
	<b>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</b> <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421</b>	
<b>A. File No.</b>	: GEN/ADJ/COMM/117/2022-Adjn-O/o-Pr.Commr-Cus-Mundra	
<b>B. Order-in-Original No.</b>	: MUN-CUSTM-000-COM-06-07-26-27	
<b>C. Passed by</b>	: Nitin Saini Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
<b>D. Date of order</b>	: 29.04.2026	
<b>Date of issue</b>	: 29.04.2026	
<b>E. SCN No. &amp; Date</b>	: (i) GEN/ADJ/ADC/146/2022-Adjn dated 09.02.2022 & Corrigendum dated 09.02.2022 (ii) GEN/ADJ/ADC/153/2022-Adjn dated 14.02.2022 & Corrigendum dated 20.03.2023	
<b>F. Noticee(s)/Co-noticee(s)</b>	: M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi-110009	
<b>G. DIN</b>	: 20260471MO000054.293	

- यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:  
**“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर,  
बहुमालीभवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”  
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan,  
Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”**
- 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.
- उक्त अपील के साथ 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
- 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 मद सं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (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.
- 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 मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

**SUBJECT- ADJUDICATION OF BELOW MENTIONED SHOW CAUSE NOTICES IN PURSUANCE OF ORDER NO. 10852-10854 DATED 12.04.2024 PASSED BY HON'BLE CESTAT, AHMEDABAD:-**

Sr. No.	SCN No. and Date	Corrigendum dated
1.	GEN/ADJ/ADC/146/2022-Adjn dated 09.02.2022	11.02.2022
2.	GEN/ADJ/ADC/153/2022-Adjn dated 14.02.2022	20.03.2023

**BRIEF FACTS OF THE CASE:-**

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

**2.** M/s. ZZEPL was importing Knitted Polyester Fabrics under Customs Tariff Heading 6006 and various other Electrical Goods such as Mosquito Bats, LED Rechargeable Search Lights, Fancy Mini Torches, Small Rechargeable Batteries, Decorative Disco LED Par Lights, Decorative Disco Focus Lights, Laser Lights, LED Rope Lights, Led Christmas Lights etc., of assorted sizes etc. under Chapter 94 and 85 of Customs Tariff Heading and subsequently, clearing the same into DTA to various DTA importers. While importing the goods M/s. ZZEPL filed Bills of Entry with KASEZ authority for clearance of the goods from Mundra Port to their unit in KASEZ. Subsequently, M/ s. ZZEPL also filed DTA Bills of Entry in the name of various domestic buyers and cleared the goods on payment of Customs Duty.

**3.** Accordingly, a Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn- O/o Cummr-Cus-Kandla dated 08.09.2021 has been issued to Mis ZZEPL & others. Under the said SCN, M/s. Jia Lighting and Audio Equipment (IEC: 0516952030) is also one of the noticee as they are one of the domestic buyers of the goods imported by M/s ZZEPL.

**4.** Further, M/s. Jia Lighting and Audio Equipment has also imported and cleared similar goods i.e., "Decorative LED Par Light 54L" and "Decorative Disco LED Par Light Small" through Mundra Port. Details of such imports are as under:

Table-A

Sl. No.	Bill of Entry No & Date	Description of goods	Quantity (In Pieces)	Declared price per Piece (USD)	Declared Assessable value (In Rs.)
1	8507039 dt. 10.02.2017	Decorative LED Par Light 54L	4532	1.288333	4,03,366/-
2	8508332 dt. 10.02.2017	Decorative Disco LED Par Light Small	8120	0.811667	4,55,317/-

3	8687768 dt. 27.02.2017	Decorative LED Par Light 54L	4532	1.29	4,01,158/-
Total					12,59,841/-

**5.** Consequent to the above modus operandi adopted by M/s ZZEPL and the concerned DTA importers, in connivance with Chinese suppliers, it appears that M/s Jia Lighting and Audio Equipment, importer of "Decorative LED Par Light 54L " and "Decorative Disco LED Par Light Small" has also mis-declared/ undervalued the goods imported and cleared through Mundra port under the Bills of Entry as per above mentioned Table-A.

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

**7.** Therefore, the mis declared/under-assessed value of Rs 12,59,841/- (Rs. Twelve Lakh Fifty Nine Thousand Eight Hundred and Forty One Only) declared by M/s. Jia Lighting and Audio Equipment at the time of clearance of goods i.e. " Fancy LED Strip Rope Light 50 Mtr ", is required to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same is required to be re-determined to Rs. 8,64,51,379/- (Rs. Eight Crore Sixty Four Lakh Fifty One Thousand Three Hundred and Seventy Nine only) as per ANNEXURE-A to Show Cause Notices Gen/Adj/ADC/146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022, under Section 14 of the Customs Act, 1962 read with Rule 3, Rule 9 and Rule 10 of the CVR, 2007.

