miss leading serial number and bar code.
- The stains present upon the surface / frame proves that the panels are old and used.
- The communicating cables were either cut or removed from the panels.
- Stains of previously pasted stickers were also legible.

**5.4.** He further submitted that the rates are considered after appropriating depreciation as per the applicable HS code 85287390 and in the lieu of YOM it is considered highest for 70% for every types of panel. As per the available data of the public domain irrespective of type and size, it is noticed that rate per piece after bulk discount as FOB INR 1709.63 per panel which is considered for this consignment which is US\$ 20.36 hence depreciated rate is US \$ 6.11.

**5.5.** The estimated depreciated FOB value of the old and used Display panels for computer LCD for the 12548 pieces as US \$ 76652.34 Say US \$ 76650. In words Us Dollars: Seventy-Six Thousand Six Hundred Fifty Only. However as per exchange rate of Bills of Entry, the Total FOB value of 12548 pieces becomes Rs. **64,80,758/-.**

**6.** Whereas, as per the report submitted by M/s. B. G. Bhatt & Co., customs empaneled Chartered Engineer & Govt. approved Valuer, the goods imported vide Bills of Entry mentioned in Table-1, total no. of 12548 Display panels was seized vide Seizure Memo F. No. DRI/JRU/INQ-06/2024-25 dated 13.08.2024 under Section 110 of the Customs Act, 1962 with a reasonable belief that the said goods were liable for confiscation under the provisions of the Customs Act, 1962 (**RUD-6**) and handed over to Shri Amol Patil, authorised representative of M/s. Holistic Global Corporation, APSEZ Mundra vide SUPRATNAMA dated 13.08.2024 (**RUD-7**) to keep the said goods in safe custody.

**7. Statements recorded during Investigation:**

**7.1.** Statement of Shri Tushar Bhanji Bhanushali, Marketing & Sales Representative (**RUD -8**) was recorded under Section 108 of the Customs Act, 1962 on 07.08.2024, wherein, he, inter-alia stated that he was not aware about the import of Display panels or Computer LCD imported under Bill of Entry No.4644740 dated 22.07.2024 and that the son of Smt. Minudevi Sorathia, Proprietor of M/s.Vinayak Impex, Thane was looking after all the work related to Customs.

**7.2.** Statement of Shri Vishal Prakash Patil, Marketing & Sales Representative of M/s. Vinayak Impex (Aadhar No. 674098190785) (**RUD-9**) was recorded under Section 108 of the Customs Act, 1962 on 21.08.2024, wherein, he, inter-alia stated that -

- He is Marketing & Sales Representative of M/s. Vinayak Impex, Thane. He looks after the work related to Customs in M/s. Vinayak Impex and Proprietor, has authorised to him to appear to tender his statement.
- He confirmed that he also look after stock management, transport, delivery of goods as well as marketing and sales of M/s. Vinayak Impex.
- He had full knowledge regarding the imported goods being imported vide the above said Bill of Entry and confirmed that above said Bill of Entry is filed by M/s. Holistic Global Corporation, AP, SEZ, Mundra for goods imported by M/s. Vinayak Impex.
- He has gone through the Panchnama dated 02.08.2024 and agree with the contents of the Panchnama. On being specifically asked about the excess quantity found, he confirmed that the goods were actually loaded in excess from the loading port.
- He further submitted that as regard the description mentioned in the Bills of Entries, the said description was declared as Display panels for LCD, was unintentional as per his knowledge, there is no difference in the duty structure of LCD or LED display panels.
- M/s. White Feathers FZCO, UAE is procuring the goods from various countries and supplying to them.
- He has gone through the Chartered Engineer's Certificate dated 12.08.2024, he agreed with the Chartered Engineer's opinion but he was not aware about the old and used refurbished condition of the display panels.
- He stated that due to cut throat competition, generally booking of any order is being done on mobile phones verbally and thereafter the goods are loaded from a foreign territory by the supplier. He did not have any purchase order for the above said consignment.
- He gone through the Import policy for second hand goods and he is aware about the policy, but not aware about the condition of the display panels, so do not obtain the authorisation, as per the Chartered Engineer opinion, he agree to follow the rules and regulation under Customs Act, 1962 as well as Foreign Trade Policy2023 in respect of Old and used imported goods.

**7.3.** Statement of Shri Kanhaiya Jagdish Kasera, Partner of M/s. Holistic Global Corporation, (**RUD-10**) was recorded under Section 108 of the Customs Act, 1962 on 26.12.2024, wherein, he, inter-alia stated that -

- He is a Partner of M/s. Holistic Global Corporation, APSEZ Mundra. The name of other partner is Shri Lokesh Jagdish Kasera.
- He confirmed that the Bill of Entry No. 4644740 dated 22.07.2024 was filed by his office located at Mumbai on behalf of M/s. Vinayak Impex, Thane.

