

<p style="text-align: center;"><b>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT&amp; SPL ECONOMIC ZONE, MUNDRA-370421</b></p>	
<b>A. File No.</b>	: CUS/ADJ/COMM/121/2022-Adjn -O/o Pr Commr-Cus-Mundra
<b>B. Order-in-Original No.</b>	: MUN-CUSTM-000-COM-07-23-24
<b>C. Passed by</b>	: Shri K. Engineer, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>D. Date of order and Date of issue</b>	: 07.08.2023 07.08.2023
<b>E. SCN No. &amp; Date</b>	: Gen/Adj/ADC/162/2022-Adjn dated 23.02.2022
<b>F. Noticee(s)/Co- noticee(s)</b>	: M/s Amber Overseas, B-4, Amber Tower, Azadpur, Delhi-110033
<b>G. DIN</b>	: 20230871MO000000B832

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

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

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

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

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

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

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

on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची1 - , न्यायालय शुल्क अधिनियम, 1870 के मदसं° 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो , अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty alone is in dispute.

#### **ISSUE IN BRIEF:**

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

2. M/s. ZZEPL was importing Knitted Polyester Fabrics under Customs Tariff Heading 6006 and various other Electrical Goods such as Mosquito Bats, LED Rechargeable Search Lights, Fancy Mini Torches, Small Rechargeable Batteries, Decorative Disco LED Par Lights, Decorative Disco Focus Lights, Laser Lights, LED Rope Lights, Led Christmas Lights etc., of assorted sizes etc. under Chapter 94 and 85 of Customs Tariff Heading and

subsequently, clearing the same into DTA to various DTA importers. While importing the goods M/s. ZZEPL filed Bills of Entry with KASEZ authority for clearance of the goods from Mundra Port to their unit in KASEZ. Subsequently, M/s. ZZEPL also filed DTA Bills of Entry in the name of various domestic buyers & cleared the goods on payment of Customs Duty.

3. Accordingly, a Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn-0/o Cummr-Cus-Kandla dated 08.09.2021 has been issued to M/s ZZEPL & others. Under the said SCN, M/s Amber Overseas (IC: 0516921576) is also one of the notice as they are one of the domestic buyers of the goods imported by M/s ZZEPL.

4. Further, M/s Amber Overseas has also imported and cleared similar goods i.e., "Various electrical goods such as Dry Battery (Non-rechargeable) AAA 1.5 V & Populated SMPS PCB with remote" through Mundra Port. Details of such imports are as under:

**Table-A**

Sr No	BE Number and Date	Item No.	Description of goods	Quantity (in Pieces)	Declared price per Piece (In USD)	Exc. Rate (1USD=INR)	Declared Assessable value(INR)
1	9254259 dt 10.04.2017	5	Dry Battery (Non-rechargeable) AAA 1.5V	393600	0.0054	65.90	141903.79
		15	Populated SMPS PCB with remote	4190	0.44	65.90	122708.17
Total							264611.96

5. Consequent to the above modus operandi adopted by M/s ZZEPL and the concerned DTA importers including M/s Amber Overseas, in connivance with Chinese suppliers, it appears that M/s Amber Overseas, importer of "Various electrical Goods" has also mis-declared/ undervalued the goods imported and cleared through Mundra port under the Bill of Entry as per above mentioned Table-A.

6. In continuation of the Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn-0/o Cummr-Cus-Kandla dated 08.09.2021 issued to M/s ZZEPL & others, the assessable value & Customs duty thereon of the Bills of Entry as per Table-A are also

liable to be rejected and re-determined.

7. Therefore, the misdeclared/under-assessed value of Rs 2,64,612/- (Rs. Two Lakh Sixty Four Thousand Six Hundred and Twelve Only) declared by M/s Amber Overseas at the time of clearance of goods i.e. "Various Electrical Goods", is required to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same is required to be re-determined to Rs. 5,04,10,429/- (Rs. Five Crore Four Lakh Ten Thousand Four Hundred and Twenty Nine only) as per ANNEXURE-A to this Show Cause Notice, under Section 14 of the Customs Act, 1962 read with Rule 3, Rule 9 and Rule 10 of the CVR, 2007.

