



सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात
OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT
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A. File No.	: GEN/ADJ/COMM/568/2023-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	: MUN-CUSTM-000-COM-11-25-26
C. Passed by	: Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	: 10.07.2025. 11.07.2025.
E. SCN No. & Date	: SCN F.No. GEN/ADJ/COMM/568/2023-Adjn-O/o Pr. Commr- Cus-Mundra, dated 30.08.2023.
F. Noticee(s) / Party / Importer	: M/s Skyblue International Trading Company 1st Floor, Plot No. 214, Office No. K, DSS Business Center, Sant Tukaram Road, Chinchbunder, Masjid Bunder East, Mumbai, Maharashtra-400009; and Others.
G. DIN	: 20250771M0000000FE57

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

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

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

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

4. उक्त अपील के साथ -/ 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, ब्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, ब्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड ब्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राप्ट 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/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदर्से-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 छूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

FACTS OF THE CASE IN BRIEF:

1. In the present matter, the examination and seizure of the import goods pertaining to 18 import consignments through 08 different importers as Tabulated in Table-1 herein below were made by the DRI in which a common set of people have been running a smuggling cartel. These 18 consignments were imported in name of 08 different importers and hence Importer-wise separate Investigation has been done by DRI, Gandhidham and separate show cause notices were issued to the importers by the Competent Authorities. **The present show cause notice deals with only 05 import consignments pertaining to M/s Skyblue International Trading Company (hereinafter also referred to as 'the importer') (IEC No. FJOPSS8421P).**

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

2.1. The officers of DRI informed the driver that the goods of the container No. TLLU4615592 was suspected to have concealment of E-Cigarettes. Therefore, for further examination of goods on the directions of the officer of DRI, the vehicle was moved to ICD Sachin for examination purpose. On reaching ICD Sachin, the officials in the presence of 02 independent arbitrators, requested Shri Alpesh Korat, Assistant Manager, ICD Sachin to arrange mechanical assistance to the laborers for checking the contents of the container. Meanwhile, a person came inside ICD Sachin and introduced himself as **Mr. Parvez Alam. He stated that he is the representative of Mr. Mohd. Asif Sathi and Mr. Sarfarajbhai**, the actual purchasers of the said consignment, to whom the goods contained in container TLLU4615592 have been sent. The officials informed Mr. Parvez Alam that container TLLU4615592 loaded on truck/trailer number GJ12 BV0610 needed to be examined as it was suspected to contain e-cigarettes of foreign origin. Thereafter, the examination of the said container was started in the presence of Panch Mr. Parvez Alam, ICD Patron Sachin, Customs Officer and DRI officials.

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

2.4. Since the electronic cigarette found concealed in the above import consignment falling under HS code 85434000 and the import thereof is prohibited vide **notification 20/2015-2020 dated 26.09.2019**, and other goods used for concealment, the import consignment relating to container number **TLLU4615592** appeared liable to confiscation under the provisions of the Customs Act, 1962. Therefore, the whole consignment pertaining to Container No. TLLU4615592 was detained under panchanama dated 01/02.09.2022. However, after detailed examination and valuation of the goods, the same was placed under seizure under provisions of Customs Act, 1962. After detailed examination of the goods under panchanama dated 19.10.2022, the goods were handed over to the representative of ICD Sachin for safe Custody of the goods under Supratnama dated 19.10.2022.

3. **Meanwhile, Statement of Shri Chhaju Ram Proprietor of M/s. Prince Logistics, Mundra, Kutch was recorded on 01/02.09.2022 at the office of DRI, Gandhidham**, it was gathered that one Shri Baldevsinh had booked 06 trailer with Shri

Chhaju Ram for transportation of the import goods pertaining to following containers which were to be delivered at Bhiwandi Godown; which were cleared from SEZ Warehouse Unit M/s. Empezar Logistics at Mundra Port. These were **immediately put on hold by the DRI for examination of the goods.**

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

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

Table-1

Sr . No .	Contain e r No.	Name of the importer	Date of panchnam a	Goods declared in the BE/BL/IGM	Description of goods found actually during examination
1	NYKU084 432	M/s Nikhat Enterprises	02.09.202 2	Floor Clean Mop (Misc Item Non popular Brand) Shippers Desire To State Thaths Code 96039000	12 Carton of E-Cigarettes and other goods
2	TLLU461 5592	M/s. M. M. Enterprises	01/02.09. 2022 and 19.10.202 2	Head Massager (Misc item Non Popular Brand) HS Code 90191020	107 Carton of E-Cigarettes, alongwith, Head massager, Exercise book, Hair straightener, Silicon Pop up toys
3	DFSU768 6560	M/s. Rajyog Enterprises	03.09.202 2	Hot water Bag (Misc. item Non Popular Brand)/Water Bottle/Plastic cube	Fidget Can Cube, Card Early Education Vice, Wate Bottle, Spinning Cube etc.
4	TEMU66 43503	M/s. Aditi Trading Company	03.09.202 2	Vegetable slicer, Foot pump, mobile holder, hair dryer etc.	Dancing cactus (Toys), Vegetable slicer, small water bottle, foot pump etc.
5	TEMU85 05123	M/s Rajyog Enterprises	03/04.09. 2022	Exercise Book (Misc item non popular brand)	Exercise Book (Misc item non popular brand), Rabit piano, Micky mouse twister car and other Toys of different kind

6	YMMU66 20747	M/s. Skyblue Internationa l Trading Company	03/04.09. 2022	Exercise Book, Back Cover, Tampered glass	Exercise Books, Tempered Glass/Toughened glass, Back Cover, Earphones
7	TCNU850 6372	M/s. Exemplar Trading	06.09.202 2	Water Bottle (Misc Item Non Popular Brand) Hs Code 392630	Kinoki Foot Pads, Dancing Cactus, Empty Cartons, Water Proof Tape, Water Bottle
8	SEGU41 14778	M/s. Exemplar Trading	06.09.202 2	Hair Straightener 851632 Hair Dryer (851631) Trimmer (851020)	Kemei Hair Trimmer/Clipper, Kemei Hair Dryer and Kemei Hair Straightener.
9	TXGU706 9291	M/s. Rajyog Enterprises	19.09.202 2	Massager Misc Item Non Popular Brand Hs Code 90191020 foot Brush Misc Item Non Popular Brand Hs Code 96032900	Bubble sensory fidget toys, pedicure paddle/brush, maxtop massager, body messenger, ventilation back rest with lump support, mesh cushion support pad
10	TXGU502 3882	M/s. Rajyog Enterprises	12.09.202 2	Hair Clipper (Misc Item Non Popular Brand) HS Code 851030	Professional Hair clipper adjustable blade maxtop model: MP98
11	BMOU69 23481	Aditi Trading Company	19.09.202 2	Egg Poacher (Misc Brand Non Popular Brand) HS Code - 39241090	dancing cactus, Egg poacher/steamer, different types of toys, study book, learning machine,
12	SLSU801 8922	M/s Sky Blue Internationa l Trading Co.	08.09.202 2	Exercise Book (Misc Item Non Popular Brand) HS Code: 48202000	Exercise book, Tempered glass, Hair Straightener, Earphone
13	TRHU845 5767	M/s Sky Blue Internationa l Trading Co.	24.09.202 2	Hair Trimmer Misc Item Non Popular Brand HS Code 85103000	Earphone(AK-H/F(B)), Hair Straightener(SK-111), Earphone (SK-786 model HF)
14	SEGU45 96469	M/s Sky Blue Internationa l Trading Co.	12.09.202 2	Plastic Chocolate Mould (Misc Item Non Popular Brand) Hs Code 392690	Plastic pop up toys, Dancing Cactus Toys
15	BMOU59 87877	M/s. Rajyog Enterprises	17.09.202 2	Exercise Book (Misc Item Non Popular Brand) HS Code: 48202000	Sank Magic Practice Copy Book, Mop Scratch Cleaning Mop, Card Early Education Device, Dancing Cactus can Sing and Dance, Xindong Nail Clippers, Nail Clipper

					kabee Brand & Bell Brand, FUR Star Monkey, I say what you said, Gyrate Octopus Fur Toys Series, Nail Cutter / Clipper Bell Brand
16	TGBU770 9478	M/s Sky Blue Internationa l Trading Co.	23.09.202 2	Hair Trimmer Misc Item Non Popular Brand HS Code 85103000	Earphone of different brand (opp, vivo, realme, boat, samsung etc.), Earphone unbranded, Mobile phone back cover (Assorted), I - phone/Apple mobile phoneback cover, Hair Clipper/straightener, Magic practice book
17	TEMU76 94450	M/s Jym Global Trading company	12.09.202 2	Plastic Chocolate Mould (Misc Item Non Popular Brand)HS Code 392690	Pop it toys, dancing cactus toys
18	TGBU516 0748	M/s. J. H. Enterprises	16/17.09. 2022	Floor Clean Mop (Misc Item Non popular Brand) HS Code 96039000	E-Cigarettes, silicone pop it toys, LCD writing pad, MOP, wired head/hand massager.

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

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

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

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

imported goods. The samples so drawn were got examined by the Govt. approved Chartered Engineer Shri Kunal Ajay Kumar and he submitted his Reports in this regard to DRI.

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

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

- Statement of Shri Parwej Alam, representative of the actual buyer Shri Mohammad Asif Sathi and Shri Sarfaraz Bhai was recorded on 02/03.09.2022, 04.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Chuna Singh Rawat, Driver of the truck/trailer no GJ12 BV0610 laden with container TLLU4615592 recorded on 02.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Jubair Ali S/o Shri Halim Shaikh, who was looking after the work of loading/unloading at the godown at Bhiwandi was recorded on 03.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Samir Sharma, G-Card Holder of Custom Broker firm M/s Al Cargo Services, was recorded on 05/06.09.2022, 08.09.2022under Section 108 of the Customs Act, 1962.
- Statement of Shri Akash Desai, General Manager of M/s. Empezar Logistics PVT. LTD., was recorded under Section 108 of Customs Act, 1962 on 08.09.2022.
- Statement of Shri Sushant Biltiwala, was recorded on 14.09.2022 Under Section 108 of the Customs Act, 1962.
- Statement of Shri Chhaju Ram Proprietor of M/s. Prince Logistics, was recorded on 14.09.2022 under Section 108 of the Customs Act, 1962.
- Statement of Mohammad Asif Sathi was recorded under Section 108 of the Customs Act, 1962 on 21.09.2022, 22.09.2022, 24.09.2022, 26.09.2022, 24.11.2022.
- Statement of Shri Mohammad Tahir Menn Proprietor of M/s. M.M. Enterprises, was recorded under Section 108 of the Customs Act, 1962, on 25.09.2022, 25.11.2022
- Statement of Shri Sarfaraj Kamani was recorded under Section 108 of the Customs Act, 1962, Gandhidham on 29.09.2022, 30.09.2022, 25.11.2022.
- Statement of Mrs. Nikhat Baig was recorded by the DRI on 11.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Vala Baldevsinh, Authorised Signatory of M/s. Kalpana Exim, was recorded on 05.09.2022, 06.09.2022, 07.12.2022, 08.12.2022, 09.12.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Mohamed Hanif Ismail Kapadia was recorded on 04.10.2022 under Section 108 of the Customs Act, 1962
- Statement of Shri Dirgesh Dhiraj Dedhiya, Proprietor of M/s. Exemplar Trading, was recorded under Section 108 of the Customs Act, 1962, on 22.11.2022.
- Statement of Mr. Venkat Jagan Peetani, Assistant General Manager Operations of M/s. Yang Ming Line India Pvt. Ltd., recorded on 23.03.2023.

- Statement of Shri Vipin Sharma was, recorded under Section 108 of the Customs Act, 1962 on 10.08.2023.
- Statement of Shri Amit Kumar Mishra was recorded on 16.08.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Suresh Kumar, the then appraiser was recorded on 17.08.2023 under Section 108 of the Customs Act, 1962.
- Statement of Shri Samir Sharma who was handling Customs Clearing work of the above importers, was recorded on 05/06.09.2022, 08.09.2022.

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

Table 2

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

9.1. During the course of investigation, the officers of DRI had visited the declared premises of M/s. Skyblue International Trading Co. at the declared address at 1st Floor, Plot No. 214, Office No. K. DSS Business Center, Sant Tukaram Road, Chinchbunder, Masjid, Bunder East, Mumbai-400009 on 12.09.2022. During visit, the premises was found closed. Enquiries were made from nearby persons/premises, however no information could be gathered about M/s Skyblue International Trading Co..

10. The present Show Cause Notice has been issued to **M/s. Skyblue International Trading Company** in respect of import consignments listed herein below:

Table-3

Sr. No.	Container No.	DTA Bill of Entry No. and date	Bill of Lading No./IGM No.
1	YMMU6620747	2013047 dated 30.08.2022	YMLUS226013432 dated 13.08.2022
2	SLSU8018922	Not filed	OOLU8891622710 dated 19.08.2022 (IGM No. 2320780 dated 02.09.2022)
3	TRHU8455767	Not filed	721211331379 dated 28.08.2022 IGM No.2321558 dated 12.09.2022
4	SEGU4596469	Not filed	KMTCNB06313351 dated 12.08.2022 IGM No.2320512 dated 29.08.2022
5	TGBU7709478	Not filed	721211331539 dated 28.08.2022 IGM No.2321558 dated 12.09.2022

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

11. Valuation of the goods

11.1. As mentioned in the forgoing paras, M/s. Skyblue International Trading Company have imported total 05 import consignments which were examined by the officers of DRI at Mundra Port under different panchnamas. During examination of

goods, gross mis-declaration was observed in respect of value, quantity and other material particulars. Further, various goods were found un-declared in the import consignments which were found in violation of the provisions of the Customs Act, 1962 and other allied Acts. M/s. Skyblue International Trading Company had filed Bill of Entry for 01 import consignment pertaining to Container Nos. YMMU6620747 only. However, after initiation of the investigation in the matter, the importer had not proceeded for filing Bills of Entry for their remaining import consignments.

11.2. The inspection of the subject goods was conducted by the Govt. approved Chartered Engineer. During inspection of the goods *prima facie* it appeared that the declared value of the goods was mis-declared to evade the applicable Customs Duty. The report submitted by the Chartered Engineer for the said consignments also indicated that the value of the goods was grossly mis-declared. Therefore, the value declared by the importer in the corresponding Bills of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007.

11.3. As mentioned above, the transaction value declared by the importer in case of BE No. 2013047 dated 30.08.2022 is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed significant misdeclaration of goods in parameters such as description, quality, quantity. In absence of credible data of import of similar goods and other constraints, the value of these goods can not be determined in terms of Rule 4,5,6,7,8 of Customs Valuation Rules 2007. Hence the value is to be determined in terms of Rule 9 of said rules. Also for remaining 04 consignments, no Bill of Entry has been filed by the importer and no invoice has been submitted, hence no transaction value is available.

11.4. Therefore, the market price as provided by the Chartered Engineer may be considered as the basis for arriving at assessable value of these goods. Therefore, the declared assessable value of the goods pertaining to container No. **YMMU6620747** for which they have filed Bill of Entry No. 2013047 dated 30.08.2022, is required to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962. Similarly, for remaining **04 consignments** also, the report of Chartered Engineer may be considered as the basis for arriving at assessable value of these goods.