- He had full knowledge regarding the imported goods being imported vide the said bill of entry as per declaration made in the bill of entry.
- On being asked about the procedure adopted for filing of in bond bill of entry and warehousing of the goods he stated that after filing IGM inward they file in-bond bill of entry for SEZ and they submit these documents to the jurisdictional customs authority and they get the permission for transhipment from the custom department. There after they receive container from the terminal. For warehousing of the goods the custom officer verify the seal and they allow the de-stuffing of the goods in their warehouse.
- On being asked whether he verified / matched the quantity, description, quantity etc. of the goods imported vide bill of entry no. 4644740 dated 22.07.2024 with the documents submitted such as Invoice, Packing List, Bill of lading etc., he stated that he has not verified / matched the quantity, description, quality etc. of the goods imported vide bill of entry with the submitted documents.
- On being asked whether he noticed any excess quantity of Display panel for computer LCD and quality Old and used refurbished condition of the Display Panel, he stated that due to shortage of space and weather condition at their warehouse they had shifted the goods temporarily in another empty container after de-stuffing the container for safe storage of the imported goods. So, he was not fully aware about the excess quantity and old and used refurbished condition of imported goods.
- As per his knowledge, the items imported were only LCD display panels and he did not have any knowledge about Display panel whether those were LED or otherwise.
- As per his knowledge, he had no idea about the huge quantity of undeclared display panels found during examination in the said container of. He was not made aware of the said fact.
- His office made check list which they sent to importer for confirmation about description, classification and claiming exemption under a particular notification. The decision is then conveyed to them by the importer and thereafter their Mumbai office takes necessary decision for filing of Bills of Entry.
- As per his knowledge and belief, the LCD display panels are rightly classified under CTH 85299090.
- He does not have much knowledge about the valuation aspect of the display panels of LCD but as per the routine group practice of assessment of said items imported at various ports throughout India, the price of display units is around 02 to 03 dollars.
- On being shown the Chartered Engineer Certificate dated 12.08.2024 that the display panels are old and used refurbished, he agreed with the chartered engineer opinion but shown his unawareness about old and used, refurbished condition of the display panels.
- On being shown the Import Policy for Second Hand Goods under Current Foreign Trade Policy, old and refurbished display panels are restricted and authorisation is required for import of this type of goods, he stated that he is aware about the policy, but, he was not aware about the condition of the display panels, so he did not obtain the authorisation. Further as per the Chartered Engineers opinion, he agreed to follow the rules and regulation under Customs Act, 1962 as well as Foreign Trade Policy 2023 in respect of Old and used imported goods.

## **8. Finding of the Investigation:**

### **8.1. Mis-declaration of goods:**

The importer declared in the bills of entry as "Display Panel for Computer LCD". But, during examination the goods were found to be old & used refurbished display panels for computer LCD / LED panels. Further, the original manufacturer's printed stickers with the bar code were camouflaged by black or white coloured stickers with misleading the serial number and bar code and communicating cables were either cut or removed from the panels. In the statement dated 21.08.2024 recorded under Section 108 of the Customs Act, 1962, the authorised representative of importer has stated that the said description was declared as Display panels for LCD, was unintentional. As per his knowledge, there was no difference in the duty structure of LCD or LED display panels which meant he was aware that both types of display panels i.e., LCD and LED are present in imported consignment. Moreover, in the Bill of Lading No. JCL23985JEAMUN dated 15.07.2024 attached in Bill of Entry no. 4644740 dated 22.07.2024 (Z type), LED display panels was mentioned also the HS Code mentioned in BL is 85291099. Hence, the description as well as HS Code mentioned in the BL is differ from the description and HS Code declared in Bill of Entry. In addition to above, although the importer denied that he was aware about the fact that display panels were old and refurbished, but the value of display panels declared in the bills of entry mentioned in Table-1 above did not justify it. The price of one display panel declared in invoices was 2\$ to 3\$ whereas, as per Chartered Engineer Certificates, price of new and fresh display panel is 20.36\$ and therefore it appears that the importer intentionally mis-declared the imported goods in Bills of Entry.

### **8.2. Excess quantity of Goods:**

Total number of Display Panels were declared in all the Bill of Entry mentioned in Table-1 was 6340, whereas, during examination, total 12548 number of Display Panels were found. Therefore, total 6208 number of Display panels were found excess during examination proceedings. The authorised representative of the importer in his statement recorded under Section 108 of the Customs Act, 1962 categorically admit that he was well aware about the excess quantity of display panels loaded at loading port.

### **8.4. Valuation:**

The importer presented the warehouse bill of entry, wherein the total assessable value of the goods were declared as Rs.11,99,765/- Whereas, M/s. B. G. Bhatt & Co., customs empaneled Chartered Engineer & Govt. approved Valuer, in his report described how he came to the final valuation of the imported goods, total value of the old and used Display panels is Rs.64,80,758/-.