8. Further, M/s Amber Overseas hatched the conspiracy to import "Various Electrical Goods", by declaring lower values than the actual transaction values of the said goods to evade the Customs Duty, as indicated in ANNEXURE-A to this SCN, and discussed in the foregoing paras of this notice and also in the relied upon Show Cause Notice. The differential amount between the actual value of Electrical Goods and the value shown in the commercial invoice, imported from said Chinese supplier were paid by them through non-banking channels/the Bank accounts of third parties with the Banks outside India.

They had full knowledge and were instrumental in mis-declaration of the value of the goods at the time of their import. Thus, they had knowingly, consciously and deliberately declared incorrect low values in the impugned Bills of Entry at the time of imports and backed them up with false and fabricated documents, with the sole intention to evade the customs duty. The firm had indulged in the activities relating to the said undervaluation and mis-declaration of actual price of said imports, which resulted in evasion of Customs duty as detailed in ANNEXURE-A to this SCN. All the aforesaid acts of omission and commission on the part of the importer have rendered the impugned imported goods liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962.

Further, the firm/person had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Thus, as discussed at para above, M/s Amber Overseas, has rendered themselves liable for penalty under the provisions of Section 112(a) & (b)/114A and 114AA of the Customs Act, 1962.

9. Therefore, vide SCN dated 23.02.2022 vide F.no. Gen/Adj/ADC/162/2022-Adjn, M/s Amber Overseas, B-4, Amber Tower , Azadpur, Delhi-110033 was called upon to show cause to the Commissioner of Customs, Custom House Mundra, having his office at Office of the Principal Commissioner of Customs, Custom House, 5B, Port User Building, Mundra Port, Mundra, Gujarat - 370421 as to why: -

(i) Total assessable value of Rs 2,64,612/- (Rs. Two Lakh Sixty Four Thousand Six Hundred and Twelve Only) declared by them/assessed at the time of clearance of goods i.e., "Various Electrical Goods", as mentioned in ANNEXURE-A to this show cause notice, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined to Rs. 5,04,10,429/- (Rs. Five Crore Four Lakh Ten Thousand Four Hundred and Twenty Nine only) as mentioned in ANNEXURE-A to this show cause notice, under subsection (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for Bill of Entry, as mentioned in ANNEXURE-A.

(ii) Differential Customs Duty amounting to Rs. 1,23,91,764/- (Rs. One Crore Twenty Three Lakh Ninety One Thousand Seven Hundred and Sixty Four Only) on the goods imported i.e., Various Electrical Goods', under the Bill of Entry, valued (re-determined value) as detailed in ANNEXURE-A should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) The goods i.e., Various Electrical Goods imported by them under the said Bills of Entry and further valued (re-determined value) as mentioned in ANNEXURE-A, should not be held liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962.

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

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

10. Personal hearings were fixed on 18.11.2022, 09.12.2022 and 05.07.2022 and informed to importer, M/s Amber Overseas. However, M/s Amber Overseas has not appeared on any of the PH. No written reply received from the Noticee.

### **DISCUSSION AND FINDINGS**

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

(i) Whether assessable value declared by importer/assessed at the time of clearance of goods is liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods)

Rules, 2007, if Yes, determination of re-determined value.

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

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

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

**Rejection and redetermination of value:**

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

**Legal Provisions:**

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

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

*Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and*

services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

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

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

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

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

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

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

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

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

(i) determined by the Board, or

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

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and

clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)."