The Chartered Engineer submitted his reports for valuation of the above goods found during examination. The brief details thereof are given as under;

Table 4

Sr. No	Container No.	DTA Bill of Entry No. and dated	Declared description of Goods as per BE/BL/IGM	Actual Goods found during examination	Quantity found	Market price as per valuation report
1	YMMU66207 47	2013047 dated 30.08.20 22	Exercise Book (Misc item non popular brand)	Exercise Books	4800	960000
			Tempered Glass(Misc item non popular brand)	Tempered Glass/Toughened glass	485381	130969800
			Back Cover(Misc item non popular brand)	Back Cover	74552	20874560
				Earphones	252000	70560000

2	SLSU80189 22	Not filed	Exercise book (Misc item non popular brand)	Exercise book	3300	656700
				Tempered glass	780160	226246400
				Hair Straightener	5280	2112000
				Earphone	36000	10080000
3	TRHU84557 67	Not filed	Hair Trimmer(Misc item non popular brand)	Earphone(AK-H/F(B))	264000	39600000
				Hair Straightner(SK-111)	5280	2112000
				Earphone (SK-786 model HF)	497000	49700000
4	SEGU45964 69	Not filed	Plastic Chocolate Mould (Misc item non popular brand)	Plastic pop up toys	105000	9450000
				Dancing Cactus Toys	24000	15600000
5	TGBU77094 78	Not filed	Hair Trimmer (Misc item non popular brand)	Earphone of different brand (opp, vivo,realme,boat,s amsung etc.)	416000	45300000
				Earphone unbranded	421000	42100000
				Mobile backcover	32250	5737500
				Hair Clipper/straightner	10320	7056000
				Magic practice book	5600	1400000

12. Mis-declaration, Misclassification and liability to Confiscation of import goods of M/s. Skyblue International Trading Company:-

12.1.1. Import of Mobile accessories by way of mis-declaration and undervaluation

As clarified from the details given in the table 4 above, during examination of the import consignment pertaining to Container No. YMMU6620747, SLSU8018922, TRHU8455767, and TGBU7709478, Tempered Glass, earphone, Back Cover of mobile phone were found in the container alongwith other declared goods. There is gross mis-declaration in description and quantity of the imported goods mentioned in Bills of lading/IGM/Bills of Entry. The same have been summarised below:-

Table 5

S R N O .	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE) (in Rs.)

1	M/s Sky Blue Intern ational Tradin g Co.	SLSU80 18922	Exercise book	980 Cart oons	Tempered glass	7007 2900	7801 60	22604 6400
2		SLSU80 18922	Exercise book	980 Cart oons	Earphone	8518 3020	3600 0	10080 0 00
3		TGBU77 09478	Hair Trimer(Misc item non popular brand)	--	Mixed mobile phoneback cover	3926 9099	3225 0	57375 00
4		TGBU77 09478	Hair Trimer(Misc item non popular brand)	--	Earphone of different brand (opp, vivo,realme,bo at,samsung etc.)	8518 3020	4160 00	45300 000
5		TGBU77 09478	Hair Trimer(Misc item non popular brand)	--	Earphone unbranded	8518 3020	4210 00	42100 000
6		TRHU84 55767	Hair Trimer(Misc item non popular brand)	--	Earphone(AK- H)	8518 3020	2640 00	39600 000
7		TRHU84 55767	Hair Trimer(Misc item non popular brand)	--	Earphone (SK- 786)	8518 3020	4970 00	49700 000
8		YMMU6 620747	Back Cover	3921 60	Back Cover	3926 9099	7455 2	20874 560
9		YMMU6 620747	Tempere d Glass	5088 0	Tempered Glass	7007 2900	4853 81	13096 9800
10		YMMU6 620747	Exercise Book, Back Cover and Tempere d Glass	--	Earphone	8518 3020	2520 00	70560 000

12.1.2. The mobile phone accessories were having marking of various brands. Therefore, it appeared that apart from the mis-declaration of description quantity of the import goods, there was gross mis-declaration of the goods in respect of value thereof to evade the applicable Customs Duty. The mobile phone accessories found during examination were having marking of various brands such as BoAt, Realme, oppo, Vivo, Samsung, Apple, etc. On being requested by the DRI, inspection of the goods was carried out by some of the authorised representatives of established companies and submitted

their report that the said goods were counterfeit goods and not the original one. The companies had also clarified that M/s. Skyblue International Trading Company was not the authorised importer to import the company product into India. This shows that the mobile phone accessories appeared to have been imported in violation of IPR regulations. Further, it was noticed that earphones were not declared by the importer in the import documents. Therefore, the mobile phone accessories appeared to liable for confiscation under Section 111 (f) and 111(m) of the Customs Act, 1962.

12.1.3. Violation of Intellectual Property Rights by subject import consignment

Government of India has enacted Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. The above rules describe the process through which rights of IPR (Intellectual Property Right) holders can be enforced.

In the case of current consignment, during examination of the consignment, it appeared that the imported goods infringed Trademark rights of various companies. Accordingly, clearance of the goods was kept on hold and letter dated 18.01.2023 were issued to different IPR right holders to join the proceedings. Examination of the goods was conducted by representative of IPR Right holder after which they submitted their report. The same has been summarised in below Table.

The DRI vide letter dated 12.04.2023 asked to submit Bond and Bank Guarantee as per provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007, however, the required compliance were not fulfilled by the rightholders.

According to para 7 of the Board Circular No. 41/2007-Customs dated 29.10.2007, the surety and security shall be on consignment basis and shall be furnished along with the bond consequent upon interdiction of the consignment allegedly infringing rights of the right holder. Keeping in view the value of the goods and other incidental expenses, it has been decided that the bond amount shall be equal to 110% of the value of goods. However, the amount of security to be furnished along with the bond shall be 25% of the bond value. The right holder may furnish security in the form of bank guarantee or fixed deposit. However, if the right holder fails to execute the consignment specific bond and to furnish security within three days from the date of interdiction of the goods, the same must be released forthwith.

12.1.4. Since the right holders failed to execute the consignment specific bond and failed to furnish security, hence their right cannot be enforced in terms of provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007.

12.2.1. Import of Exercise Book by way of mis-declaration and undervaluation

Further, M/s. Skyblue International Trading Company have imported Exercise book having total **quantity 13700** and having market price of **Rs. 30,16,700/-**. Whereas, it appears that the importer has mis-declared the description and quantity, value of the exercise books as detailed below in various consignments. For Container No. YMMU6620747, they have filed Bill of Entry No 1011563 Dt 29.08.2022, in which declared price of Exercise Book is only Rs 1,29,444. However, actual value of the exercise books as per report of Chartered Engineer is Rs 9,60,000.

Table 6

S R N O.	IEC Name	No. of container	Declare d Goods	Decla red quant ity	Goods found during examina tion	HSN	Quan tity	Value (As per CE)

1	M/s Sky Blue International Trading Co.	SLSU801 8922	Exercise book	980 Cartons	Exercise book	48202 000	3300	6567 00
2		TGBU770 9478	Hair Trimer (Misc item non popular brand)		Magic practice book	48202 000	5600	1400 000
3		YMMU662 0747	Exercise Book (Misc item non popular brand)	1929 6	Exercise Book (Misc item non popular brand)	48202 000	4800	9600 00

12.2.2. Further to import of the exercise book the importer was required to undergo compulsory registration under Paper Import Monitoring Systems (PIMS as per the provisions of DGFT Notification 11/2015-2020 dated 25.05.2022. During investigation, the importer has not submitted any documentary evidence which shows that they were having such mandatory registration with the PIMS. In view of above, total **13700** exercise books having market price of **Rs. 30,16,700/-** appear to have been found mis-declared in respect of quantity, value and the same appeared to have been imported without proper authority of law, are liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962.

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

During examination of the goods by M/s. Skyblue International Trading Company pertaining to following import consignments, total 20880 Hair Straightener/Hair trimmer (HS Code 85102000) were found which were mis-declared in terms of description and quantity by the importer. The same has been Tabulated below:

Table 7

S R N O .	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Value (As per CE) (Rs.)
1	M/s Sky Blue International Trading Co.	SLSU801 8922	Exercise book	980 Cartons	Hair Straightener	8510 2000	5280	2112 000
2		TGBU770 9478	Hair Trimer (Misc item non popular brand)		Hair Trimer/straightener/clipper	8510 2000	1032 0	7056 000
3		TRHU84 55767	Hair Trimer (Misc item non		Hair Straighteners	8510 2000	5280	2112 000

		popula r brand)				
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In view of above, total 20880 Hair Straighener/Hair trimmer (HS Code 85102000) having market price of **Rs. 1,12,80,000/-** appears to have been found mis-declared in respect of quantity, value and the same appeared to have been imported without proper authority of law are liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962.

12.4. In view of the above, it appears that the goods mentioned at **para 12.1.2, 12.2.1 and 12.3** above attract Customs duty and can be released after fulfilment of necessary compliance for the same. It further appears that the Customs Duty considering the market price of these goods as **Rs. 65,54,64,960/-** the total duty liability for these goods comes to **Rs 26,26,39,462/-** as detailed in **Annexure-A** to this notice.

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

During examination of the goods M/s. Skyblue International Trading Company pertaining to following import consignments, 'Toys' falling under HS Code 95030010/95030020 were found concealed which were not declared by the importer, as Tabulated below.

Table 8

SR NO .	IEC Name	No. of container	Declar ed Goods	Decla red quan tity	Goods found during examina tion	HSN	Quantit y	Value (As per CE)
1	M/s Sky Blue Internati onal Trading Co.	SEGU4596 469	Plastic Chocolat e Mould (Misc item non popular brand)	--	Plastic pop up toys	95030 0	105000	94500 00
2		SEGU4596 469	Plastic Chocolat e Mould (Misc item non popular brand)	--	Dancing Cactus Toys	95030 0	24000	15600 000

12.5.1. Requirement of BIS Certification for import of 'Toys' and violations of rules made thereunder;

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

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

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

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

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

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

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

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

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

12.5.2. As mentioned above, M/s. Skyblue International Trading Company have imported total of 129000 toys such as Cactus, Pop up toys, having market price of **Rs. 2,50,50,000/-** without mandatory BIS compliance and by way of mis-declaration. Therefore, the said toys and also appear to have been imported in violation of the provisions of Condition 2 of Chapter 95, being the offending goods, seem liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962.

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

13.1. Role of M/s. Skyblue International Trading Company

In the present case, M/s. Skyblue International Trading Company has imported total 05 import consignments through Container No. YMMU6620747, SLSU8018922, TRHU8455767, SEGU4596469 and TGBU7709478. Out of these 05 import consignments the importer has filed bill of Entry for only 01 import consignment pertaining to container No. YMMU6620747. The details of the import consignments are given as under;

Table-9

Sr. No.	Container No.	DTA Bill of Entry No. and date	Bill of Lading No./IGM No.
1	YMMU6620747	2013047 dated 30.08.2022	YMLUS226013432 dated 13.08.2022
2	SLSU8018922	Not filed	OOLU8891622710 dated 19.08.2022 (IGM No. 2320780 dated 02.09.2022)
3	TRHU8455767	Not filed	721211331379 dated 28.08.2022 IGM No.2321558 dated 12.09.2022

4	SEGU4596469	Not filed	KMTCNB06313351 dated 12.08.2022 IGM No.2320512 dated 29.08.2022
5	TGBU7709478	Not filed	721211331539 dated 28.08.2022 IGM No.2321558 dated 12.09.2022

During investigation, Summons was issued to M/s. Skyblue International Trading Company, however they have not responded to the Summons. Also, during visit conducted by DRI officer, the declared premises of M/s. Skyblue International Trading Co. i.e. 1st Floor, Plot No. 214, Office No. K. DSS Business Center, Sant Tukaram Road, Chinchbunder, Masjid, Bunder East, Mumbai-400009 on 12.09.2022 was found closed. Therefore, it appears that the actual importer were not conducted any business activities for import of mis-declared goods and prohibited goods. From the evidenced revealed during investigation it appears that Shri Sameer Abdul Rauf, Proprietor of M/s. Skyblue International Trading Company willingly allowed the smuggling cartel led by Shri Asif Sathi to use the documents of his firm in lieu of monetary benefits.

M/s. Skyblue International Trading Company never bothered to involve diligently the business activities which were being conducted in their name. This shows their connivance in the import of offending goods. It appears that M/s. Skyblue International Trading company has provided signed documents to Shri Asif and others to use the same for import of offending goods.

Thus, M/s. Skyblue International Trading company has done act rendering the goods mentioned in Annexure A & B to the Show Cause Notice liable for confiscation under Section 111 of the Customs Act, 1962. It also appears that M/s. Skyblue International Trading Company has willfully and deliberately indulged into conspiracy of importing and clearance of prohibited goods i.e. Toys. By doing such acts and omissions and by knowingly concerning themselves in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, they have made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered themselves liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.

Further it appears that M/s. Skyblue International Trading Company had lent its IEC to Shri Asif Sathi, Shri Safaraz, Shri Tahir etc. This IEC of M/s. Skyblue International Trading Company was used by Shri Asif for his own import, and they have used KYCs of this firm for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It appears that M/s. Skyblue International Trading Company has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appears that M/s. Skyblue International Trading Company is also liable to penalty under Section 114AA of the Customs Act, 1962.

14.1. Role and capability of Shri Asif Sathi

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

through Shri Tahir. He also used IECs of various firms as mentioned vide Table 15 to subject SCN.

- iii He clearly informed Shri Baldevsinh that he wanted to import prohibited goods such as Toys and e-cigarettes, apart from usual mis-declared/undervalued/counterfeit goods. Mr. Asif used to send him Bill of Lading through Whatsapp alongwith Invoice, Packing List etc., and based on these documents Bills of Entry were filed by Shri Sameer Sharma. Since the goods in the consignments were mis-declared/ prohibited/ restricted/ undervalued, hence depending upon the extent of mis-declarations he used to make payment of Rs. 15000/- to Rs. 50,000/- per IEC per Consignment to Shri Vishal, Shri Tahir and Shri Baldev. For clearance of consignment of e-cigarettes Shri Asif even paid a hefty amount of Rs 17 Lakh per container to Shri Baldevsinh.
- iv For payment of Customs duty for these import consignments and payment to foreign supplier, Shri Asif used to deposit cash or do bank transfer from domestic purchaser firms in accounts of these dummy firms, from where such payments used to be made.
- v Cleared goods were dispatched to his godown in Bhiwandi where Shri Parvez Alam was deputed by him for receipt, loading/unloading, storage, further dispatch work etc. He had indulged in importation of e-cigarettes/Toys multiple times and used to sell the same to various domestic buyers such as Raju bhai, Sohail bhai for e-cigarettes and Imran, Sagar, Rajguru, Sandeep for Toys.
- vi Shri Asif and his cartel had already imported and sold out 265 cartons of e-cigarettes in the month of July, 2022 and August, 2022 out of which left out quantity of 12 cartons containing 9600 pcs of e-cigarettes have been recovered by officers of DRI from the godown of smuggling syndicate at Bhiwandi under Panchnama dated 01/02.09.2022.
- vii From discussions in Whatsapp Group "Mm", it appears that Shri Asif had planned the import of prohibited items such as Toys and e-cigarettes, undervalued and counterfeit items such as mobile accessories, and multiple mis-declared import consignments as mentioned in Table 3.
- viii After interception of various consignments pertaining to him by DRI, Shri Mohammad Asif Sathi insisted the shipper of Container No. TGBU5160748, being imported in name of firm J H Enterprises to attempt to revised the Bill of Lading changing discharge port from Mundra to Jebel Ali, Dubai instead of declared port of discharge i.e. Mundra but while attempting to divert the same, the said consignment was intercepted by the DRI. From this consignment 251 cartons of e-cigarettes were recovered.
- ix In view of the above, it appears that Shri Asif has played an active role in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods i.e. e- Cigarettes. Mohammad Asif Sathi was aware that the business of e-cigarettes is prohibited in India since 2019 and even though he was running the organized smuggling syndicate, which deals in smuggling and distribution of Prohibited goods i.e. e- Cigarettes. It also appears that Shri Asif was the mastermind behind import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3 to subject SCN.
- x **In the present case**, in respect of import of goods in name of **M/s. Skyblue International Trading Company, Shri Asif** has acted as the mastermind of the smuggling cartel and his role remains the same as has been described in above paras. Thus, it appears that Shri Asif has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Asif has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also