**8.4.1.** As per the report that the rates declared were cross checked by market inquiry as well as explored from the public domain of made in China make Display panels for computer, lowest rate with bulk discount was considered for the rate of new which was depreciated as per the Circular No. 07/2020 for old and used for the calculation of the depreciation. Further in his report, he had submitted that the rates on public domain convey that the rates are common for the sizes 17", 18.5", 19", 19.5", 20", 20.1", 21.5"22", 23",23.6", 23.8" & 24" recorded during panchnama as on 2-Aug-2024 and that the rates of LED panels are higher to LCD panels but he has considered same for LCD &

LED panels. The estimated depreciated FOB value of the old and used Display panels for computer LCD for the 12548 pieces as US \$ 76652.34 Say US \$ 76650 (US Dollars Seventy-Six Thousand Six Hundred Fifty Only). However as per exchange rate of Bills of Entry, the Total FOB value of 12548 pieces becomes **Rs.64,82,758/-**.

**8.4.2.** Whereas, the declared value of the imported goods covered under said warehouse bill of entry as well as in corresponding bills of entry filed for DTA clearance as given in Table-1 above, was Rs.11,99,765/-. However, during the examination of the goods, the goods were found old and used. Thus, in order to ascertain the correct value, the inspection and current valuation of the same was done through empaneled Chartered Engineer and Govt. approved valuer. The report suggested the estimated value of the consignment as Rs.64,82,758/-. Thus, there appears gross mis-declaration of the consignments with respect to the value thereof.

**8.4.3.** Whereas, Board's circular No. 07/2020-Customs dated 05.02.2020 (issued vide F. No. 467/34/2066- Cus.V) on "Valuation of Second Hand machinery" stipulates the following:

*"6. To sum up the following guidelines shall be followed:*

*(a) All imports of second hand machinery/used capital goods shall be ordinarily accompanied by an inspection/appraisement report issued by an overseas Chartered Engineer or equivalent, prepared upon examination of the goods at the place of sale.*

*(b) The report of the overseas chartered engineer or equivalent should be as per the Form A annexed to this circular.*

*(c) In the event of the importer failing to procure an overseas report of inspection/appraisement of the goods, he may have the goods inspected by any one of the Chartered Engineers empanelled locally by the respective Custom Houses.*

*(d) In cases where the report is to be prepared by the Chartered Engineers empanelled by Custom Houses, the same shall be in the Form B annexed to this circular.*

*(e) The value declared by the importer shall be examined with respect to the report of the Chartered Engineer. Similarly, the declared value shall be examined with respect to the depreciated value of the goods determined in terms of the circular No. 493/124/86-Cus VI dated 19/11/1987 and dated 4/1/1988. If such comparison does not create any doubt regarding the declared value of the goods, the same may be appraised under rule 3 of the Customs Valuation Rules, 2007. If there are significant differences arising from such comparison, Rule 12 of the Customs Valuation Rules, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and condition of the goods, determine whether the declared transaction value conforms to Rule 3 of Customs Valuation Rules, 2007. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9.*

**8.4.4.** Therefore, in view of above, it appears that the value declared before Customs by the importer for clearance of the aforesaid imported goods cannot be considered as representing true transaction value under Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) and the same is liable for rejection under Rule 12 of the said rules. As per sub explanation (1) of explanation (1) of Rule 12,

*"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".*

**8.4.5. APPLICATION OF RULE 4, 5 OF CVR. 2007 (TRANSACTION VALUE OF THE IDENTICAL/ SIMILAR GOODS):**

Efforts were made to find out the correct assessable value of the imported goods. As the imported goods were found to have been mis-declared and were found as old and used, it was not possible to find identical or similar goods, which were old and used and of same description, brand, make, model, quantity and Country of Origin. As the import data extracted with respect to contemporaneous imports was general in nature and contemporaneous data for imports of identical or similar old and used goods was not available, therefore, the value could not be determined under Rules 4 or Rule 5 of CVR, 2007.

**8.4.6. APPLICATION OF RULE 6 OF CUSTOMS VALUATION RULES, 2007:**

***Rule 6 of the CVR, 2007 is reproduced below:***

*"If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under the rule, under rule 8."*

As per Rule 6 ibid, if the value cannot be determined under Rules 3, 4 and 5, same shall be under the provisions of Rule 7 or when same cannot be determined under that rule then under Rule 8.

**8.4.7. DEDUCTIVE VALUE (RULE 7) OF CVR, 2007:**

***Rule 7 of the CVR, 2007 is reproduced below:***

*(i) Subject to the provisions of rule 3, if the goods being valued or identical or similar the declaration goods are sold in India, in the condition as imported at or about the time at which for determination based on of value is presented, the value of imported goods shall be are sold the unit price at which the imported goods or identical or similar imported goods in the greatest aggregate India, subject quantity to persons who are not related to the sellers in to the following deductions -*

*(i) Either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sale In India of imported goods of the same class or kind;*

(ii) *The usual cost of transport and insurance and associated cost incurred with in India*

(iii) *the customs duties and other taxes payable in India by reason of importation or sale of the goods.*

(2) *If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.*

(3) (a) *If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India*

(b) *In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).*

**8.4.8.** As the imported goods were found to have been mis-declared and were found as old & used in nature, in different variety, description, specification, model, brand, make, sizes quality and having varying life span, the sale price of identical or similar goods was not available in the domestic market. Therefore, determination of transaction value under Rule 7 of CVR, 2007 was not possible.