• **Rule 2(f) of the CVR, 2007:**

- a. "similar goods" means imported goods –
  - i. which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
  - (ii) produced in the country in which the goods being valued were produced; and
  - (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

• **Rule 3 of the CVR, 2007:**

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

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

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

*Provided that -*

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

(i) are imposed or required by law or by the public

*authorities in India; or*

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

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

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

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

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

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

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

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

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

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

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

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

*(4) if the value cannot be determined under the provisions*

of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

• **Rule 9 of the CVR, 2007:**

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

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

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

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

• **Rule 10 of the CVR, 2007:**

**10. Cost and services. -**

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

(a) the following to the extent they are incurred

by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

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

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the Imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

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

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

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

(b) the cost of insurance to the place of importation:

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

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

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

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

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

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

*Explanation-*

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

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

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

- **Rule 12 of the CVR, 2007:**

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

- **Rule 13 of the CVR, 2007:**

**13. Interpretative notes..-**

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

**The Schedule**

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

**Note to rule 9**

1. *Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.*
2. *The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.”*

13. Rule 3, inter-alia, of the **CVR, 2007** provides the method of valuation. Rule 3(1) of the CVR, 2007 provides that “Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10”. Rule 3(4) ibid states that “if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007”.

**14. Rejection of Value under Rule 12 of CVR, 2007 in respect of the goods declared as “Dry Battery (Non-rechargeable) AAA 1.5V” and “Populated SMPS PCB with remote”:**

14.1 I find that the importer have not co-operated with

I/1338420/2023

investigation in case of M/s ZZEPL. The **electrical goods** in respect of M/s Amber Overseas was not available for physical verification and Customs documents are manipulated / forged and cannot be relied upon to give exact description of goods in terms of physical characteristics, quality, brand, model, reputation etc.

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

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

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**15. Value re-determination in terms of proceeding sequentially from Rule 4 to 9 of CVR, 2007 in respect of the goods declared as "Dry Battery (Non-rechargeable) AAA 1.5V" and "Populated SMPS PCB with remote":**

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

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

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

15.4 In view of the above, it is evident that:

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

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

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

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

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

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

- There have been multiple types of **electrical goods** imported by M/s Amber Overseas and their identical nature in all respects cannot be compared with other goods imported in India by neutral importers.

- The value of **electrical goods** supplied by the foreign suppliers to other neutral importers in India or abroad cannot be applied in the instant case with reference to rule 4 and 5 keeping in mind the significant variations in terms of physical characteristics, quality, brand, model, reputation etc. Likeness in characteristics/quality/usability and interchangeability cannot be established.
- It also appears that both goods i.e. “Dry Battery (Non-rechargeable) AAA 1.5V” and “Populated SMPS PCB with remote” do not fulfill the criteria for determining value under rule 4 and 5 of Customs Valuation (Determination of Value of imported goods) Rules, 2007 read with its interpretative notes as there have not been demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments to be made under these rules. It appears that in the absence of proper objective measure, recourse of re-determining value under rule 4 and 5 of the said rules is not appropriate.

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

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

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

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

- A. Since goods were not physically available, value of the same has been determined using reasonable means consistent with the principles and general provisions of CVR, 2007.
- B. During his statement dated 29.05.2019 to DRI under the investigation of case of M/s ZZEPL (SCN No. GEN /ADJ /COMM / 218 / 2021 – Adjn - 0/o Cummr – Cus -Kandla dated 08.09.2021), Sh Pawan Chotia, Partner of M/s Pride India Enterprises and Authorised Signatory of M/s Bharat Enterprises agreed to the Annexure A to report of Chartered Engineer – B.G. Bhatt & Co. dated 06.07.2018 and he accepted that the actual/transaction FOB price for “Small rechargeable Battery 4V 1.5 AH” was USD 1.50/Pc. On adding freight charges and insurance charges, the CIF value comes out to be USD 1.83/Pc. Based upon the above calculation, DRI has proposed the same value in SEZ Bill of entry number 0007711 dated 19.05.2017 and 0009438 dated 16.06.2017 in respect of the goods “Small rechargeable Battery 4V 1.5 AH” imported by M/s Amber Overseas.
- C. Further, DRI based on evidences obtained during investigation has also proposed the value as USD10.66 per unit in SEZ Bill of entry number 1020889 dated 23.12.2017 in respect of the goods “Populated SMPS PCB” imported by M/s Magnum Overseas.
- D. As the goods with same specification had been imported by the DTA importers in case of M/s ZZEPL and the value of the goods stand corroborated with secondary evidences and the same have also been admitted by concerned DTA importers, therefore, value should be considered for the import of similar goods imported at Mundra port under Rule 9 of CVR, 2007.