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

14.2. Role and culpability of Shri Mohammed Tahir Menn

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

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

14.3. Role and culpability of Shri Sarfaraj Kamani

- i. Shri Sarfaraj Kamani is the business associate of mastermind of smuggling racket Shri Mohammad Asif Sathi and others with whom he went to Dubai tour also. He was aware about importation of e-cigarettes by the smuggling racket headed by Shri Mohammad Asif Sathi and was also aware that import of e-cigarettes was prohibited in India. He was part of video call with the said mastermind and overseas supplier wherein stuffing of e-cigarettes was being made in the container to be imported to India. He was also aware about discussions of stacking of e-cigarettes in the container and also actively participated in the Whatsapp Group 'Mm' wherein discussions regarding importation of copy/counterfeit goods of various popular brands infringing IPRs was made by him.
- ii. As per statement of Shri Asif, Shri Sarfaraj Kamani had imported goods packed in the boxes with marka 'SK'. On being apprised with the outcome of examination of goods imported in one container no. YMMU6620747 having goods with marka 'SK' pertaining to Shri Sarfaraj (as per version of Shri Asif), Shri Sarfaraj stated that he had perused the examination Panchnama dated 03/04.09.2022 respective Chartered Engineer Valuation Report No. DRI/136/22-23 dated 22.09.2022 and Annexure-A prepared on the basis of Panchnama and Valuation Report. Thus there is gross mis-declaration of quantity and value of goods imported in the cartons having marka 'SK' and it appears that infringement of IPRs is also involved in such import. Hence it appears that he has been concerned with import of other goods mobile phone accessories having mark/logo of various popular brands like Vivo, Oppo, Realme etc. with respect to quantity, value and other material particulars in gross violation of the provisions of Customs Act, 1962 and other allied Acts.
- iii. Apart from above, it appears that Shri Sarfaraj has been a part of smuggling cartel that had imported and already sold out 265 cartons of e-cigarettes in the month of July, 2022 and August, 2022 out of which left out quantity of 12 cartons containing 9600 pcs of e-cigarettes have been recovered by officers of DRI from the godown of smuggling syndicate at Bhiwandi under Panchnama dated 01/02.09.2022. It appears that he was business associate of mastermind of smuggling of e-cigarettes Shri Mohammad Asif Sathi and others and he was very well aware and knowingly concerned in the illegal import of prohibited e-cigarettes as apparent from the Video Calling held among him, Shri Mohammad Asif Sathi and the overseas supplier during the loading of e-cigarettes in the container to be imported. This aspect is substantiated with his Chat

conversations with Shri Parvej Alam and also from the conversation held in the Whatsapp Group 'Mm' with other key persons read with statements of Shri Mohammad Asif Sathi, Shri Mohammed Tahir Menn and Shri Parvej Alam. It also appears that Shri Sarfaraj was active member of Smuggling cartel behind import of mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3 to Show Cause Notice. **In the present case of import of goods in name of Skyblue International Trading Company**, role of Shri Sarfaraz remains the same as has been described in above paras.

- iv. It also appears that Shri Sarfaraj has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Sarfaraj has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS and the goods infringing IPR, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions and by knowingly concerning himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112(b) of Customs Act 1962.
- v. Further it appears that Shri Sarfaraj had used IECs of dummy firms for his own import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. He has also forwarded incorrect documents for filing of Bills of Entry for these consignments with false declarations. He has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it appears that Shri Sarfaraj is also liable to penalty under Section 114AA of the Customs Act, 1962.

14.4. Role and culpability of Shri Baldevsinh Vala

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

Shri Baldevsinh Vala have been recovered. These conversations include messages from Shri Baldevsinh Vala instructing other group members viz. mastermind Mohammad Asif Sathi and his associates Mohammad Tahir Menn, Shri Sarafarz Kamani etc. to load counterfeit goods, restricted goods and other offending in the containers. Shri Baldevsinh Vala sent messages vide which he assured the group members that he would take care of valuation of goods to save the Duty etc, vide which he instructed other members to keep the amount of restricted goods to the extent of 30%, vide which he informed the group members to make extra expenses for clearance of restricted/prohibited goods involving BIS, IPR issues etc.

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

14.5. Role and culpability of M/s Kalpana Exim

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

14.6. Role of Shri Mohamed Hanif Ismail Kapadia

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

Limited, in which AH stands for 'Asif' and 'Hanif' and in M/s. HK Longcheng Trade Co. Limited, in which HK stands for Hanif Kapadia as per version of Shri Tahir. They were also going on business tours outside India together and finalising deals of import. Thus, it appears that Shri Hanif, in a pre-planned manner, had connived with Shri Asif for managing companies in China. From these companies in China undervalued goods were routed to India and imported in dummy companies managed by Shri Asif.

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

14.7. Role of Shri Samir Sharma

- i. **Shri Samir Sharma**, G-Card holder in Customs Broker firm M/s. Al Cargo Services (CB License No. ANUPM4678FCH001) hatched a conspiracy with Shri Vala Baldevsinh Nanbha, Shri Asif and other associated of the smuggling cartel to import mis-declared/ restricted/ prohibited/ undervalued goods as highlighted in Table 3 to the subject SCN.
- ii. Shri Samir Sharma assured Shri Vala Baldev Nanbha for clearance of import consignments of offending goods from Customs. Neither the importer firm, nor their authorised representative provided the import documents to Shri Samir Sharma but the same were given to him by Shri Vala Baldevsinh Nanbha, the forwarder who was not at all authorised by any of the importer firm. During investigation, most of the aforementioned IEC holders were not found or found non-existing. This clearly indicates Shri Samir Sharma has never met the IEC holders and hence verification of genuineness of the IEC holders was not done by him through his reliable sources. It is admitted fact by the mastermind and other concerned key persons that the IEC holders merely allowed their IECs to the mastermind of smuggling racket for getting money from him.
- iii. Being a customs broker Shri Samir Sharma knew that e-way bills were part of the documents required at the time of exiting the consignments from SEZ to DTA while granting Delivery. Yet he connived with the smuggling cartel and submitted E-way Bills with SEZ Customs Authorities having names of unrelated parties such as M/s. Anjali Enterprises, M/s. Nikunj Enterprises, M/s. MD, M/s. Sapna International, M/s. ZU International etc.
- iv. It appears that Shri Samir Sharma was getting Rs. 2.5 lakh to Rs. 3 lakh per consignment in lieu of clearance of offending goods like toys requiring mandatory BIS compliance, mobile phone accessories infringing IPR, by way of mis-declaration.

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

14.8. Role of Shri Parvej Alam

- i **Shri Parwej Alam** was working for Shri Asif and Shri Sarfaraj and was incharge of their Godowns in Bhiwandi. He was arranging for unloading of containers arriving from various ports like Mumbai, Mundra etc. to the warehouses/godowns in Bhiwandi. He was also coordinating with Shri Baldevsinh for details of Trucks/containers departing from Mundra to the godowns. Based on instructions of Shri Asif, he was also dispatching imported goods including e-cigarettes and Toys to various domestic customers.
- ii It is evident that he was involved in transportation of e-cigarettes in container bearing number TLLU4615592 which left Mundra on 28.08.2022 in truck number GJ12 BV0610. On instructions of Asif, he reached ICD Sachin, Surat. From this container TLLU4615592 107 cartons of e-cigarettes along with the other items were recovered. He had also involved himself in handling the imported e-cigarettes in the past also i.e. first consignment of 125 carton e-cigarettes in July 2022 and second consignment of 140 cartons of e-cigarettes in August 2022. Out of the second consignment pertaining to August 2022, 12 cartons of e-cigarettes were kept hidden in at Godown No. 6 and 7, Madvi Complex, Anjur Phata, Narayan Talpatri Bhiwandi which was seized under panchnama dated 01/02.09.2022 by DRI, Zonal Unit, Mumbai. It further appears that being incharge of godowns of Shri Asif and Shri Sarfaraj, he was the main person who was aware about all the mis-declared/concealed/restricted and prohibited products being imported by the cartel led by Shri Asif.
- iii Hence, it appears that Shri Parwej has assisted in smuggling of e-cigarettes in violation of provisions of Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and

Advertisement) Act, 2019, in as much as he played an active role in removing, depositing, harbouring, keeping and dealing with Prohibited goods i.e. E-Cigarettes in India. It also appears that Shri Parwej was well aware and had handled the unloading and dispatch of all mis-declared/undervalued/concealed/counterfeit goods as mentioned in Table 3.

- iv **In the present case role of Shri Parwej Alam in respect of import of goods in name of M/s Skyblue International Trading Company**, remains the same as has been described in above paras.
- v Thus, it appears that Shri Parwej has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Shri Parwej has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.

14.9. Role of Shri Dirgesh Dedhia

- (i) **Shri Dirgesh Dedhia** is proprietor of firm M/s Exemplar Trading. It appears that in lieu of getting easy money he allowed Shri Asif to import goods in his firm.
- (ii) **Shri Dirgesh** also used to supervise the crossing of containers after clearance from Mundra SEZ indicating that he was well aware about the nature of misdeclared goods in the consignments. The crossing was apparently done to evade detection and tracking by enforcement agencies as per version of Shri Baldev. Thus, it appears that Shri Dirgesh was fully aware of the nature of mis-declaration/concealment/undervaluation in such consignments and thus was a partner in crime with the gang of smugglers led by Shri Asif. He was part of the gang led by Shri Asif and comprising of Shri Tahir, Shri Baldevsinh, Shri Sarfaraj, Shri Hanif, Shri Gaurav Sahay and Shri Samir Sharma. He had also gone on a trip to Dubai with these gang members to explore business opportunities. It appears that he had full knowledge about activities of this smuggling cartel and also about the imports being done in the name of dummy firm Skyblue International Trading Company.
- (iii) From above, it appears that Shri Dirgesh has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing, selling and dealing with mis-declared goods including prohibited goods i.e. toys being imported in the name of **M/s. Skyblue International Trading Company** which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.

14.10. Role and culpability of Shri Gaurav Sahay

- Shri Gaurav Sahay was an active member of the smuggling cartel being led by Shri Asif. He was an active member of Whatsapp Group "Mm". He was also into the business of lending dummy IECs to Shri Asif as is evident from chat conversations in the group. From Chats, it is evident that he had forwarded IEC of "Global Impex" to Shri Asif. He is also seen to be suggesting use of IEC of "Exemplar Trading" in the chats. In chat messages of whatsapp group "Mm" Gaurav Sahay is actively asking details of BLs of consignments being imported by Asif and about details of "Notify party" that should be mentioned in the documents.
- Being active member of whatsapp group "Mm", Gaurav Sahay was also privy to plans regarding import of prohibited goods such as e-cigarettes; restricted goods such as Toys; counterfeit mobile accessories etc. and other undervalued/mis-

declared goods. Shri Gaurav Sahay was also receiving monetary benefits from Shri Asif and Shri Tahir had clearly mentioned that he had given Rs 1,00,000/- to Shri Gaurav Sahay for his work in clearing goods pertaining to Asif.

- Hence it appears that Shri Gaurav Sahay is an active associate of cartel of smuggling of prohibited item e-cigarettes and other offending goods imported illegally at Mundra port by way of concealment and mis-declaration like toys requiring mandatory BIS compliance, and/or other goods involving gross undervaluation as mentioned in Table 3.
- **In the present case** role of Shri Gaurav Sahay in case of **import of goods in name of M/s Skyblue International Trading Company**, remains same as has been described in above paras. All the acts done by him as described above are in contravention to the provisions of Customs Act, 1962 and rules made there under. Thus, it appears that Shri Gaurav Sahay has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys and other offending goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and (b) of Customs Act 1962.
- He is also involved in manipulation of documents by was of mentioning "Notify Party" in name of dummy firms, being managed by Shri Asif one of which was M/s Skyblue International Trading Company. He is also seen to be actively managing the BLs of the consignments imported by Shri Asif. In these IECs including M/s Skyblue International, Bills of Entry having wrong declarations in document for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation have been filed. It appears that he has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore Shri Gaurav Sahay is also liable to penalty under Section 114AA of the Customs Act, 1962.

14.11. Role and culpability of Empezar Logistics

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

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

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

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

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

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

v. From above regulations, it is crystal clear that there is no provision to create sub-id in name of CHA. Any such practice is without authority of law. Further the Warehousing Unit cannot shed its own responsibilities while filing correct declarations in Bill of Entry on the pretext that the CHA firm has filed the Bill of Entry. Further Shri Samir Sharma in his statement dtd. 08.09.2022 stated that the checklist for Bills of Entry filed by him are duly approved by Empezar Logistics before filing of the same.

vi. Hence it appears that Empezar Logistics is responsible for filing incorrect details in the Bill of Entry filed in name of M/s. M. M. Enterprises pertaining to the said container. Further as per above regulations the Bill of Entry filed for DTA clearanceshould be having complete description of the goods such as make, model number, serial number, specification. Since in this case the DTA client was not filing the Bill of Entry and because the warehousing unit was getting the Bill of Entry filed using its own id/sub-id, hence the onus for filing correct declarations of the goods in the Bills of Entry falls on the warehousing Unit. It appears that Empezar Logistics have failed to discharge their responsibility in this regard which had led to clearance of mis-declared/undervalued/prohibited goods.

vii. Further it was noticed during investigation that some of the import consignments of firms mentioned in Table 3 were being DTA cleared in same Containers without destuffing at the warehouse of M/s. Empezar Logistics Pvt. Ltd. As regards the import consignments of M/s. Skyblue International Trading Company, it was noticed that the import consignments covered under under Warehouse Bill of Entry 1011567 dated 29.08.2022 and 1011568 dated 29.08.2022 and corresponding DTA Bills of Entry No. 2013042 dated 30.08.2022 and 2013044 dated 30.08.2022 for the Containers bearing Nos. DFSU7686560 and TEMU8505123, respectively. However, it appears that Empezar Logistics had removed the import consignments without destuffing of the same in their warehouse. Hence, it appears that M/s. Empezar Logistics Pvt. Ltd. had failed to destuff the entire goods in the said consignment at its warehouse and thus failed to discharge the obligations entrusted on it under SEZ Act and rules thereunder.

viii. Further investigation has revealed that large numbers of mis-declared and undervalued consignments having restricted/prohibited/IPR violating goods were cleared into DTA from Empezar Logistics by the cartel led by Shri Asif and other members as mentioned above. In the present case of import of goods in name of M/s. Skyblue International Trading Company, role of M/s Empezar Logistics remains the same as has been described in above paras.

ix. Thus, it appears that Empezar Logistics have done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing,

depositing, harbouring, keeping, concealing and dealing with Prohibited goods i.e. Toys. It also appears that Empezar Logistics has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and 112 (b) of Customs Act 1962.

x. It also appears that M/s. **Empezar Logistics** lent their ID to CHA Shri Samir Sharma for filing of incorrect Bill of Entry No 2013042 and 2013044 both Dt 30.08.2022 pertaining to Rajyog Enterprise for without authority of law. Incorrect description and values in Bills of Entries and wrong declarations were accordingly filed for ensuring clearance of various offending goods by way of mis-declaration/concealment/undervaluation. It appears that M/s. Empezar logistics has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, therefore they are liable to penalty under Section 114AA of the Customs Act, 1962.