**8.4.9. COMPUTED VALUE (RULE 8) OF CVR, 2007:**

*Rule 8 of the Customs Valuation Rules, 2007 is reproduced below:*

*“Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-*

*(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;*

*(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;*

*(c) the cost or value of all other expenses under sub-rule (2) of rule 10.*

**8.4.10.** As substantial data related to the cost or value of materials and fabrication or other processing employed in producing the imported goods is required to compute the value under Rule 8 is also not available and as the impugned goods are not brand new but are an assortment of old & used (second hand) goods of varied description, variety, specification, they are not comparable to any goods made by manufacturer for export to India. Therefore, valuation of the impugned goods could not be ascertained under Rule 8 of CVR, 2007.

#### **8.4.11. RESIDUAL METHOD (RULE 9) OF CVR, 2007:-**

Rule 9 of the Customs Valuation Rules, 2007 is reproduced below:

*"(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India; Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale."*

**8.4.12.** As, the value of imported goods cannot be determined under the provisions of Rules 3, 4, 5, 7 and 8 of Customs Valuation Rules, 2007, therefore, in the present case the transaction value has been determined under Rule 9 of Customs Valuation Rules, 2007.

**8.4.13.** The imported goods were examined by the customs empaneled Chartered Engineer & Govt. approved Valuer in order to arrive at the correct value of goods. Therefore, on the basis of their reports with respect to the said import consignments and in terms of Rule 9 of the Customs Valuation Rules, 2007, valuation of the goods has been done. Accordingly, calculation table of value calculated on the basis of residual method of the valuation as per Rule 9 of Customs Valuation Rules, 2007 is as mentioned in table below:

**Table-II**

Sl. No.	Bill of Entry No & Date (Z Type)	Assessable Value declared in Bill of Entry (in Rs.)	Quantity actually found in Bill of Entry in pcs	Market value as per Chartered Engineer Report in Rs. per piece 6.11\$
1.	4644740 dated 22.07.2024	11,99,765/-	12548	Rs. 64,82,758/-

#### **8.5. Restriction on import of Second Hand Goods other than Capital Goods:**

**8.5.1.** The policy relating to Import / Exports is given in Chapter 2 of the Foreign Trade policy 2015-2020 and as per Para 2.01 of the said Foreign Trade Policy 2015-2020, the Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports.

**8.5.2.** In terms of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, as amended by the Foreign Trade (Development & Regulation) Amendment Act, 2010;

**8.5.3.** Powers to make provisions relating to imports and exports -

- (1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

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

**8.5.4.** . In terms of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, as amended in 2010, no export or import shall be made by a person except in accordance with the provisions of this Act, the rules and orders made there under and the Foreign Trade Policy for the time being in force.

**8.5.5.** Section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992, as amended by the Foreign Trade (Development & Regulation) Amendment Act, 2010 states that where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made there under or the export and import policy, he shall be liable to a penalty not less than ten thousand rupees or five times the value of the goods in respect of which any contravention is made.

**8.5.6.** As per Rule 14 (1) of the Foreign Trade (Regulation) Rules, 1993, no person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

**8.5.7.** As per Rule 14 (2) of the Foreign Trade (Regulation) Rules, 1993, No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

**8.5.8.** As per Para No. 2.31 of the Foreign Trade Policy, 2015-20:

S. No	Categories of Second Hand Goods	Import Policy	Conditions, if any
1	Second Hand Capital Goods		
(a)	i. Desktop Computers, ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/ Laptops. iii. Air conditioners iv. Diesel generating sets	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration ) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration ) Order, 2012 as amended from time to time. (ii) Import of unregistered/noncompliant notified products as in CRO, 2012 as amended from time to time is "Prohibited".
(c)	Refurbished / re-conditioned spares of	Free	Subject to production of Chartered Engineer certificate

	Capital Goods		to the effect that such spares have at least 80% residual life of original spare.
(d)	All other second hand capital goods {other than (a) (b) & (c) above}	Free	
<b>II</b>	<b>Second Hand Goods other than capital goods</b>	<b>Restricted</b>	<b>Importable against an authorization.</b>
III	Second Hand Goods imported for the purpose of repair / refurbishing / reconditioning or re-engineering	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

**8.5.9.** The Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 The Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 were notified by the Ministry of Environment, Forest and Climate Change vide GSR No. 395(E) dated 04<sup>th</sup> April 2016. Hazardous Waste Management Rules are notified to ensure safe handling, generation, processing, treatment, package, storage, transportation, use reprocessing, collection, conversion, and offering for sale, destruction and disposal of Hazardous Waste. These Rules came into effect in the year 1989 and have been amended later in the years 2000, 2003 and with final notification of the Hazardous Waste (Management, Handling and Trans boundary Movement) Rules, 2008 in supersession of former notification. The Rules lay down corresponding duties of various authorities such as MoEF, CPCB, State/UT Govts., SPCBs/PCCs, DGFT, Port Authority and Custom Authority while State Pollution Control Boards/ Pollution Control Committees have been designated with wider responsibilities touching across almost every aspect of Hazardous wastes generation, handing and their disposal. The relevant provisions in so far as they relate to the present case are discussed as follows:

*Rule 3. Definitions. - (1) In these rules, unless the context otherwise requires, -*

3. "authorisation" means permission for generation, handling, collection, reception, treatment, transport, storage, reuse, recycling, recovery, pre-processing, utilisation including co-processing and disposal of hazardous wastes granted under sub-rule (2) of rule 6;

4. "Basel Convention" means the United Nations Environment Programme Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal;

17. "hazardous waste" means any waste which by reason of characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes or substances, and shall include - (i) waste specified under column

(3) of Schedule I; (ii) waste having equal to or more than the concentration limits specified for the constituents in class A and class B of Schedule II or any of the characteristics as specified in class C of Schedule II; and (iii) wastes specified in Part A of Schedule III in respect of import or export of such wastes or the wastes not specified in Part A but exhibit hazardous characteristics specified in Part C of Schedule III;

18. "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

19. "importer" mean any person or occupier who imports hazardous or other waste;

**23. "other wastes" means wastes specified in Part B and Part D of Schedule III for import or export and includes all such waste generated indigenously within the country;**

32. "transboundary movement" means any movement of hazardous or other wastes from an area under the jurisdiction of one country to or through an area under the jurisdiction of another country or to or through an area not under the jurisdiction of any country, provided that at least two countries are involved in the movement;

### **CHAPTER III IMPORT AND EXPORT OF HAZARDOUS AND OTHERWASTES**

**11. Import and export (transboundary movement) of hazardous and other wastes.** – The Ministry of Environment, Forest and Climate Change shall be the nodal Ministry to deal with the transboundary movement of the hazardous and other wastes in accordance with the provisions of these rules.

**12. Strategy for Import and export of hazardous and other wastes.-**

**(1) No import of the hazardous and other wastes from any country to India for disposal shall be permitted.**

**(2) The import of hazardous and other wastes from any country shall be permitted only for recycling, recovery, reuse and utilisation including co-processing.**

**(3) The import of hazardous waste in Part A of Schedule III may be allowed to actual users with the prior informed consent of the exporting country and shall require the permission of the Ministry of Environment, Forest and Climate Change.**

**(4) The import of other wastes in Part B of Schedule III may be allowed to actual users with the permission of the Ministry of Environment, Forest and Climate Change.**

**(5) The import of other wastes in Part D of Schedule III will be allowed as per procedure given in rule 13 and as per the note below the said Schedule.**

(6) No import of the hazardous and other wastes specified in Schedule VI shall be permitted.

.....

### **13. Procedure for import of hazardous and other wastes.-**

(1) Actual users intending to import or transit for transboundary movement of hazardous and other wastes specified in Part A and Part B of Schedule "I shall apply in Form 5 along with the documents listed therein, to the Ministry of Environment, Forest and Climate Change for the proposed import together with the prior informed consent of the exporting country in respect of Part A of Schedule III waste, and shall send a copy of the application, simultaneously, to the concerned State Pollution Control Board for information and the acknowledgement in this respect from the concerned State Pollution Control Board shall be submitted to the Ministry of Environment, Forest and Climate Change along with the application.

.....

(3) For Part B of Schedule III, in case of import of any used electrical and electronic assemblies or spares or part or component or consumables as listed under Schedule I of the E-Waste (Management and Handling) Rules, 2011, as amended from time to time, the importer need to obtain extended producer responsibility-authorisation as producer under the said E-Waste (Management and Handling) Rules, 2011.

(4) Prior to clearing of consignment of wastes listed in Part D of Schedule III, the Custom authorities shall verify the documents as given in column (3) of Schedule VIII.

(5) On receipt of the complete application with respect to Part A and Part B of Schedule III, the Ministry of Environment, Forest and Climate Change shall examine the application considering the comments and observations, if any, received from the State Pollution Control Boards, and may grant the permission for import within a period of sixty days subject to the condition that the importer has - (i) the environmentally sound facilities; (ii) adequate arrangements for treatment and disposal of wastes generated; (iii) a valid authorisation and consents from the State Pollution Control Board; (iv) prior informed consent from the exporting country in case of Part A of Schedule III wastes.

(6) The Ministry of Environment, Forest and Climate Change shall forward a copy of the permission to the concerned Port and Customs authorities, Central Pollution Control Board and the concerned State Pollution Control Board for ensuring compliance with respect to their respective functions given in Schedule VII. 10

(7) The importer of the hazardous and other wastes shall maintain records of the hazardous and other waste imported by him in Form 3 and the record so maintained shall be made available for inspection.

(8) The importer of the hazardous and other wastes shall file an annual return in Form 4 to the State Pollution Control Board on or before the 30th day of June following the financial year to which that return relates.

.....