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

15.10 I find that considering the reasonable flexibility as provided under Rule 9, “Small rechargeable Battery 4V 1.5 AH” imported at KASEZ under Bill of entry number 0007711 dated 19.05.2017 and 0009438 dated 16.06.2017 are similar to the “Dry Battery (Non-rechargeable) AAA 1.5V” imported at Mundra Port under Bill of Entry No 9254259 dated 10.04.2017.

15.11 Further, I also find that considering the reasonable flexibility as provided under Rule 9, “Populated SMPS PCB”

I/1338420/2023

imported at KASEZ under Bill of entry number 1020889 dated 23.12.2017 are similar to the "Populated SMPS PCB with remote" imported at Mundra Port under Bill of Entry No 9254259 dated 10.04.2017.

15.12 Therefore, I find that the declared value is liable to be re-determined under Rule and Rule 9 of CVR,2007 and the re-determined value of "Dry Battery (Non-rechargeable) AAA 1.5V" and "Populated SMPS PCB" is as per annexure-A to the current SCN.

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

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

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

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

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

17. From the comparison shown in detailed manner in above paras, it is apparent that M/s Amber Overseas suppressed the actual transaction value.

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

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

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

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

21. I find that it is alleged in the current SCN that the goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. In this regard I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962,

defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(d) and 111(m) of the Customs Act, 1962 are reproduced below: -

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

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

22. On plain reading of the above provisions of the Section 111(d) of the Customs Act, 1962 it is clear that any goods which are imported and in violation of regulation prescribed by the law in force or any prohibition in force in respect of the said goods are imposed or non-fulfilment of any sanction imposed by the proper officer will be liable to confiscation.

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

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

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

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

#### *“2. Indian Quality Standards:*

A. *Mandatory Indian Standards of Bureau of Indian Standards (BIS):*

*Quality of the products that are subject to mandatory Indian Standards, as applicable to domestic goods, shall be required to comply with quality specified for the product as per same Indian Standards. For compliance of this requirement, all manufacturers/exporters of these products to India shall be required to obtain BIS license for using Standards mark on their product. The present list of ‘Items under mandatory BIS certification’ is given in Appendix – III of this Schedule. As and when BIS notifies the quality specifications for new product(s) as an Indian Standards,*

*the said Indian Standard would be deemed to be part of Appendix – III from the date of implementation of the said Indian Standards for the said product(s) and the import of that product(s) shall conform to that specified Indian Standard from the date of implementation as specified for the said product(s) by BIS. To see the up-to-date list, visit Bureau of Indian Standards' website link or search on website of the Bureau - .”*

**25.** I find that the Central Government, in exercise the power conferred by sections 14 of Bureau of Indian Standards Act, 1986, issued Multipurpose Dry Batteries (Quality Control) Order, 1987. The relevant provisions of this order are reproduced below:

*“No person shall, by himself or by any person on his behalf, manufacture or store for sale, sell or distribute any Multipurpose Dry Batteries which do not conform to the Specified standard and it would be with the Standard Mark of the Bureau of Indian Standards.”*

**26.** By virtue of Para 2A of general note regarding import policy, para 2.03 of the Foreign Trade Policy 2015-2020 and Multipurpose Dry Batteries (Quality Control) Order, 1987, I find that the BIS certification is required for import clearance of goods “Dry Batteries”

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

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

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

*of goods of any specified description.*

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

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

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

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

**28.** In the instance case, I find that the importer failed to produce any BIS registration certificate for the goods declared as "Dry Battery (Non-rechargeable) AAA 1.5V", therefore, the goods become restricted under import policy. By the virtue of section 3(3) of Foreign Trade (Development and Regulation) Act, 1992, due to above mentioned restriction under import policy, the goods under import deemed to be prohibited goods under Section 11 of the Customs Act, 1962. Therefore, the goods, "Dry Battery (Non-rechargeable) AAA 1.5V" without BIS certificate are prohibited under customs act, 1962.