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

During investigation it was noticed that M/s. Skyblue International Trading Company had imported total 05 import consignments, however, they have filed Bill of Entry No. 2013047 dated 30.08.2022 for the goods imported through Container No. YMMU6620747. It appears that Shri Vipin Sharma had submitted his examination report in respect of the import goods covered under Bill of Entry No. 2013047 dated 30.08.2022 in compliance to the examination order placed by the appraising officer. During examination of the goods pertaining to the said container gross mis-declaration in respect of quantity and value were noticed during examination thereof. Shri Vipin Sharma submitted the examination report for both the import consignments as under;

Examination Order:-

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

Examination Report

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

During examination of the goods, gross mis-declaration in respect of quantity and value of the goods were noticed. Also total 252000 earphones were found in the import consignment which were not declared by the importer at the time of filing Bill of Entry for the same. It appears that Shri Vipin Sharma, the then Preventive officer had not examined the goods in spite of specific directions given by the assessing officer on the system, as offending goods and mis-declaration of quantity, value was noticed.

From the facts discussed in foregoing paras, it appears that by not carrying out proper examination of subject consignments, Shri Vipin Sharma had submitted the examination report without verifying the actual details/description of the goods whereas, in consequent examination the goods were found mis-declared in respect of quantity, description and value thereof which show his negligence towards his duty. Such act of omissions and commission on the part of Shri Vipin Sharma rendered 4800 exercise book, 74552 mobile back cover, 252000 earphone, 485381 pcs tempered glass having total market price of Rs. 22,33,64,360/-, liable to confiscation under Section 111 (f) and 111(m) of the Customs Act, 1962. Therefore, it appears that Shri Vipin Sharma, then Preventive Officer, Customs House, Mundra has rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962.

15. In view of above, a Show Cause Notice F.No. GEN/ADJ/COMM/ 568/2023-Adjn dated 30.08.2023 was issued to M/s Skyblue International Trading Company (IEC No. FJOPS8421P) and others, made answerable to show cause in writing to the Pr. Commissioner of Customs, Customs House, Mundra, wherein it is proposed as to why:-

(i) The assessable value of total 1265541 pcs of Tempered /toughened glass classified under HS Code 7007290, should not be determined as Rs. 35,72,16,200/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of Rs. 13,38,48,910/- should not be demanded under Section 28(4) of the Customs Act, 1962, as given in Annexure-A to this notice.

(ii) The assessable value of total 106802 pcs of Mobile back cover classified under HS Code 39269099, should not be determined as Rs. 2,66,12,060/-under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of Rs. 99,71,539/- should not be demanded under Section 28(4) of the Customs Act, 1962, as given in Annexure-A to this notice.

(iii) The assessable value of total 1886000 pcs of Earphone classified under HS Code 85183020, should be determined as Rs. 25,73,40,000/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of Rs. 11,31,26,664/- should not be demand under Section 28(4) of the Customs Act, 1962, as given in Annexure-A to this notice.

(iv) The assessable value of total 13700 pcs. of Exercise Book classified under HS Code 48202000, should be determined as Rs. 30,16,700/-under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of Rs. 7,33,661/- should not be demanded under Section 28(4) of the Customs Act, 1962, as given in Annexure-A to this notice.

(v) The assessable value of total 20880 pcs of Hair Straightener/Hair Trimmer classified under HS Code 85102000, should be determined as Rs. 1,12,80,000/-under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the applicable Customs Duty of Rs. 49,58,680/- should not be demanded under Section 28(4) of the Customs Act, 1962, as given in Annexure-A to this notice.

(vi) Since the goods mentioned at para (i) to (v) above have been found mis-declared in respect of description, quantity, value thereof hence it appears that these goods are liable for confiscation under Section 111 (f) and 111(m) of the Customs Act, 1962.

(vii) Total 129000 Toys (Cactus, Pop up toys) falling under HS Code 95030010/95030020 found concealed in the import consignments pertaining to Container No. SEGU4596469 and was grossly mis-declared as 'Plastic Chocolate Mould (Misc item non popular brand) having market price of Rs. 2,50,50,000/- imported under Bill of Lading No. which appears to be in violation of the provisions of Condition 2 of Chapter 95, being the offending goods, should not be held liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as mentioned in Annexure-B to this notice.

15.1. Further, vide the said Show Cause Notice F.No. GEN/ADJ/COMM/ 568/2023-Adjn dated 30.08.2023 penalty has also been proposed to impose upon following persons:-

Table-10

Sr. No.	Name	Penal provisions under Customs Act, 1962			
		(3)	(4)	(5)	(6)
1	M/s. Skyblue International Trading Company	112(a)	112(b)	114A	114(AA)

2	Shri Asif Sathi (Beneficial owner of the import goods)	112(a)	112(b)	114A	114(AA)
3	Shri Sarfaraz Kamani (Beneficial owner of the import goods)	112(a)	112(b)	114A	114(AA)
4	Shri Tahir Menn (Associate of beneficial owner)	112(a)	112(b)	---	114(AA)
5	Shri Parvej Alam (Associate of beneficial owner)	112(a)	112(b)	---	---
6	Shri Baldevsinh Vala Associate of beneficial owner	112(a)	112(b)	---	114(AA)
7	Shri Samir Sharma, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment)	112(a)	112(b)	---	114(AA)
8	Shri Gaurav Sahay (Associate of beneficial owner)	112(a)	112(b)	---	114(AA)
9	Shri Dirgesh Dedia (Associate of beneficial owner)	112(a)	112(b)	---	---
10	Shri Hanif Kapadia (Associate of beneficial owner)	112(a)	112(b)	---	114(AA)
11	M/s Kalpana Exim	112(a)	112(b)	---	114(AA)
12	M/s. Empezar Logistics Pvt Ltd.	112(a)	112(b)	117	114(AA)
13	Shri Vipin Sharma	112(a)	---	---	---

EARLIER ADJUDICATION OF THE CASE

16. The subject case was earlier adjudicated and Order-in-Original No. MUNCUSTM-000-COM-22-24-25 dated 27.08.2024 was issued by the Pr. Commissioner, Mundra Customs, in favour of the department, thereby ordering as follows:

26.1. IN RESPECT OF DUTIABLE GOODS WHERE BILLS OF ENTRY FILED FOR DTA CLEARANCE:

- (i) *I reject the declared value of impugned goods i.e. 252000 Pcs. of Earphone classifiable under HS Code 85183020, 485381 Pcs. Of Tempered Glass classifiable under HS Code 70072900, 74552 Pcs. of Back Cover classifiable under 39269099 and 4800 Pcs. of Exercise Book classifiable under HS Code 48202000 imported by M/s. **Skyblue International Trading Company (IEC No. FJOPS8421P)**, in terms of Rule 12 of CVR, 2007; and order to re-determine the value of the same as per their Assessable Value of **Rs.22,33,64,3260/-** in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 readwith Section 14 of the Customs Act, 1962.*
- (ii) *I order to confiscate the impugned goods as mentioned at (i) above, under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs 2,50,00,000 /- (Rupees***

Two Crore Fifty Lakhs only) under Section 125 of the Customs Act, 1962.

- (iii) I confirm the demand of Customs Duty of **Rs. 8,81,47,730/- (Rupees Eight Crore Eighty One Lakh Forty Seven Thousand Seven Hundred Thirty only)** against impugned goods mentioned at (i) above, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; alongwith interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (iv) I impose penalty of **Rs. 8,81,47,730/- (Rupees Eight Crore Eighty One Lakh Forty Seven Thousand Seven Hundred Thirty only)** upon **M/s. Skyblue International Trading Company (IEC No. FJOPS8421P)** under Section 114A of the Customs Act, 1962 in respect of (i) & (iii) above;
- (v) I impose penalty of **Rs. 8,81,47,730/- (Rupees Eight Crore Eighty One Lakh Forty Seven Thousand Seven Hundred Thirty only)** upon **Shri Asif Sathi** (Beneficial owner of the import goods) under Section 114A of the Customs Act, 1962 in respect of (iii) & (vi) above; however, I refrain from imposing penalty upon him under Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.
- (vi) I impose penalty of **Rs 15,00,000/- (Rupees Fifteen Lakhs only)** upon **Shri Sarfaraj Kamani** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs 15,00,000/- (Rupees Fifteen Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Parvej Alam** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (ix) I impose penalty of **Rs 25,00,000/- (Rupees Twenty-Five Lakhs only)** upon **Shri Baldevsinh Vala** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (x) I impose penalty of **Rs 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 112(a)(ii) of the Customs Act, 1962.
- (xi) I impose penalty of **Rs 15,00,000/- (Rupees Fifteen Lakhs only)** upon **Shri Gaurav Sahay** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xii) I impose penalty of **Rs10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Dirgesh Dedia** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xiii) I impose penalty of **Rs15,00,000/- (Rupees Fifteen Lakhs only)** upon **Shri Hanif Kapadia** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xiv) I impose penalty of **Rs10,00,000/- (Rupees Ten Lakhs only)** upon **M/s Kalpana Exim** under Section 112(a)(ii) of the Customs Act, 1962.
- (xv) I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 112(a)(ii) and Section 117 of the Customs Act, 1962, for the reasons discussed hereinabove.

(xvi) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Vipin Sharma** under Section 112(a)(ii) of the Customs Act, 1962.

26.2. IN RESPECT OF DUTIABLE GOODS WHERE BILLS OF ENTRY NOT FILED FOR DTA CLEARANCE:

- (i) I order to determine the value of impugned goods (excluding Toys) for which **M/s. Skyblue International Trading Company (IEC No. FJOPS8421P)** did not file Bills of Entry as **Rs. 43,21,00,600/-** under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 readwith Section 14 of the Customs Act, 1962.
- (ii) I order to confiscate the impugned goods (excluding Toys) having determined value of **Rs. 43,21,00,600/-** under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods for the purpose of re-export only, on payment of redemption fine of **Rs13,00,00,000/- (Rupees Thirteen Crores only)** under Section 125 of the Customs Act, 1962, within 90 days.
- (iii) I impose penalty of **Rs. 1,00,00,000/- (Rupees One Crore only)** upon **M/s. M/s. Skyblue International Trading Company (IEC No. FJOPS8421P)** under Section 112(a)(ii) of the Customs Act, 1962.
- (iv) I impose penalty of **Rs 1,00,00,000/- (Rupees One Crore only)** upon **Shri Asif Sathi (Beneficial owner of the import goods)** under Section 112(a)(ii) of the Customs Act, 1962.
- (v) I impose penalty of **Rs 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Sarfaraj Kamani (Beneficial owner of the import goods)** under Section 112(a)(ii) of the Customs Act, 1962.
- (vi) I impose penalty of **Rs 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Tahir Menn** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs 25,00,000/- (Rupees Twenty-Five Lakhs only)** upon **Shri Parvej Alam** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs 25,00,000/- (Rupees Twenty-Five Lakhs only)** upon **Shri Baldevsinh Vala** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (ix) I refrain from imposing penalty upon **Shri Samir Sharma**, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 112(a)(ii) of the Customs Act, 1962 for the reasons discussed hereinabove.
- (x) I impose penalty of **Rs 12,00,000/- (Rupees Twelve Lakhs only)** upon **Shri Gaurav Sahay** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xi) I impose penalty of **Rs 12,00,000/- (Rupees Twelve Lakhs only)** upon **Shri Dirgesh Dedhia** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xii) I impose penalty of **Rs 12,00,000/- (Rupees Twelve Lakhs only)** upon **Shri Hanif Kapadia** (Associate of beneficial owner) under Section 112(a)(ii) of the Customs Act, 1962.
- (xiii) I impose penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **M/s Kalpana Exim** under Section 112(a)(ii) of the Customs Act, 1962.
- (xiv) I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 112(a)(ii) and section 117 of the Customs Act, 1962, for the reasons discussed hereinabove.
- (xv) I refrain from imposing penalty upon **Shri Vipin Sharma** under Section 112(a)(ii) of the Customs Act, 1962.

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

- (i) I order to confiscate the impugned offending goods **1,29,000 toys** valued at **Rs. 2,50,50,000/-** of different kind falling under HS Code 95030010/95030020, found concealed in the import consignment and grossly mis-declared as Plastic Chocolate Mould; pertaining to **Container No. SEGU4596469** imported under Bill of Lading/IGM, in violation of the provisions of Condition 2 of Chapter 95, under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as detailed vide Annexure-B. However, I give an option to the importer to redeem the confiscated goods quantifying to **1,29,000 Toys** valued at **Rs. 2,50,50,000/-** for the purpose of re-export only wherin DTA bill has not been filed, on payment of redemption fine of **Rs 50,00,000/- (Rupees Fifty Lakhs only)** under Section 125 of the Customs Act, 1962, within 90 days.
- (ii) I impose penalty of **Rs 25,00,000 /- (Rupees Twenty-Five Lakhs only)** upon **M/s. Skyblue International Trading Company (IEC No. FJOPS8421P)** under Section 112(a)(i) of the Customs Act, 1962.
- (iii) I impose penalty of **Rs 25,00,000/- (Rupees Twenty-Five Lakhs only)** upon **Shri Asif Sathi (Beneficial owner of the imported goods)** under Section 112(a)(i) of the Customs Act, 1962.
- (iv) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Sarfaraj Kamani (Beneficial owner of the imported goods)** under Section 112(a)(i) of the Customs Act, 1962.
- (v) I impose penalty of **Rs 4,00,000/- (Rupees Four Lakhs only)** upon **Shri Tahir Menn (Associate of beneficial owner)** under Section 112(a)(i) of the Customs Act, 1962.
- (vi) I impose penalty of **Rs 4,00,000/- (Rupees Four Lakhs only)** upon **Shri Parvej Alam (Associate of beneficial owner)** under Section 112(a)(i) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Baldevsinh Vala (Associate of beneficial owner)** under Section 112(a)(i) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Gaurav Sahay (Associate of beneficial owner)** under Section 112(a)(i) of the Customs Act, 1962.
- (ix) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Dirgesh Dedhia (Associate of beneficial owner)** under Section 112(a)(i) of the Customs Act, 1962.
- (x) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakhs only)** upon **Shri Hanif Kapadia (Associate of beneficial owner)** under Section 112(a)(i) of the Customs Act, 1962.
- (xi) I impose penalty of **Rs 1,00,000/- (Rupees One Lakhs only)** upon **M/s Kalpana Exim** under Section 112(a)(i) of the Customs Act, 1962.
- (xii) I refrain from imposing penalty upon **Shri Samir Sharma**, G-card holder of the Customs Broker Firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 112(a)(i) of the Customs Act, 1962 for the reasons discussed hereinabove.
- (xiii) I refrain from imposing penalty upon **Shri Vipin Sharma** under Section 112(a)(i) of the Customs Act, 1962.
- (xiv) I refrain from imposing penalty upon **M/s. Empezar Logistics Pvt Ltd.** under Section 112(a)(i) and section 117 of the Customs Act, 1962, for the reasons discussed hereinabove.