**8.5.10. Basel No. B1110 of Part D of Schedule-III of Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016;**

Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct reuse and not for recycling or final disposal

- Used electrical and electronic assemblies imported for repair and to be re-exported back after repair within one year of import \*\*\*
- Used electrical and electronic assemblies imported for rental purpose and re-exported back within one year of import \*\*\*
- Used electrical and electronic assemblies exported for repair and to be reimport after repair - Used electrical and electronic assemblies imported for testing, research and development, project work purposes and to be re-exported back within a period of three years from the date of import \*\*\*
- Spares imported for warranty replacements provided equal number of defective or nonfunctional parts are exported back within one year of the import \*\*\*
- Used electrical and electronic assemblies imported by Ministry of Defence, Department of Space and Department of Atomic Energy \*\*\*
- Used electrical and electronic assemblies (not in bulk, quantity less than or equal to three) imported by the individuals for their personal uses
- Used Laptop, Personal Computers, Mobile, Tablet up to 01 number each imported by organisations in a year - Used electrical and electronic assemblies owned by individuals and imported on transfer of residence
- Used multifunction print and copying machines (MFDs) \*\*\* -
- Used electrical and electronic assemblies imported by airlines for aircraft maintenance and remaining either on board or under the custodianship of the respective airlines warehouses located on the airside of the custom bonded areas

**8.5.11. Customs Circular No.-27/2011 dated 04.07.2011**

**Para 3:** The administrative Ministry viz. Ministry of Environment and Forests has been consulted and they have confirmed that items at A1180 of the said Schedule III relating to waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries etc. require Prior informed Consent. It is also confirmed that items at B1110 of the said Schedule III can be imported with permission from Ministry of Environment and Forests. This entry

includes electrical and electronic assemblies (including printed circuit board electronic components and wires) destined for direct re-use and not for recycling or final disposal. The Ministry of Environment and Forests has also confirmed that imports of second hand computers would require the permission of that Ministry.

**Para 4:** In view of the above, the Board desires that the field formations should carefully and strictly implement the provisions of Hazardous Waste (Management, Handling and Transboundary) Rules, 2008. In particular, it should be noted that all imported goods falling within the purview of entry B 1110 of Part B of Schedule III of the said Rules, indicating second hand computers, would require the permission of the Ministry of Environment and Forests for import into India. It merits mention that the field formations should also refer to Rule 17 of the said Rules that treats contravening imports as illegal traffic requiring the importer to re-export the wastes at his cost within 90 days from the date of arrival. We must ensure that India does not become a destination for dumping junk electronic products.

**8.5.12.** As illustrated above, it appears that the goods imported vide Bills of Entry as mentioned in Table-1 are old, used and refurbished and were imported in contravention of the Provision Trade of Rule 11 of the Foreign Rules, 1993. As per Para 2.31 of Import Policy for Second Hand Goods in Chapter 2-General Provisions Regarding Imports and Exports of Foreign Trade Policy 2023, import of second hand goods other than capital goods is restricted and is allowed only against authorisation.

**8.5.13.** As the Importer could not produce any such authorisation issued by the competent authority, it appears that the imported goods are prohibited goods and in contravention of the provision of Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992. Furthermore, these old and used LED panels have been imported in violation of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 read with Customs Circular No- 27/2011 dated 04.07.2011 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962.

## **9. Relevant legal provisions of the Customs Act, 1962:**

**SECTION 2(26):** "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer;

**Section 2 (33)** "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

**SECTION 2(39):** "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

**Section 46: Entry of goods on importation. -**

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting <sup>1</sup> [electronically] <sup>2</sup> [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing <sup>3</sup> [in such form and manner as may be prescribed] :

(2).....

(3).....

(4) The importer while presenting a bill of entry shall <sup>12</sup> [\* \* \*] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, <sup>13</sup> [and such other documents relating to the imported goods as may be prescribed].

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

- (a) The accuracy and completeness of the information given therein;
- (b) The authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

**Section 111: Confiscation of improperly imported goods, etc. -**

The following goods brought from a place outside India shall be liable to confiscation: -

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

(l) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(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;]

**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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(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 :

**Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

#### **Section 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.]

#### **Section 117: Penalties for contravention, etc., not expressly mentioned**

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding [four lakh rupees].

#### **Section 119: Confiscation of goods used for concealing smuggled goods:**

Any goods used for concealing smuggled goods shall also be liable to confiscation.