29. Therefore, I find that the goods declared as Dry Battery (Non-rechargeable) AAA 1.5V" are prohibited and liable for confiscation under section 111(d) of customs act, 1962.

30. Further, on plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods which are imported by way of the misdeclaration, will be liable to

confiscation.

31. I find that the importer has imported "Dry Battery (Non-rechargeable) AAA 1.5V" and "Populated SMPS PCB with remote" by way of misdeclaration in terms of value, under the import consignment covered under bill of entry no. 9254259 dated 10.04.2017, therefore, the goods declared as "Dry Battery (Non-rechargeable) AAA 1.5V" and "Populated SMPS PCB with remote" under import is liable for confiscation under section 111(m) of customs act, 1962.

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

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

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

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

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

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

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

38. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. In the instance case, the importer knowingly or intentionally imported

I/1338420/2023

the impugned goods to evade the custom duty and policy conditions of BIS and importer was involved in importation of illegal goods. Therefore, I find that for these acts and omissions, the importer is liable for penal action under Section 114AA of the Customs Act, 1962.

### **ORDER**

39.1 I hold the goods declared as "Dry Battery (Non-rechargeable) AAA 1.5V" imported vide Bills of Entry no. 9254259 dated 10.04.2017 are "prohibited" under Customs Act, 1962.

39.2 I reject the declared assessable value of Rs. 2,64,612/- (Rupees two lakh, sixty-four thousand, six hundred and twelve) for item declared as "Dry Battery (Non-rechargeable) AAA 1.5V" and "Populated SMPS PCB with remote" imported vide Bills of Entry no. 9254259 dated 10.04.2017 under Rule 12 of CVR, 2007 and order to re-determine the same as Rs. 5,04,10,429/- in terms of Rule 9 of the CVR, 2007 read with section 14 of Customs Act, 1962.

39.3 I confirm the demand of Rs. 1,23,91,764/- (Rupees one crore, twenty-three lakh, ninety one thousand, seven hundred and sixty four Only) for the goods declared as "Dry Battery (Non-rechargeable) AAA 1.5V" and "Populated SMPS PCB with remote" imported vide Bills of Entry no. 9254259 dated 10.04.2017 as per annexure-A to SCN under section 28(4) of Customs Act, 1962 along with applicable interest under section 28AA of Customs Act, 1962.

39.4 I order to confiscate the impugned goods declared as "Dry Battery (Non-rechargeable) AAA 1.5V" imported vide Bills of Entry no. 9254259 dated 10.04.2017 under Section 111(d) & 111(m) of the Customs Act 1962. However, I give an option to redeem the same on payment of redemption fine of Rs. 50,00,000/- (Rupees fifty lakhs Only) under Section 125(1) of Customs Act, 1962.

39.5 I order to confiscate the impugned goods Declared as "Populated SMPS PCB with remote" imported vide Bills of Entry no. 9254259 dated 10.04.2017 under Section 111(m) of the Customs Act 1962. However, I give an option to redeem the same on payment of redemption fine of Rs. 3,00,000/- (Rupees three lakhs Only) under Section 125(1) of Customs Act, 1962.

39.6 I impose a Penalty of Rs. 1,23,91,764/- (Rupees one crore, twenty-three lakh, ninety one thousand, seven hundred and sixty four Only) on M/s Amber Overseas, B-4, Amber Tower, Azadpur, Delhi-110033 under Section 114A of the Customs Act, 1962.

39.7 I impose a Penalty of Rs. 25,00,000/- (Rupees Twenty Five lakh only) on M/s Amber Overseas, B-4, Amber Tower, Azadpur, Delhi-110033 under Section 114AA of the Customs Act, 1962.

I/1338420/2023

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

(K. Engineer)  
Commissioner of  
Customs  
Custom House Mundra

**F.No. CUS/ADJ/COMM/121/2022-Adjn**

**Date : 07.08.2023**

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

**To (The Noticees):**

**M/s Amber Overseas,  
B-4, Amber Tower,  
Azadpur, Delhi-110033**

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

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