26.4. IMPOSITION OF PENALTY UNDER SECTION 114(AA) OF THE CUSTOMS ACT, 1962:

- (i) *I impose penalty of Rs 10,00,000/- (Rupees Ten Lakhs only) upon M/s. Skyblue International Trading Company under Section 114(AA) of the Customs Act, 1962.*
- (ii) *I impose penalty of Rs 10,00,000/- (Rupees Ten Lakhs only) upon Shri Asif Sathi (Beneficial owner of the import goods) under Section 114(AA) of the Customs Act, 1962.*
- (iii) *I impose penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon Shri Sarfaraj Kamani (Beneficial owner of the import goods) under Section 114(AA) of the Customs Act, 1962.*
- (iv) *I impose penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon Shri Tahir Menn (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.*
- (v) *I impose penalty of Rs 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) upon Shri Baldevsinh Vala (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.*
- (vi) *I impose penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon Shri Samir Sharma, G-card holder of the Customs Broker firm M/s. Al Cargo Services (who filed Bills of Entry for the import consignment) under Section 114(AA) of the Customs Act, 1962.*
- (vii) *I impose penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon Shri Gaurav Sahay (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.*
- (viii) *I impose penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon Shri Hanif Kapadia (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.*
- (ix) *I impose penalty of Rs 1,00,000/- (Rupees One Lakh only) upon M/s. Kalpana Exim under Section 114(AA) of the Customs Act, 1962.*
- (x) *I refrain from imposing penalty upon M/s. Empezar Logistics Pvt Ltd. under Section 114(AA) of the Customs Act, 1962, for the reasons discussed hereinabove."*

CORRIGENDUM TO THE ORDER-IN-ORIGINAL

17. Corrigendum to the Order-in-Original No. MUN-CUSTM-000-COM-22-24-25 dated 27.08.2024 was issued on 14.11.2024 and the same is produced below:

"In the said Order-In-Original, at Para No. 26.1 (iii), 26.2 (v) and 26.3 (iv)

1. *At Para No. 26.1 (iii) at page No. 86 of 92 is as under:*
 - iii) I confirm the demand of Customs Duty of Rs. 8,81,47,730/- (Rupees Eight Crore Eighty One Lakh Forty Seven Thousand Seven Hundred Thirty only) against impugned goods mentioned at (i) above, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; alongwith interest at appropriate rate under Section 28AA of the Customs Act, 1962.*

May be read as

- iii) I confirm the demand of Customs Duty of Rs. 8,81,47,730/- (Rupees Eight Crore Eighty One Lakh Forty Seven Thousand Seven Hundred Thirty only) against impugned goods mentioned at (i) above, in terms of the provisions of Section*

28(8) read with Section 28(4) of the Customs Act, 1962; alongwith interest at appropriate rate under Section 28AA of the Customs Act, 1962 which shall be recovered jointly and severally from Importer M/s Skyblue International Trading Company and Beneficial Owner Shri Asif Sathi.

2. At para 26.2 (v) at page No. 88 of 92 is as under

v) I impose penalty of **Rs 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Sarfaraj Kamani (Beneficial owner of the import goods)** under Section 112(a)(ii) of the Customs Act, 1962.

May be read as

v) I impose penalty of **Rs 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Sarfaraj Kamani (Associate of Beneficial owner)** under Section 112(a)(ii) of the Customs Act, 1962.

3. At para 26.3 (iv) at page No. 88 of 92 is as under:

iv) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Sarfaraj Kamani (Beneficial owner of the imported goods)** under Section 112(a)(i) of the Customs Act, 1962

May be read as

iv) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakhs only)** upon **Shri Sarfaraj Kamani (Associate of Beneficial owner)** under Section 112(a)(i) of the Customs Act, 1962

4. All other contents of said O-i-O shall remain unchanged.²

CASE REMADED BACK FOR DE-NOVO ADJUDICATION

18. Aggrieved by the aforesaid Order-in-Original No. MUN-CUSTM-000-COM-22-24-25 dated 27.08.2024, the following noticees had filed appeal at Hon'ble CESTAT, Ahmedabad:

- i. M/s Skyblue International Trading Company (Appeal no. 10719/2024)
- ii. Shri Asif Sathi (Appeal no. 10720/2024)
- iii. Shri Sarfaraz Kamani (Appeal no. 10645/2024)
- iv. Shri Parvej Alam (Appeal no. 10643/2024)
- v. Shri Baldevsinh Vala (Appeal no. 10764/2024)
- vi. Shri Samir Sharma (Appeal no. 10505/2024)
- vii. Shri Gaurav Sahay (Appeal no. 10820/2024)
- viii. Shri Dirgesh Dedhia (Appeal no. 10644/2024)
- ix. Shri Hanif Kapadia (Appeal no. 10642/2024)
- x. M/s Kalpana Exim through proprietor Shri Abhalsinh Vala (Appeal no. 10763/2024)
- xi. Shri Vipin Sharma (Appeal no. 10741/2024)

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

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

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

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

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

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

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

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

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

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

*The appeals are disposed of in above terms.**

MISCELLANEOUS APPLICATION FOR TIME EXTENSION

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

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

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

"The documents as desired by the party have been provided by the department, which relates to the process of valuation adopted by the department and the party has also raised its objection in written reply seeking some cross-examination. The learned AR seeks one-week time for the order to be passed (after the submission of final reply including the

crossexamination if any accorded by the Adjudicating Authority). Accordingly, the matters to come up on July 15, 2025."

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

20. As per directions of Hon'ble CESTAT regarding method to be adopted for valuation of impugned goods, letter was sent to DRI, Gandhidham for providing NIDB and contemporaneous import basis revaluation or if not available, deductive method basis. Accordingly, DRI sent its report consisting of valuation of some items as per contemporaneous data (NIDB) and of some items as per market survey. The list of documents provided by the DRI are **1. Committee Report on market survey, 2. E-mails to 4 importers, 3. List of Bills of Entry relied upon for contemporaneous data (NIDB), 4. Online links to price references, 5. Calculation sheet after re-valuation of all the impugned goods, 6. Calculation sheet for goods where market survey adopted and 7. Whole Sale Price Index.** The gist of report sent by DRI in case of M/s Skyblue International Trading Co. is produced below:

Table-11

Container no.	Item found on examination	CTH	Value/unit (in Rs.)	Based on NIDB/committee report
YMMU66 20747	Exercise Book (Misc item non popular brand)	48202000	146.06	NIDB
	Tempered Glass	70071900	265.65	NIDB
	Back Cover	39269099	11.00	NIDB
	Earphone	85183000	3.86	NIDB
SLSU80 18922	Exercise book	48202000	146.06	NIDB
	Tempered glass	70071900	265.65	NIDB
	Hair Straightener	85102000	32.37	NIDB
	Earphone	85183000	3.86	NIDB
TRHU84 55767	Earphone(AK-H)	85183000	3.86	NIDB
	Hair Straighteners	85102000	32.37	NIDB
	Earphone (SK-786)	85183000	3.86	NIDB
SEGU45 96469	Plastic pop up toys	950300	34.12	Committee report
	Dancing Cactus Toys	950300	28.70	NIDB
TGBU77 09478	Earphone of different brand (oppo, vivo, realme, boat, samsung etc.)	85183000	144.01	NIDB
	Earphone unbranded	85183000	3.86	NIDB
	Mixed mobile phone Back Cover	39269099	8.72	NIDB
	Hair Clipper/straightner	85102000	44.52	NIDB
	Magic practice book	48202000	146.06	NIDB

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

WRITTEN SUBMISSION AND PERSONAL HEARING

21. Noticee on receiving the DRI report, submitted reply 17.04.2025 and 24.04.2025. Accordingly, personal hearing in the matter was granted to the noticees on 13.06.2025. Shri Hardik Modh, Consultant, representing Noticees, appeared for personal hearing

through virtual mode on 13.06.2025. During the personal hearing, he reiterated the submissions as made in the reply dated 17.04.2025 and 24.04.2025 wherein he inter alia stated that:

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

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

Table-12

<u>Bill of Entry relied upon by DRI</u>	<u>Imported goods</u>	<u>Reasons for discarding the valuation, as per noticee</u>	<u>Remarks by noticee</u>
8421846 dated 25.04.2022	Earphone	<ul style="list-style-type: none"> • Import was made in April, 2022 whereas the disputed consignment was imported in August, 2022 and therefore, the value proposed to be adopted by the customs authority is older than 5 months; • Import was made from Hong Kong whereas the disputed consignment, was imported from China; • 21,000 pieces of Earphone (unbranded) were imported whereas in the disputed consignment 4,21,000 pieces of Earphone (unbranded) were imported; • Quality and specifications of the imported goods and the disputed goods have not been examined; 	<ul style="list-style-type: none"> • Other importers imported consignments of Earphone from China declaring the value ranging from .09 USD per GRS to 3 USD per GRS. Copies of relevant Bills of Entry are attached herewith.
9408579 dated 04.07.2022	Hair Straightener	<ul style="list-style-type: none"> • 2,000 pieces of Hair Straightener were imported whereas in the disputed consignment 5,280 pieces in two container each of Hair Straightener were imported; • Quality and specifications of the 	<ul style="list-style-type: none"> • Other importers imported consignments of Hair Straightener from China declaring the value ranging from 3.6 USD per DOZEN to 6 USD per DOZEN. Copies of relevant

		imported goods and the disputed goods have not been examined;	Bills of Entry are attached herewith.
7033861 dated 11.01.2022	Earphone of different brands	<ul style="list-style-type: none"> Import was made in January, 2022 whereas in the disputed consignment, import was made in August, 2022 and therefore, 7 months old value cannot be relied; Supply is made from Hong Kong whereas in the disputed consignment, supply was made from China; Supplier is different and based of Taiwan whereas in the disputed consignments, supplier was based of China; Quality and specifications of the imported goods and the disputed goods have not been examined; 21,788 pieces of branded Earphone were imported whereas in the disputed consignment, 416000 pieces of branded earphones were imported; 	<ul style="list-style-type: none"> Other importers imported consignments of Earphone from China declaring the value ranging from .09 USD per GRS to 3 USD per GRS. Copies of relevant Bills of Entry are attached herewith.
2163512 dated 25.08.2022	Mixed Mobile phone back cover	<ul style="list-style-type: none"> 4083 pieces of mixed mobile phone back cover were imported whereas in the disputed consignment 32,250 pieces of mixed mobile phone back cover were imported; Quality and specifications of the imported goods and the disputed goods have not been examined; 	<ul style="list-style-type: none"> Other importers imported consignments of Mixed Mobile phone back cover from China declaring the value ranging from .24 USD per GRS to 4.8 USD per GRS. Copies of relevant Bills of Entry are attached herewith.
2107371 dated 22.08.2022	Tempered Glass	<ul style="list-style-type: none"> Customs authority has taken the value of goods imported under 70071900 whereas the disputed consignments belongs to HSN 85299090 and 	<ul style="list-style-type: none"> Other importers imported consignments of Tempered Glass from China declaring the value ranging from 12

		<p>therefore, value of different HSN cannot be relied;</p> <ul style="list-style-type: none"> • 6,720 pieces of Tempered Glass were imported whereas in the disputed consignment 12,65,541 pieces of Tempered Glass were imported; • Quality and specifications of the imported goods and the disputed goods have not been examined; 	<p>USD per GRS to 17 USD per GRS. Copies of relevant Bills of Entry are attached herewith.</p>
Bill of Entry No.9390899 dated 03.07.2022	Exercise Book	<ul style="list-style-type: none"> • Only screenshot was provided and complete copy of Bill of Entry not provided; • Supplier name not mentioned in the screenshot; • 1100 pieces of Exercise Book were imported whereas in the disputed consignment 3300 pieces of Exercise Book were imported; • Quality and specifications of the imported goods and the disputed goods have not been examined; • "Declared Value" was taken instead of "Assessed Value" by Committee. 	<ul style="list-style-type: none"> • Other importers imported consignments of Exercise Book from China declaring the value in the range of 1.2 USD per Dozen. Copies of relevant Bills of Entry are attached herewith.
Bill of Entry No.9870249 dated 04.08.2022	Hair Clipper / Trimmer not of reputed brand	<ul style="list-style-type: none"> • Only screenshot was provided and complete copy of Bill of Entry not provided; • Supplier name not mentioned in the screenshot; • Quality and specifications of the imported goods and the disputed goods have not been examined; 	<ul style="list-style-type: none"> • Other importers imported consignments of Hair Clipper / Trimmer from China declaring the value ranging from 3.60 USD per Dozen to 8.4 USD per Dozen. Copies of relevant Bills of Entry are attached herewith.
Bill of Entry No.7738400	Dancing Cactus	<ul style="list-style-type: none"> • Only screenshot was provided and complete copy of Bill of Entry not provided; 	<ul style="list-style-type: none"> • Other importers imported consignments of Dancing Cactus

dated 04.03.2022	<ul style="list-style-type: none"> Supplier name not mentioned in the screenshot; Quality and specifications of the imported goods and the disputed goods have not been examined; 5000 pieces of Dancing Cactus were imported whereas in the disputed consignment 24000 pieces of Dancing Cactus were imported; "Declared Value" was taken instead of "Assessed Value" by Committee. 	from China declaring the similar price as declared by the Noticee. Copies of relevant Bills of Entry are attached herewith.
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Value Proposed By The Committee Based On The Domestic Inquiry Is Incorrect

ii. It appears from the Committee Report that the Committee enquired with the domestic retailers to ascertain value of the disputed goods where value of contemporaneous import was not available. While proposing to adopt the value of retailers, the customs authority appears to have not considered the following points:

- Rule 6 of Customs Valuation Rules which provides that if value of goods cannot be determined under the provisions of Rule 3, 4 and 5, the value shall be determined under the provisions of Rule 7. If the value cannot be determined under Rule 7, value is to be determined under Rule 8.
- Rule 7 (2) provides that value of imported goods shall be based on the unit price at which imported goods or identical or similar goods are sold in India at the earliest date after importation but before expiry of 90 days after such import.

In the instant case, the retailers did not provide the information of wholesalers and the importers on the ground of confidentiality and competency of the business. Therefore, the Committee computed the landing cost by computing on reverse method from the price at which retailer sold the goods to the customers. It is an obligation upon the Customs Authority to ascertain whether the price provided by the retailers satisfies the conditions provided in Rule 7 of Valuation Rules. The Committee failed to consider whether the price at which the retailers sold the goods was imported within a period of 90 days from the date of import of the disputed goods. For example, in the present case, the Bill of Entry of the disputed goods was filed in August 2022 and therefore while accepting domestic price for valuation of the imported goods under Rule 7, the Customs Authority ought to have examined that the said retail goods were not imported beyond 3 months from August 2022. The Committee report is silent on this aspect. Hence, the value proposed by the Committee based on the domestic enquiry is contrary to the decision dated 05.12.2024 passed by the Hon'ble CESTAT and Valuation Rules.

It is submitted that when a committee is being assigned the work to ascertain value of contemporaneous import, it is crucial to compare the value of these goods with the international price of similar imports in terms of quality and quantity from the same country. This ensures an accurate and fair assessment of the goods' value failing which the report of such committee cannot be accepted.