**Section 124: Issue of show cause notice before confiscation of goods, etc.**

*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—*

*(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

*(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

*(c) is given a reasonable opportunity of being heard in the matter:*

*Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

**10.** Whereas, the importer had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962, in all their import declarations. Further, in terms of Section 46(4A) the importer had subscribed to declare the accuracy and completeness of information, authenticity and validity of any document support in it and compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it was the importer who must doubly ensure that he declared the correct classification / CTH of the imported goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the importer to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

**11.** In view of the discussion supra, it is evident that the importer declared in the bills of entry as "Display Panel for Computer LCD". But, during examination the goods were found to be old & used refurbished display panels

for computer LCD / LED panels. Further, the original manufacturer's printed stickers with the bar code were camouflaged by black or white coloured stickers with misleading the serial number and bar code and communicating cables were either cut or removed from the panels. In the statement dated 21.08.2024 recorded under Section 108 of the Customs Act, 1962, the authorised representative of importer has stated that the said description was declared as Display panels for LCD, was unintentional. As per his knowledge, there was no difference in the duty structure of LCD or LED display panels which meant he was aware that both types of display panels i.e., LCD and LED are present in imported consignment. Moreover, in the Bill of Lading No. JCL23985JEAMUN dated 15.07.2024 attached in Bill of Entry no. 4644740 dated 22.07.2024 (Z type), LED display panels was mentioned also the HS Code mentioned in BL is 85291099. Hence, the description as well as HS Code mentioned in the BL is differ from the description and HS Code declared in Bill of Entry. Therefore, it is evident that the importer was well aware about the imported goods in the aforesaid bill of entry, i.e. Display panels being old and refurbished and come under Restricted Category for Import into India and is importable against an authorization. Therefore, the importer did not declare the actual description of the goods in Bills of Entry. Although the importer denied that he was aware about the fact that display panels were old and refurbished, but the value of display panels declared in the bills of entry mentioned in Table-1 above did not justify it. The price of one display panel declared in invoices was 2\$ to 3\$, whereas, the price does not correspondence with new and fresh display panel. As per the Chartered Engineer & Govt. approved Valuer Certificate, considering the bulk discount and depreciation the price / value of one display panel is US\$20.36 and therefore it appears that the importer intentionally mis-declared the imported goods in Bills of Entry to clear the restricted goods. Further, total number of Display Panels were declared in all the aforesaid Bill of Entry was 6340, whereas, total number of Display Panels found during examination proceeding was 12548, therefore, total 6208 pcs of Display panels (almost double) were imported in excess. The authorised representative of importer in his statement recorded under Section 108 of the Customs Act, 1962 categorically admit that he was well aware about the excess quantity of display panels loaded at loading port. Thus, in view of above, the importer had misdeclared the actual description, value and other parameters of the imported goods at the time of importation by way of wilful and intentional suppression of these facts in the Bill of Entry as mentioned in Table -I, and thus appears to have cleared the restricted / prohibited goods. Furthermore, these old and used LED panels have been imported in violation of Sr. No. 2.31 of the Foreign Trade Policy, 2023 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962. Furthermore, these old and used LED panels have been imported in violation of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 read with Customs Circular No- 27/2011 dated 04.07.2011 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962. By the act of mis-declaration and undervaluation of the subject goods, and on account of violations and restrictions imposed on import of such goods, the said goods having a total re-determined assessable value of Rs.64,82,758/- are liable to confiscation under Section 111(d), 111(l), Section 111(m) of the Customs Act, 1962. It further appears that the said goods are to be construed as 'smuggling' within the meaning of Section 2(33) of the said Act. By above acts of omission and commission, it appears that the importer were fully aware that the import of the said goods is restricted/prohibited. It appears that the importer have involved themselves in carrying, keeping, concealing and dealt with the offending goods in a manner which they knew or had reasons to believed were liable to confiscation under the Customs Act, 1962. In the above manner, the

importer have rendered themselves liable for penal action under the provisions of Sections 112 (a) & (b) of the Customs Act, 1962. Further, for his acts of making false declaration in the bill of entry and having knowingly involved himself in the smuggling of old and used LED panels, the importer also appears liable for penalty under Section 114AA and 117 of the Customs, Act, 1962.

**12.** Whereas, M/s. Holistic Global Corporation filed the Z-type (warehouse) and T-type (DTA clearance) Bills of Entry on behalf of the importer M/s. Vinayak Impex. Section 46 (4) of the Customs Act, 1962, specifies that, the importer while presenting a bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods. Further, Section 46 (4A) specify to declare the accuracy and completeness of information, authenticity and validity of any document support in it and compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. M/s. Holistic Global Corporation filed Z-type (warehouse) bill of entry and after customs procedure they de-stuffed and warehoused the goods in their warehouse. It appears that while de-stuffing and warehoused the goods, they became full aware about the actual description, quantity and value of the goods. Hence, M/s. Holistic Global Corporation was very much aware that the warehoused goods are restricted and excess in quantity. Even though while filing T-type (DTA clearance) bill of entry they deliberately mis-declared the goods, whereas, they were having sufficient/actual/present information about the description, quantity and value of the goods. Although Shri Kanhaiya Jagdish Kasera, Partner of M/s. Holistic Global Corporation in his statement recorded under Section 108 of the Customs Act, 1962 denied that he was aware about the huge quantity of undeclared old and used display panels, which appears to be totally false. In view of the same, it appears that M/s. Holistic Global Corporation involved themselves in carrying, keeping, concealing and dealt with the offending goods in a manner which they knew or had reasons to believed were liable to confiscation under the Customs Act, 1962. In the above manner, M/s. Holistic Global Corporation has rendered themselves liable for penal action under the provisions of Sections 112 (a) & (b) of the Customs Act, 1962. Further, for his acts of making false declaration in the bills of entry and having knowingly involved himself in the smuggling of old and used LED panels, M/s. Holistic Global Corporation also appears liable for penalty under Section 114AA and 117 of the Customs, Act, 1962.