The Noticee further submits that the Committee Report dated 07.04.2025 should not be relied upon for the following reasons (as elaborated in our letter dated 17.04.2025):

- Details of the professional expertise and competency of the committee members in determining the value of the imported goods;
- Questionnaire raised by the committee along with the answers / response given by the shop keepers;
- Name and role of the persons with whom conversation was held by the committee;
- Details of questionnaire raised before the shop keepers to understand the pricing strategy, cost structure etc;
- Total purchase value made by the above-mentioned shops for each of the disputed items, including any relevant supporting documents or details;
- Provide purchase invoices and sales invoices alongwith associated credit Notes/Debit Notes and transportation documents;
- Whether the committee examined and confirmed that the proposed price adopted was identical to that of the disputed goods;
- Whether the committee examined and confirmed regarding quality and quantity and appearance of the disputed goods were identical to the goods that were examined by them at the shops?
- Reasons as to why the committee did not visited the place of wholesalers and/or importers across India where similar goods were imported by many other importers and wholesalers;
- Provide the basis for determining the percentage of profit margin, including the calculation of transportation, insurance, and delivery charges;
- Since the selling price varies across each shop, kindly provide the basis for concluding that the profit margin remains consistent across all these shops;
- Provide the rationale for the 10% price difference that is said to cover profit, transportation, insurance, delivery, and handling charges;
- Provide the basis for the conclusion that the importer earns only a 5% profit on the sales of their imported goods;
- Please provide the basis for determining the percentage of transportation, insurance, loading, and unloading charges borne by the importer for the clearance of goods from the port to the wholesaler, considering the fact that the port and wholesaler locations are geographically distinct.

Noticee requires Cross Examination of the DRI Committee Members and Shop Keepers

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

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

(4) Shri Saurabh Sharma

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

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

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

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

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

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

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

regard to the circumstances of the case, the statement should be admitted in the interests of justice.

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

18. *It is only, therefore,-*

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

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

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

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

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

21.1 Noticee further submitted additional submission dated. 04.07.2025 wherein he interalia stated that

- In case of tempered glass, The value proposed to be adopted by department is not reliable as the importer in the Bill of Entry No.2107371 dated 22.08.2022 provided by department is filed by L.G Electronics India Private Limited for import of Tempered Glass having 4200 quantities of Black color and 2520 quantities of Blue color declaring value at US \$ 2.89 and US \$ 3.3 per unit respectively for the weight of 6120 Kgs and 3672 Kgs respectively. Thus, the weight per unit of Tempered Glass is 1.45 kg per piece (total weight divided by total Quantity) whereas the goods imported in the present consignment consisted of weight from 10 to 50 Grams per piece. Further, the goods imported by LG Electronics are to be used for Television, Kitchen appliances and various FMCG products which are having of higher weight. Whereas, the Tempered Glass imported in the present consignment are to be used for safeguarding Mobile phones having very minimal weight.
- In case of Exercise book, the BOE relied by the Revenue contains Exercise Book having weight of 120 Grams per unit whereas the goods imported in the present consignment consisted of around 50-60 grams per unit.

DISCUSSION AND FINDINGS

22. I have gone through the facts of the case, records, documents placed before me and Hon'ble CESTAT order dated 05.12.2024. Personal hearing was attended by, shri Hardik Modh, Authorized Representatives of the Noticees on the scheduled date i.e. 13.06.2025 and written submissions dated 17.04.2025 and 24.04.2025 were made by the Noticee.

22.1. After carefully considering the facts of the case, written submissions made by the Noticee, record of Personal Hearing along with previous adjudication order MUNCUSTM-000-COM-22-24-25 dated 27.08.2024 and CESTAT order dated 05.12.2024, I find that the main issue to be decided before me is the valuation of impugned goods as per directions of Hon'ble CESTAT order dated 05.12.2024.

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

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

Table-13

Sr.No.	Item	Quantity	Value proposed by DRI (value in Rs)	Value range submitted by Noticee (value in Rs.)	Remarks
1	Earphone	252000	3.86	0.47 (BE no. 9044271 dt. 09.06.2022, Mumbai port) - 1.74 (BE no. 3981141 dt. 30.12.2022, Mumbai port)	Value relied upon by Noticee is near to value proposed by DRI.
2	Earphone	36000			
3	Earphone (AK-H)	264000			
4	Earphone(S K-786)	497000			
5	Earphone unbranded	421000			
6	Hair Straightener	5280	32.37	22.14 (BE no. 2795787 dt. 16.02.2024, Mumbai port) - 40.2 (BE no. 2724874 dt. 03.10.2022, Mumbai port)	Value proposed by DRI is in range relied upon by Noticee.
7	Hair Straighteners	5280			
8	Earphone of different brands (oppo, vivo, realme, boat, Samsung etc.)	416000	144.01	no value submitted	Only DRI value is available
9	Back cover	74552	11	0.33 (BE no. 9305715 dt. 27.06.2022,	Value relied upon by Noticee is near to value proposed

				Mumbai port)- 2.785 (BE no. 4052977 dt. 05.01.2023, Mumbai port)	by DRI.
10	Mixed Mobile phone back cover	32250	8.72	0.33 (BE no. 9305715 dt. 27.06.2022, Mumbai port)- 2.785 (BE no. 4052977 dt. 05.01.2023, Mumbai port)	Value relied upon by Noticee is near to value proposed by DRI.
11	Tempered Glass	485381		6.55 (BE no. 8802341 dt. 23.05.2022, Mumbai port)	
12	Tempered Glass	780160	265.65	- 9.32 (BE no. 9305715 dt. 27.06.2022, Mumbai port)	Value relied upon by Noticee is much lower.
13	Exercise Book (Misc. item non popular Brand)	4800		8.245 (BE no. 2924015 dt. 17.10.2022, Mumbai port)	
14	Exercise Book	3300	146.06		Value relied upon by Noticee is very much lower.
15	Magic Practice Book	5600			
16	Hair Clipper / Straightner	10320	44.52	23.58 (BE no. 8802341 dt. 23.05.2022, Mumbai port) - 58.2 (BE no. 5675082 dt. 25.04.2023, Mumbai port)	Value proposed by DRI is in range relied upon by Noticee.
17	Dancing Cactus Toys	24000	28.70	no value submitted	Only DRI value is available
18	Plastic pop- up toys	105000	34.12	no value submitted	Only DRI value is available

Now, I proceed to discuss the same below:

SR. NO. 6,7,16,17 & 18 OF TABLE-13.

23.2 From above, it is observed that the assessable value of the impugned goods viz. Hair Straightener (Sr. No. 6 of Table-13), Hair Straighteners (Sr. no. 7 of Table-13), Hair Clipper/Straightener (Sr. no. 16 of Table-13), Dancing Cactus Toys (Sr. no. 17 of Table-13) and Plastic Pop-up Toys (Sr. no. 18 of Table-13), as proposed by the DRI, is liable to be accepted, inasmuch as either the noticees themselves have submitted comparable values or failed to furnish any value for the same.

SR. NO. 8 of TABLE-13

23.3 However, with respect to the valuation of Earphone of different brands (oppo, vivo, realme, boat, Samsung etc.) (Sr. no. 8 of Table-13), it is noted that the value of ₹144/- per piece proposed by the DRI in the re-valuation report is based on the import data pertaining to Bill of Entry No. 7033861 dated 11.01.2022 filed by M/s Vivo Mobile India Pvt. Ltd., wherein the goods imported were original branded products. In contrast, as per the verification report submitted by the authorised representatives of the respective IPR holders, as also detailed in para 23.1.3 of SCN dated 30.08.2023, the impugned earphones in the present case are counterfeit in nature. Therefore, the reliance placed by DRI on the aforesaid Bill of Entry for valuation purposes is misplaced and the proposed value of ₹144/- per piece is liable to be rejected. Further, it is pertinent to note that the DRI, in its own investigation report dated 23.08.2023, on basis of which the current SCN dated 30.08.2023 was issued, had proposed the value of the subject counterfeit earphones as ₹108.9/- per piece. This lower value was also accepted in the earlier adjudication proceedings vide O-i-O dated 27.08.2024. Accordingly, considering that redetermined value in any adjudication cannot exceed the original value proposed in Show Cause Notice and in the absence of any defence submission on this valuation, the value of ₹108.9/- per piece, as determined in the previous proceedings, merits acceptance for the purpose of valuation of the impugned Earphone of different brands (oppo, vivo, realme, boat, Samsung etc.).

SR. NO. 1, 2, 3, 4, 5, 9 & 10 OF TABLE-13

23.4 Further, in respect of the goods, namely Earphone (Sr. no. 1 of Table-13), Earphone (Sr. no. 2 of Table-13), Earphone (AK-H) (Sr. no. 3 of Table-13), Earphone (SK-786) (Sr. no. 4 of Table-13), Earphone unbranded (Sr. no. 5 of Table-13), Back cover (Sr. no. 9 of Table-13) and Mixed Mobile phone back cover (Sr. no. 10 of Table-13), it is observed that the value relied upon by the Noticee is lower than the value proposed by the DRI. Upon careful examination, I find that the quality and specifications of the similar goods—whose values are relied upon by both the DRI and the Noticee—cannot be conclusively ascertained merely on the basis of the Bills of Entry cited. In view of the above, and in the absence of definitive evidence to ascertain which of the two values—proposed by the DRI or submitted by the Noticee—is accurate, I deem it appropriate to consider these goods as mid-range quality and apply the middle of the two competing values for the purpose of valuation. Therefore, the assessable value of Earphones (Sr. no. 1 to 5 of Table-13) is determined at Rs. 2.85 per piece, the value of Back Cover (Sr. no. 9 of Table-13) is determined at Rs. 6.9 per piece and the value of Mixed Mobile Phone Back Cover (Sr. no. 10 of Table-13) is determined at Rs. 5.7 per piece.

SR. NO. 11, 12, 13, 14 & 15 OF TABLE-13

24. Further, it is observed that there exists a significant disparity between the values of Tempered Glass (Sr. no. 11 of Table-13), Tempered Glass (Sr. no. 12 of Table-13), Exercise Book (Misc. item non popular Brand) (Sr. no. 13 of Table-13), Exercise Book (Sr. no. 14 of Table-13) and Magic Practice Book (Sr. no. 15 of Table-13) as proposed by the DRI and those relied upon by the Noticee. In view of this substantial variation, I am inclined to undertake a further examination to verify the veracity and reliability of the values submitted by both sides.

24.1 In relation to impugned goods i.e Tempered Glass (Sr. no. 11 of Table-13) and Tempered Glass (Sr. no. 12 of Table-13), Noticee submitted that the goods referred by DRI are imported under CTI 70071900 whereas the impugned goods belongs to CTI 85299090. Further, I find that the value of Tempered glass proposed by DRI is Rs. 265.65/piece and the value relied upon by Noticee is Rs. 9.32/piece. DRI proposed the said value Rs. 265.65/piece on basis of B/E No. 2107371 dated 22.08.2022. I have gone through the said BE and find that the importer of said BE is M/s LG Electronics India Pvt. Ltd. and items imported in said BE are produced below:

 INDIAN CUSTOMS PORT MANDRA SEZ, PORT MANDRA, GUJARAT BILL OF ENTRY FOR HOME CONSUMPTION										121	
PART - II - INVOICE & VALUATION DETAILS (INR/-)											
1. INVOICE NO. & DT.		2. PURCHASE ORDER NO & DT.		3. LG NO & DATE		4. CONTRACT NO & DAYS		5. BILLER'S NAME & ADDRESS		6. CARRIER'S NAME & ADDRESS	
HP 012207300								JAHODA CITY, HOSHANGABAD, GUJARAT, INDIA, 362410, GUJARAT, INDIA, 362410			
7. IMPORTER'S NAME & ADDRESS		8. SUPPLIER'S NAME & ADDRESS		9. CARRIER'S NAME & ADDRESS		10. CARRIER'S NAME & ADDRESS		11. BILLER'S NAME & ADDRESS		12. CARRIER'S NAME & ADDRESS	
M/S LG ELECTRONICS INDIA PRIVATE LIMITED, JAHODA, HOSHANGABAD, GUJARAT, INDIA, 362410		JAHODA CITY, HOSHANGABAD, GUJARAT, INDIA, 362410		JAHODA CITY, HOSHANGABAD, GUJARAT, INDIA, 362410		JAHODA CITY, HOSHANGABAD, GUJARAT, INDIA, 362410		JAHODA CITY, HOSHANGABAD, GUJARAT, INDIA, 362410		JAHODA CITY, HOSHANGABAD, GUJARAT, INDIA, 362410	
13. VALUE 14. FREIGHT 15. INSURANCE		16. HS CODE		17. LOADING DOCUMENT		18. PAY TERMS		19. EVALUATION METHOD		20. DOCUMENTS	
10454 10000 10000 10000		2000 2000 2000 2000		62500 62500 62500 62500		D/D D/D D/D D/D		RULE 15.8 15.8 15.8 15.8		10000 10000 10000 10000	
1. CTN		2. QTY		3. HSN CODE		4. MTD CHG		5. VAL		6. DOCUMENTS	
1,488		2,000		3,000		4,000		5,000		6,000	
7,000		8.000		8.000		8.000		8.000		8.000	
1. S. NO.		2. CTN		3. DESCRIPTION		4. UNIT PRICE		5. QUANTITY		6. DOCUMENTS	
1		70071900		TEMPERED GLASS (MCV63093325*492.4*300.1*4 MM (BLACK) (5120 KGS)		3,000000		4200.00000		PCS	
2		70071900		TEMPERED GLASS (MCV63093327*492.4*300.1*4 MM (BLUE) (3672 KGS)		3,000000		3672.00000		PCS	

From above BE, it is observed that a total of 4200 pieces of tempered glass with dimensions 492.4 x 300.1 x 4 mm were imported under Serial No. 1, having a total weight of 6120 Kgs, which translates to approximately 1.4 Kg per piece. Additionally, 2520 pieces of tempered glass of the same dimensions were imported under Serial No. 2, with a total weight of 3672 Kgs, again indicating a unit weight of approximately 1.4 Kg per piece. From the above dimensions where length is about 1/2 meter and width is about 1/3 meter and weight per piece, it is evident that the subject tempered glass items are not intended for use in mobile phones, but are instead meant for application in household appliances such as washing machines, refrigerators, or microwave ovens. This conclusion is further substantiated by the fact that the importer in this case is M/s LG Electronics India Pvt. Ltd. who deal in household appliances. The above inference is confirmed by a clarification dated 04.07.2025 received from Shri Sandeep Sharma, Technical Representative of M/s LG Electronics India Pvt. Ltd., Greater Noida, via email wherein it has been informed that the said Tempered glass has been used in LG's microwave production. The relevant portion of his communication is reproduced below:

= sandeep1.sharma@lg.com.in =
 Ph: 011-45200000, 011-45200001, 011-45200002
 Adjudication Bureau: =sab.munshi@pwc.gov.in=

Dear Mohit Ji,
 Gud Day!
 As you said about BEB No. 2107371 dt. 22.08.2022, we have used these glass in our Microwave production.

Warm Regards,
 Sandeep
 Original Message

From: "Adjudication Bureau" <adjudication@pwc.gov.in>
 To: SANDEEP SHARMA<lg1.sandeep1@lg.com.in>
 Date: 2025-06-19 10:30:30 (GMT +01:30)
 Subject: Information regarding use of goods imported by M/s LG Electronics vide BE No. 2107371 dt. 22.08.2022.

An per telephonic conversation with you.

Please see attached herewith copy of BE no. 2107371 dated 22.08.2022 filed by M/s LG Electronics India Pvt. Ltd.

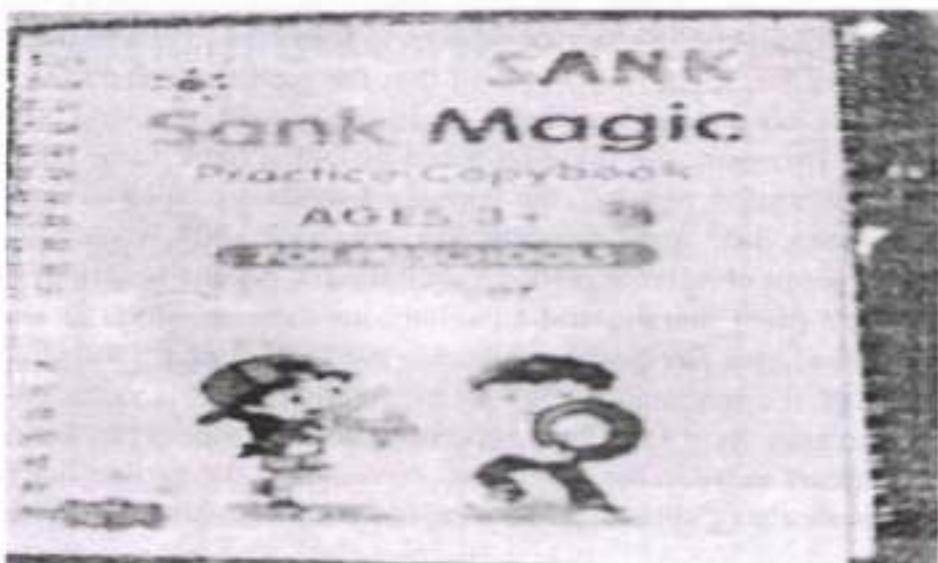
In this regard, it is requested to inform the use of goods i.e Tempered glass (MCV63093325) and (MCV63093327) imported vide above mentioned Bill of Entry.

Regards,
 Adjudication Section,
 Custom House, Mumbai.

Therefore, the value proposed by DRI i.e. Rs. 265.65/piece for impugned goods i.e. Tempered glass for mobile phone is incorrect and reference for the same to B/E no. 2107371 dated 22.08.2022 is incorrect as goods in said BE are meant for other applications. Further, the value relied upon by Noticee is Rs. 9.32/piece (BE no. 9305715 dt. 27.06.2022) and is found to be reasonable and in line with the prevailing practice adopted by the Assessing Group for similar goods. Accordingly, the value of Rs. 9.32/piece is accepted for the purpose of assessment.

24.2 Further, it is observed that the value of Exercise Book (Misc. item non popular Brand) (Sr. no. 13 of Table-13), Exercise Book (Sr. no. 14 of Table-13) and Magic Practice Book (Sr. no. 15 of Table-13) proposed by the DRI is Rs. 146.06/piece, whereas the Noticee relied upon a copy of a Bill of Entry indicating a price of Rs. 8.245/piece. In view of the significant disparity between the two values, it becomes imperative to undertake a thorough verification of both claims. A fair and reasonable assessable value needs to be ascertained based on objective evidence and prevailing market/comparable import data.

It is observed that the DRI, while proposing the assessable value of Rs. 146.06/piece, has relied upon the Bill of Entry No. 9390899 dated 03.07.2022, wherein the description of goods was declared as 'Exercise Book', comprising 1100 pieces with a total weight of 132 KGs, thereby indicating an average weight of approximately 120 grams per piece. Furthermore, the photographs of the actual impugned goods, as found during the course of examination conducted by the DRI, and subsequently shared with this office, are placed below for reference."



Accordingly, the price and other specifications of the above exercise book/magic practice book were verified from the FirstCry website and it was found that the price is ₹141 for a set of 4 books, having an approximate total weight of 250 - 350 grams (i.e., around 65 - 85 grams per book). The relevant details are reproduced below:"

ADKD Sank Magic Practice Copybook Pack of 4 - English
₹141²⁷ (including GST) Add to Cart

Buy Now Add to Cart

Club Benefits Club Cash Benefit

No of Pages

Pack of

Delivery To

With Prime
-70% ₹149
₹299 ₹149
Inclusive of all taxes
Exclusive Prime price
Save Extra with 5 others
Conditions: Get 5% back with Amazon Pay ICICI Bank credit card others. Not applicable on EPS orders and Amazon Business Inc.
Bank Offer E30: Super Value Days: 10% instant discount on ICICI Cards (excluding Amazon Pay ICICI Credit Card). Minimum Transaction Value ₹1000.
Buy 1 more
10 days
Returnable
10 days
Delivery
Same Day
Brand: Generic
Net Quantity: 1.0 Count
Item dimensions L x W x H: 30 x 20 x 1.5 Centimeters
Item Weight: 350 Grams

From the above, it is observed that the goods on which the DRI has relied for value comparison weigh approximately 120 grams per piece, whereas the impugned goods weigh around 65 - 85 grams per piece as mentioned above. Furthermore, the goods, referred to by the DRI, appears to be standard exercise books, whereas the impugned goods are 'Sank Magic Practice Books', which have been mis-declared by the noticee as 'exercise books'. Notably, the Sank Magic Practice Book uses a magic ink pen (disappearing ink), enabling the written content to fade over time and thereby making the pages reusable. Accordingly, it is evident that the goods, referred to by the DRI for valuation purposes, are materially different in nature, specification, and utility from the impugned goods. Therefore, the value proposed by DRI is liable to be rejected. As per the online listing (FirstCry website), the impugned goods are being sold at ₹141 for a pack of four books, i.e., approximately ₹35 per book. After making appropriate deductions on account of Internet platform commission, retailer's margin, wholesaler's margin, importer's profit margin, and miscellaneous expenses such as warehousing, transportation, clearance along with applicable IGST, BCD and SWS, the assessable value is calculated at approximately 40% of the retail price. This yields an assessable value of approximately Rs. 14.02/piece. The value relied upon by the Noticee, i.e., Rs. 8.245/piece, appears to be on the lower side. Accordingly, the derived fair value of Rs. 14.02/piece, as calculated above, merits acceptance for assessment purposes."

25. Mis-declaration, Misclassification and liability to Confiscation of import goods of M/s. Skyblue International Trading Company: -

25.1. Import of Mobile accessories by way of mis-declaration and undervaluation

During examination of the import consignment pertaining to Container No. YMMU6620747, SLSU8018922, TRHU8455767, and TGBU7709478, Tempered Glass, earphone, Back Cover of mobile phone were found in the container alongwith other declared goods. There is gross mis-declaration in description and quantity of the imported goods mentioned in Bills of lading/IGM/Bills of Entry. The same have been summarized below:-

Table-14

SR N O.	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Assessable Value (As per Re-valuation) (in Rs.)

1	SLSU80189 22	Exercise book	980 Cartoons	Tempered glass	700729 00	780160	7268049
2	SLSU80189 22	Exercise book	980 Cartoons	Earphone	851830 20	36000	102690
3	TGBU7709 478	Hair Trimer(Misc item non popular brand)	--	Mixed mobile phoneback cover	392690 99	32250	183986
4	TGBU7709 478	Hair Trimer(Misc item non popular brand)	--	Earphone of different brand (opp, vivo, realme, boat, sa msung etc.)	851830 20	416000	4530000 0
5	TGBU7709 478	Hair Trimer(Misc item non popular brand)	--	Earphone unbranded	851830 20	421000	1200903
6	TRHU8455 767	Hair Trimer(Misc item non popular brand)	--	Earphone(AK-H)	851830 20	264000	753060
7	TRHU8455 767	Hair Trimer(Misc item non popular brand)	--	Earphone (SK-786)	851830 20	497000	1417693
8	YMMU6620 747	Back Cover	39216 0	Back Cover	392690 99	74552	514409
9	YMMU6620 747	Tempered Glass	50880	Tempered Glass	700729 00	485381	4521858
10	YMMU6620 747	Exercise Book, Back Cover and Tempered Glass	--	Earphone	851830 20	252000	718830

25.1.1. The mobile phone accessories were having marking of various brands. Therefore, it appeared that apart from the mis-declaration of description quantity of the import goods, there was gross mis-declaration of the goods in respect of value as determined on re-valuation to be **Rs.7,65,91,301/-** thereof to evade the applicable Customs Duty of **Rs.3,28,59,045/-**. The mobile phone accessories found during examination were having marking of various brands such as BoAt, Realme, oppo, Vivo, Samsung, Apple, etc. On being requested by the DRI, inspection of the goods was carried out by authorised representatives of established companies and submitted their report that the said goods were counterfeit goods and not the original one. The companies had also clarified that M/s. Skyblue International Trading Company was not the authorised importer to import the company product into India. This shows that the mobile phone accessories appeared to have been imported in violation of IPR regulations. Further, it was noticed that the earphones were not declared by the importer in the import documents. Therefore, these mobile phone accessories are liable for confiscation under Section 111 (f) and 111(m) of the Customs Act, 1962.

25.1.2 Violation of Intellectual Property Rights by subject import onsignment

Government of India has enacted Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. The above rules describe the process through which rights of IPR (Intellectual Property Right) holders can be enforced.

In the case of current consignment, during examination of the consignment, it appeared that the imported goods infringed Trademark rights of various companies. Accordingly clearance of the goods was kept on hold and letter dated 18.01.2023 were issued to different IPR right holders to join the proceedings. Examination of the goods was conducted by representative of IPR Right holder after which they submitted their report. The same has been summarised in below Table.

The DRI vide letter dated 12.04.2023 asked to submit Bond and Bank Guarantee as per provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007, however, the required compliance were not fulfilled by the rightholders.

According to para 7 of the Board Circular No. 41/2007-Customs dated 29.10.2007, the surety and security shall be on consignment basis and shall be furnished along with the bond consequent upon interdiction of the consignment allegedly infringing rights of the right holder. Keeping in view the value of the goods and other incidental expenses, it has been decided that the bond amount shall be equal to 110% of the value of goods. However, the amount of security to be furnished along with the bond shall be 25% of the bond value. The right holder may furnish security in the form of bank guarantee or fixed deposit. However, if the right holder fails to execute the consignment specific bond and to furnish security within three days from the date of interdiction of the goods, the same must be released forthwith.

Since the right holders failed to execute the consignment specific bond and failed to furnish security, hence their right cannot be enforced in terms of provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007.

25.2 Import of Exercise Book by way of mis-declaration and undervaluation

Further, M/s. Skyblue International Trading Company have imported Exercise book having total **quantity 13700** having valuation of **Rs. 1,92,026/-**. Whereas, it appears that the importer has mis-declared the description and quantity, value of the exercise books to evade Customs Duty of **Rs. 46,701/-** in various consignments. For Container No. YMMU6620747, they have filed Bill of Entry No 2013047 dated 30.08.2022, in which declared price of Exercise Book is only Rs 1,29,444. However, actual value of the exercise books as per above discussion is **Rs. 1,92,026/-**.

Further to import of the exercise book, the importer required compulsory registration under Paper Import Monitoring Systems (PIMS as per the provisions of DGFT Notification 11/2015-2020 dated 25.05.2022. During investigation, the importer has not submitted any documentary evidence which shows that they were having such mandatory registration with the PIMS. In view of above, total **13700** exercise books having assessable value of **Rs. 1,92,026/-** were found mis-declared in respect of quantity, value and the same was imported without proper authority of law are liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962.

25.3. Import of Hair Straighener/Hair trimmer by way of mis-declaration and undervaluation

During examination of the goods M/s. Skyblue International Trading Company pertaining to following import consignments, **total 20880** Hair Straighener/Hair

trimmer (HS Code 85102000) were found which were mis-declared in terms of description and quantity by the importer. The same has been Tabulated below:

Table-15

SR NO.	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Assesable Value (As per Re-valuation) (in Rs.)
1	M/s Sky Blue International Trading Co.	SLSU801 8922	Exercise book	980 Cartoons	Hair Straightener	85102 000	5280	1709 11
2		TGBU770 9478	Hair Trimer(Misc item non popular brand)		Hair Trimer/straightner /clipper	85102 000	1032 0	4594 72
3		TRHU845 5767	Hair Trimer(Misc item non popular brand)		Hair Straightners	85102 000	5280	1709 11

In view of above, total 20880 Hair Straightener/Hair trimmer (HS Code 85102000) having valuation of **Rs. 8,01,294/-** have been found mis-declared in respect of quantity, value resulted in evasion of customs duty of **Rs. 2,92,609/-** and the same were imported without proper authority of law and are liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962.

25.4 In view of the above, it appears that the goods mentioned at para 25.1, 25.2 and 25.3 above attract differential Customs duty and can be released after fulfilment of necessary compliance for the same. It further appears that the Customs Duty considering the value assessment of these goods as **Rs. 7,74,95,531/-** the total duty liability for these goods comes to **Rs 3,31,64,973/-** as detailed in Annexure-A to this order.

25.5 Import of Toys by way of mis-declaration and undervaluation

During examination of the goods of M/s. Skyblue International Trading Company pertaining to following import consignments, 'Toys' falling under HS Code 95030010/95030020 were found concealed which were not declared by the importer, as tabulated below.

Table-16

SR NO	IEC Name	No. of container	Declared Goods	Declared quantity	Goods found during examination	HSN	Quantity	Assessable Value (As per Re-valuation) (in Rs.)

1	M/s Sky Blue International Trading Co.	SEGU459 6469	Plastic Chocolate Mould (Misc item non popular brand)	--	Plastic pop up toys	95030 0	105000	3013500
2		SEGU459 6469	Plastic Chocolate Mould (Misc item non popular brand)	--	Dancing Cactus Toys	95030 0	24000	818880

25.5.1 Requirement of BIS Certification for import of 'Toys' and violations of rules made thereunder;

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

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

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

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

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

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

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

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

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

25.5.2. As mentioned above, M/s. Skyblue International Trading Company have imported total 1,29,000 toys such as Cactus, Pop up toys, having assessable value of **Rs. 38,32,380/-** without mandatory BIS compliance and by way of mis-declaration. Therefore, the said toys also appear to have been imported in violation of the provisions of Condition 2 of Chapter 95, being the offending goods, held liable for confiscation under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962.

26. Duty Demand under Section 28(4) of Customs Act, 1962

I find that the importer had mis-declared the value of the goods at the time of filing of Bill of Entry. The subject import consignments have been imported and it has been observed during the investigation that the declared value of the import goods appeared to be gross undervalued. Investigation carried out by the DRI revealed that the subject import consignments have been mis-declared in respect of value thereof in order to evade the applicable Customs Duty. Therefore, the importer by way of resorting to mis-declaration and undervaluation of subject goods (as mentioned in Annexure-A) attempted to evade total Customs Duty of **Rs. 3,31,98,355/- (Customs Duty of Rs. 3,28,59,045/- against impugned goods i.e. mobile accessories, having assessable value of Rs. 7,65,91,301/- {+} Customs Duty of Rs. 2,92,609/- against total 20880 pcs. of Hair Straightener/Hair Trimmer having assessable value of Rs. 8,01,294/- {+} Customs Duty of Rs. 46,701/- against impugned goods i.e. total 13700 pcs of Exercise Books having assessable value of Rs. 1,92,026/-).** However, for dutiable goods where B/E was not filed, re-export is to be allowed. Therefore, the customs duty of **Rs. 22,19,449/-** for the dutiable goods, where B/E no. 2013047 dated 30.08.2022 was filed for Container no. **YMMU6620747**, is liable to be demanded under Section 28(4) of the Customs Act, 1962.