**13.** Now therefore, the Importer, **M/s Vinayak Impex** is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra having office situated at office of the Pr. Commissioner of Customs, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 within 30 (thirty) days from the date of receipt of the notice, as to why:-

- (i) The goods imported vide the Bills of Entries mentioned in Table-I which were seized vide Seizure Memorandum dated 13.08.2024 should not be held liable for confiscation under Section 111 (d), 111 (l) & 111 (m) of Customs Act 1962.
- (ii) The value for the goods covered under Bills of Entry as mentioned in Table-01 imported by M/s Vinayak Impex, declared as Rs.11,99,765/- should not be rejected under Rule 12 of Customs Valuation Rules, 2007 and re-determined as Rs. 64,82,758/- under provisions of Rule 9 of Customs Valuation Rules, 2007.

(iii) Penalty should not be imposed on i.e. M/s. Vinayak Impex under Section 112 (a), 112(b), 114AA & 117 of the customs Act, 1962.

**14. M/s. Holistic Global Corporation**, are also hereby called upon to show cause to the Additional Commissioner of Customs, Custom House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:

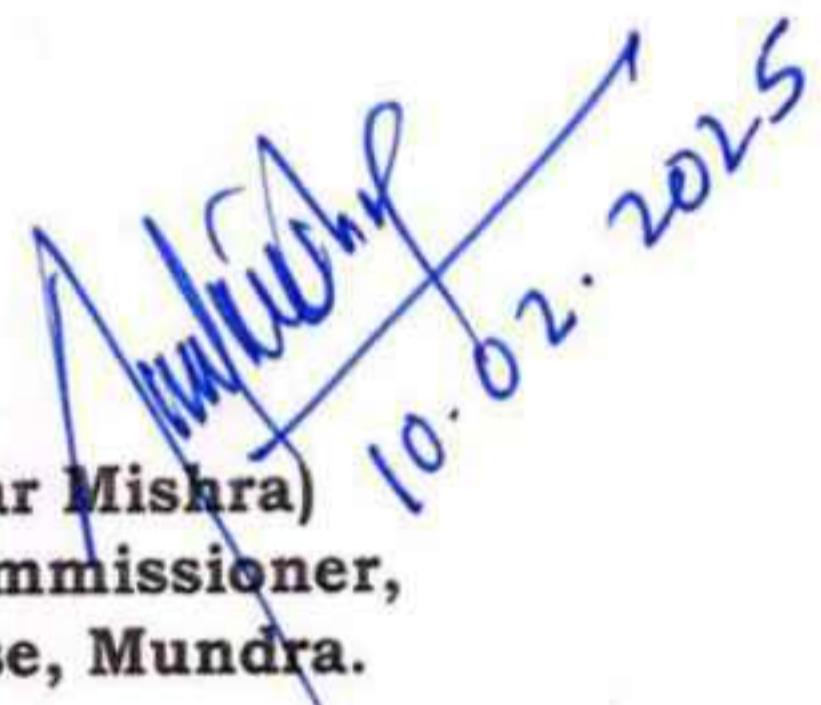
(i) Penalty should not be imposed on them under Section 112 (a), 112(b), 114AA & 117 of the customs Act, 1962.

**15.** The noticees are hereby required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They are further required to indicate in their written explanation as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written explanation, it will be presumed that they do not desire a personal hearing. If no cause is shown by them against the action proposed to be taken within 30 days of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case would be liable to be adjudicated on the basis of evidences on records.

**16.** This Show Cause Notice is issued without prejudice to any other actions that may be taken against the persons involved in the subject case, under the provisions of the Customs Act, 1962 or any other Allied Acts for the time being in force.

**17.** The relied upon documents are enclosed with this show cause notice. Copies of RUDs, if any, can also be collected from this office within 30 days of receipt of this notice.

Encl: – Annexure-I (List of RUDs)

  
(Amit Kumar Mishra)  
Additional Commissioner,  
Custom House, Mundra.

F. No. GEN/ADJ/ADC/390/2025-Adjn

DIN: 20250271MO0000555B82

To,

**1. M/s. Vinayak Impex (IEC No. BATPS4800C)**

Radha Residency, Phase 4A,  
303 Tata Power, Deshmukh Homes,  
Kalyan, Thane – 421 203

**2. M/s. Holistic Global Corporation,**

Plot No. 3, Block-D, Section 12 N,  
FTWZ Zone in east of Steinweg plot,  
Adani Port & SEZ Ltd., Taluka Mundra,  
District-Kutch, Gujarat 370 421

**Copy to:**

1. The Deputy Director, Directorate of Revenue Intelligence, Jamnagar
2. Guard File.