27. Imposition of Redemption Fine in lieu of Confiscation of the Goods under Section 111(D), Section 111(F), and Section (M) of the Customs Act, 1962:

A plain reading of Section 125 of the Customs Act, 1962 shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that in the instant case option to pay the redemption fine can be given to the noticee for one consignment where Bill of Entry has been filed for clearance of the goods for home consumption and where there is no policy restriction. The exporter has also sought for re-export of the goods. A fundamental requirement in considering requests for re-export is whether the importer has made a truthful declaration at the time of import. In the instant case there has been gross misdeclaration of quantity and value in respect of one consignment in respect of which bill of entry has been filed. It cannot be the case that an importer indulges in serious fraudulent misdeclaration and on being caught can seek re-export as a matter of right. In respect of the four consignments where no Bill has been filed for DTA clearance an option to pay the redemption fine can be given to the Noticee for re-export of the goods. This request is being considered as besides the fact of bill of entry for home consumption not having been filed there are significant quantities of goods where there is policy restriction for clearance of the goods for home consumption. Here again, the quantum of fine shall be imposed considering that there is little doubt on the fraudulent nature of these imports as well which is borne out from the fact that the importer did not possess the requisite BIS license for import of Toys.

28. With regards Cross Examination sought by the Noticees:

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

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

"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis,

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

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

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

29. Role and Culpability of M/s. Skyblue International Trading Company

(i) I find that in the present case, M/s. **Skyblue International Trading Company** has imported total 05 import consignments through Container No. SLSU8018922, TGBU7709478, TRHU8455767 and SEGU4596469 and YMMU6620747. Out of these 05 import consignments, the importer has filed bill of Entry for only 01 import consignment pertaining to container No. YMMU6620747. The details of the import consignments are given as under:

Table-17

Sr. No.	Container No.	DTA Bill of Entry No. and date	Bill of Lading No./IGM No.
1	YMMU6620747	2013047 dated 30.08.2022	YMLUS226013432 dated 13.08.2022
2	SLSU8018922	Not filed	OOLU8891622710 dated 19.08.2022 (IGM No. 2320780 dated 02.09.2022)
3	TRHU8455767	Not filed	721211331379 dated 28.08.2022 IGM No.2321558 dated 12.09.2022
4	SEGU4596469	Not filed	KMTCNB06313351 dated 12.08.2022 IGM No.2320512 dated 29.08.2022
5	TGBU7709478	Not filed	721211331539 dated 28.08.2022 IGM No.2321558 dated 12.09.2022

(ii) I find that M/s. Skyblue International Trading Company, did not respond to the Summons issued by the DRI.

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

(iv) I find that investigation carried out by the DRI revealed that Prop. of M/s. Skyblue International Trading Company provided signed documents to Shri Asif Sathi and others to use the same for import of offending goods.

(v) I find that M/s. Skyblue International Trading Company have willingly and deliberately indulged in the conspiracy of importing and clearance of prohibited goods i.e. Toys and other offending goods. Further, the importer by knowingly concerning themselves in removing, depositing, harbouring, keeping, concealing,

selling and dealing with prohibited goods and others mis-declared goods resulted in contravention of the prohibition under the Customs Act, 1962 and Rules made there under. Thus, the aforementioned acts and omission on part of the importer has rendered the impugned goods liable for confiscation under Section 111 of the Customs Act, 1962. In view of this, in relation to impugned dutiable goods, where bill of entry was filed and said omission and commission led to evasion of Customs duty of Rs. **Rs. 21,86,067/-**, I find that M/s. Skyblue International Trading Company is liable to penalty under Section 112(a)(ii) and 114A of the Customs act, 1962. Further, in relation to dutiable goods, where Bills of Entry was not filed, I find that M/s. Skyblue International Trading Company is liable to penalty under Section 112(a)(ii) of the Customs Act, 1962. Further, in relation to offending goods i.e. Toys for which BIS Certification is mandated by law, I find that M/s. Skyblue International Trading Company is liable to penalty under Section 112(a)(i) of the Customs Act, 1962.

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

30. ROLE AND CULPABILITY OF SHRI ASIF SATHI

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

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

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

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

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

(vi) In view of above, I find that in the present case of import of goods in name of M/s. Skyblue International Trading Company, Shri Asif has acted as the mastermind of the smuggling cartel and his role remains the same as has been described in above paras. Thus, such acts and omission on part of Shri Asif have rendered impugned goods liable for confiscation under Section 111 of the Customs Act, 1962. In view of this, in relation to impugned dutiable goods, where bill of entry was filed and said omission and commission led to evasion of Customs duty of **Rs. 22,19,449/-**, I find that Shri Asif Sathi is liable to penalty under Section 112(a)(ii) and 114A of the Customs act, 1962. Further, in relation to dutiable goods, where Bills of Entry was not filed, I find that Shri Asif Sathi is liable to penalty under Section 112(a)(ii) of the Customs Act, 1962. Further, in relation to offending goods i.e. Toys for which BIS Certification is mandated by law, I find that Shri Asif Sathi is liable to penalty under Section 112(a)(i) of the Customs Act, 1962.

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

31. ROLE AND CULPABILITY OF SHRI SARFARAJ KAMANI:

- i. Shri Sarfaraj Kamani is the business associate of mastermind of smuggling racket Shri Mohammad Asif Sathi and others with whom he went to Dubai tour also. He was aware about importation of e-cigarettes by the smuggling racket headed by Shri Mohammad Asif Sathi and was also aware that import of e-cigarettes was prohibited in India. He was part of video call with the said

mastermind and overseas supplier wherein stuffing of e-cigarettes was being made in the container to be imported to India. He was also aware about discussions of stacking of e-cigarettes in the container and also actively participated in the Whatsapp Group 'Mm' wherein discussions regarding importation of copy/counterfeit goods of various popular brands infringing IPRs was made by him.

- ii. I find from the statement of Shri Asif that Shri Sarfaraj Kamani had imported goods packed in the boxes with marka 'SK'. On being apprised with the outcome of examination of goods imported in one container no. YMMU6620747 having goods with marka 'SK' pertaining to Shri Sarfaraj (as per version of Shri Asif), Shri Sarfaraj stated that he had perused the examination Panchnama dated 03/04.09.2022 respective Chartered Engineer Valuation Report No. DRI/136/22-23 dated 22.09.2022 and Annexure-A to the impugned SCN prepared on the basis of Panchnama and Valuation Report. Thus there established gross mis-declaration of quantity and value of goods imported in the cartons having marka 'SK' and also infringement of IPRs committed in such import. Hence, it is beyond doubt that he has been concerned with import of other goods mobile phone accessories having mark/logo of various popular brands like Vivo, Oppo, Realme etc. with respect to quantity, value and other material particulars in gross violation of the provisions of Customs Act, 1962 and other allied Acts.
- iii. I find that being business associate of smuggling cartel, Shri Sarfaraj was very well aware and knowingly concerned in the illegal import of prohibited e-cigarettes as apparent from the Video Calling held among him, Shri Mohammad Asif Sathi and the overseas supplier during the loading of e-cigarettes in the container to be imported. This aspect is substantiated with his Chat conversations with Shri Parvej Alam and also from the conversation held in the Whatsapp Group 'Mm' with other key persons read with statements of Shri Mohammad Asif Sathi, Shri Mohammed Tahir Menn and Shri Parvej Alam. The role of Shri Sarfaraz in case of M/s. Skyblue International Trading Company remains the same as has been described in above paras.
- iv. In view of above, I find that Shri Sarfaraj has done an act rendering these goods liable for confiscation and has knowingly concerned himself in removing, depositing, harboring, keeping, concealing and dealing with Prohibited goods i.e. Toys. Shri Sarfaraj has willfully and deliberately indulged into conspiracy of importing and clearance of goods requiring mandatory BIS and the goods infringing IPR, and goods by way of mis-declaration/concealment and gross undervaluation. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of this, in relation to impugned dutiable goods, where bill of entry was filed and said omission and commission led to evasion of Customs duty of **Rs. 22,19,449/-**, I find that Shri Sarfaraj Kamani is liable to penalty under Section 112(a)(ii) of the Customs act, 1962. Further, in relation to dutiable goods, where Bills of Entry was not filed, I find that Shri Sarfaraj Kamani is liable to penalty under Section 112(a)(ii) of the Customs Act, 1962. Further, in relation to offending goods i.e. Toys for which BIS Certification is mandated by law, I find that Shri Sarfaraj Kamani is liable to penalty under Section 112(a)(i) of the Customs Act, 1962.
- v. I also find that Shri Sarfaraj had used IECs of dummy firms for his own import, and he has used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. He forwarded incorrect documents for filing of Bills of Entry for these consignments with false declarations. He has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as

description, value etc., with mala-fide intention, and due to this act Shri Sarfaraj Kamani is also liable to penalty under Section 114AA of the Customs Act, 1962.

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

ORDER

32.1 IN RESPECT OF DUTIABLE GOODS WHERE BILLS OF ENTRY FILED FOR DTA CLEARANCE:

- (i) I reject the declared value of impugned goods i.e. **252000 Pcs.** of Earphone classifiable under HS Code 85183020, **485381 Pcs.** Of Tempered Glass classifiable under HS Code 70072900, **74552 Pcs.** of Back Cover classifiable under 39269099 and **4800 Pcs.** of Exercise Book classifiable under HS Code 48202000 imported by M/s. Skyblue International Trading Company (IEC No. FJOPS8421P), in terms of Rule 12 of CVR, 2007; and order to re-determine the value of the same as per their Assessable Value of **Rs. 58,22,376/-** in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 readwith Section 14 of the Customs Act, 1962.
- (ii) I order to confiscate the impugned goods as mentioned at (i) above, under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs 7,00,000 /- (Rupees Seven Lakhs only)** under Section 125 of the Customs Act, 1962.
- (iii) I confirm the demand of Customs Duty of **Rs. 22,19,449/- (Rupees Twenty Two Lakh Nineteen Thousand Four Hundred and Forty Nine only)** against impugned goods mentioned at (i) above, in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; alongwith interest at appropriate rate under Section 28AA of the Customs Act, 1962 which shall be recovered jointly and severally from Importer M/s Skyblue International Trading Company and Beneficial Owner Shri Asif Sathi.
- (iv) I impose penalty of **Rs. 22,19,449/- (Rupees Twenty Two Lakh Nineteen Thousand Four Hundred and Forty Nine only)** upon **M/s. Skyblue International Trading Company** (IEC No. FJOPS8421P) under Section 114A of the Customs Act, 1962;
- (v) I impose penalty of **Rs. 22,19,449/- (Rupees Twenty Two Lakh Nineteen Thousand Four Hundred and Forty Nine only)** upon **Shri Asif Sathi** (Beneficial owner of the import goods) under Section 114A of the Customs Act, 1962;
- (vi) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **Shri Sarfaraj Kamani** (Associate of beneficial owner of the import goods) under Section 112(a)(ii) of the Customs Act, 1962.

32.2 IN RESPECT OF DUTIABLE GOODS WHERE BILLS OF ENTRY NOT FILED FOR DTA CLEARANCE:

- (i) I order to determine the value of impugned goods (excluding Toys) for which M/s. Skyblue International Trading Company (IEC No. FJOPS8421P) did not file Bills of Entry as **Rs. 7,17,62,245/-** under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- (ii) I order to confiscate the impugned goods (excluding Toys) having determined value of **Rs. 7,17,62,245/-** under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods for the purpose of re-export only, on

payment of redemption fine of **Rs 2,15,00,000/-** (Rupees Two Crore Fifteen Lakh only) under Section 125 of the Customs Act, 1962, within 90 days.

(iii) I impose penalty of **Rs. 15,00,000/-** (*Rupees Fifteen Lakhs only*) upon **M/s. Skyblue International Trading Company** (IEC No. FJOPS8421P) under Section 112(a)(ii) of the Customs Act, 1962.

(iv) I impose penalty of **Rs. 15,00,000/-** (*Rupees Fifteen Lakhs only*) upon **Shri Asif Sathi** (Beneficial owner of the import goods) under Section 112(a)(ii) of the Customs Act, 1962.

(v) I impose penalty of **Rs 3,00,000/-** (*Rupees Three Lakhs only*) upon **Shri Sarfaraj Kamani** (Associate of Beneficial owner of the import goods) under Section 112(a)(ii) of the Customs Act, 1962.

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

(i) I order to confiscate the impugned offending goods **1,29,000 toys** valued at **Rs. 38,32,380/-** of different kind falling under HS Code 95030010/95030020, found concealed in the import consignment and grossly mis-declared as Plastic Chocolate Mould; pertaining to **Container No. SEGU4596469** imported under Bill of Lading/IGM, in violation of the provisions of Condition 2 of Chapter 95, under Section 111(d), 111(f), and 111(m) of the Customs Act, 1962, as detailed vide Annexure-B. However, I give an option to the importer to redeem the confiscated goods quantifying to 1,29,000 Toys valued at Rs. 38,32,380/- for the purpose of re-export only wherin DTA bill has not been filed, on payment of redemption fine of **Rs 8,00,000/-** (*Rupees Eight Lakhs only*) under Section 125 of the Customs Act, 1962, within 90 days.

(ii) I impose penalty of **Rs 4,00,000 /-** (*Rupees Four Lakhs only*) upon **M/s. Skyblue International Trading Company** (IEC No. FJOPS8421P) under Section 112(a)(i) of the Customs Act, 1962.

(iii) I impose penalty of **Rs 4,00,000 /-** (*Rupees Four Lakhs only*) upon **Shri Asif Sathi** (Beneficial owner of the imported goods) under Section 112(a)(i) of the Customs Act, 1962.

(iv) I impose penalty of **Rs 50,000/-** (*Rupees Fifty Thousand only*) upon **Shri Sarfaraj Kamani** (Associate of Beneficial owner of the imported goods) under Section 112(a)(i) of the Customs Act, 1962.

32.4 IMPOSITION OF PENALTY UNDER SECTION 114(AA) OF THE CUSTOMS ACT, 1962:

(i) I impose penalty of **Rs 1,50,000/-** (*Rupees One Lakh Fifty Thousand only*) upon **M/s. Skyblue International Trading Company** under Section 114(AA) of the Customs Act, 1962.

(ii) I impose penalty of **Rs 1,50,000/-** (*Rupees One Lakh Fifty Thousand only*) upon **Shri Asif Sathi** (Beneficial owner of the import goods) under Section 114(AA) of the Customs Act, 1962.

(iii) I impose penalty of **Rs 1,00,000/-** (*Rupees One Lakh only*) upon **Shri Sarfaraj Kamani** (Associate of Beneficial owner of the import goods) under Section 114(AA) of the Customs Act, 1962.

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



(Nitin Saini)

Commissioner of Customs,
Custom House, Mundra.

Dated: 10.07.2025

F.No. GEN/ADJ/COMM/568/2023-Adjn
By Speed Post & through proper/official channel

To {Noticees},

1. M/s. Skyblue International Trading Company
1st Floor, Plot No. 214, Office No. K, DSS Business Center, Sant Tukaram Road, Chinchbunder, Masjid, Bunder East, Mumbai, Maharashtra-400009
(email-asifsathi@gmail.com).
2. Shri Asif Sathi (Beneficial owner of the import goods),
Flat No. 4104, 41st Floor, B-Wing, Orchid Enclave, Belasis Road, Mumbai Central, Mumbai-400008 (email id- asifsathi@gmail.com)
3. Shri Sarfaraz Kamani (Associate of Beneficial owner of the import goods)
502, 5TH Floor, Fatima Apartment, 109 Morland,
Mumbai Central, Mumbai (email sarfaraj.kamani1981@gmail.com)

Copy To: -

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 2) The Additional Director, DRI, Gandhidham Regional Unit, Plot No.5866, Ward-5A, Near Vinayak Hospital, Adipur, Kutch-370205 (Email:driganru@nic.in), for information.
- 3) The Specified Officer, Mundra Special Economic Zone, Gandhidham.
- 4) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 6) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 7) Notice Board.
- 8) Guard File.