**8.** Further, M/s. Jia Lighting and Audio Equipment hatched the conspiracy to import "Decorative LED Par Light 54L" and "Decorative Disco LED Par Light Small", by declaring lower values than the actual transaction values of the said goods to evade the Customs Duty, as indicated in ANNEXURE-A to Show Cause Notices Gen/Adj/ADC /146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022, and discussed in the the notice and also in the relied upon Show Cause Notice. The differential amount between the actual value of Electrical Goods and the value shown in the commercial invoice, imported from said Chinese supplier were paid by them through non-banking channels / the Bank accounts of third parties with the Banks outside India. They had full knowledge and were instrumental in mis-declaration of the value of the goods at the time of their import. Thus, they had knowingly, consciously and deliberately declared incorrect low values in the impugned Bills of Entry at the time of imports and backed them up with false and fabricated documents, with the sole intention to evade the customs duty. The firm had indulged in the activities relating to the said undervaluation and mis-declaration of actual price of said imports, which resulted in evasion of Customs duty as detailed in ANNEXURE-A to the said two SCNs. All the aforesaid acts of omission and commission on the part of the importer have rendered the impugned imported goods liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962. Further, the firm/person had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Thus, as discussed at para above, M/s. Jia Lighting and Audio Equipment, had rendered themselves liable for penalty under the provisions of Section 112(a) & (b)/114A and 114AA of the Customs Act, 1962.

**9.** Therefore, a Show Cause Notices Gen/ADJ/ADC/146/2022-Adjn dated 09.02.2022 read with corrigendum dated 11.02.2022 was issued to M/s. Jia Lighting and Audio Equipment, calling them to show cause to the Commissioner of Customs as to why:-

(i) Total assessable value of Rs. 8,58,682/- (Rs. Eight Lakh Fifty eight thousand Six hundred eighty two Only) declared by them/assessed at the time of clearance of goods i.e., "Various Electrical Goods", as mentioned in ANNEXURE-A to the show cause notice, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined to Rs. 7,69,00,546/- (Rs. Seven Crore Sixty Nine Lakh Five Hundred and Forty Six only) as mentioned in ANNEXURE-A to the show cause notice, under sub-section (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for Bills of Entry, as mentioned in ANNEXURE-A.

(ii) Differential Customs Duty amounting to Rs. 1,65,35,318/- (Rs. One Crore Sixty Five Lakh Thirty Five Thousand Three Hundred and eighteen Only) on the goods imported i.e., Various Electrical Goods', under the Bills of Entry, valued (re-determined value) as detailed in ANNEXURE-A to Show Cause should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

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

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

**10.** Further, another show cause notice F.No. Gen/ADJ/ADC/153/2022-Adjn dated 14.02.2022 read with corrigendum dated 20.03.2023 was issued to M/s. Jia Lighting and Audio Equipment, calling them to show cause to the Commissioner of Customs, Custom House Mundra as to why: -

(i) Total assessable value of Rs. 4,01,158/- (Rs. Four Lakh One Thousand One Hundred and Fifty eight Only) declared by them/assessed at the time of clearance of goods i.e., "Various Electrical Goods", as mentioned in ANNEXURE-A to the show cause notice, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined to Rs. 95,50,832/- (Rs. Ninety Five Lakh Fifty Thousand Eight Hundred and Thirty two only) as mentioned in ANNEXURE-A to the show cause notice, under sub-section (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for Bills of Entry, as mentioned in ANNEXURE-A.

(ii) Differential Customs Duty amounting to Rs. 19,79,856/- (Rs. Nineteen Lakh Seventy Nine Thousand Eight Hundred and Fifty Six Only) on the goods imported i.e., Various Electrical Goods', under the Bills of Entry, valued (re-determined value) as detailed in ANNEXURE-A to the Show Cause Notice, should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

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

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

**10.1** Both the show cause notices were adjudicated vide OIO No. MUN-CUSTM-000-COM-14-23-24 dated 20.09.2023 issued by the then Commissioner, Custom House Mundra confirming the demand of Rs. 1,85,15,174/- along with interest at applicable rate. Further the then Adjudicating authority imposed a penalty of Rs. 1,85,15,174/- under Section 114A and penalty of Rs. 30,00,000/- under Section 114AA of the Customs Act, 1962.

**10.2** Being aggrieved with the OIO dated 20.09.2023, the noticee preferred an appeal before the Hon'ble CESTAT which vide order dated 12.04.2024 remanded the matter.

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

**11.** Shri Vikas Mehta, consultant appeared for personal hearing on 23.09.2025. During the course of personal hearing, he argued that the calculation in Annexure-A to the SCN is incorrect and requested to rectify that while adjudication. Further, he argued that when contemporaneous import values are not considered, provisions of valuation rules are not relevant.

**12.** M/s. Jia Lighting and Audio Equipment (Proprietor: Shri Gagan Bajaj), 1964, Gautam Lines, Kingsway Camp, Delhi vide submission dated 30.09.2025, inter alia, submitted that-

(i) Both the notices have been issued to the noticee in continuation of the Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn-O/o Commr-Cus-Kandla dated 08.09.2021 issued to M/s. ZZEPL & others ("earlier notice").

(ii) The averment made in the impugned notice as "in continuation of the" earlier notice lacks jurisdiction for adjudication inasmuch as the earlier notice was issued in respect of clearances that were not made from Mundra and so none of the contents of the said notice can be taken up for adjudication by an authority at Mundra, unless notified by competent authority in this regard.

(iii) Hon'ble Tribunal has observed in their order directing remand that there was no independent inquiry/investigation with respect to goods imported vide Bills of Entry filed at Mundra.

(iv) The order of Hon'ble Tribunal has attained finality.

(v) Continuation is distinct from placing reliance. The impugned notices claiming to be in continuation of earlier notice does not rely upon the earlier notice except for enclosing a copy thereof. There is no specific averment that it is relying on the earlier notice.

(vi) Hon'ble Tribunal has already held that the only basis of issuing the impugned notice is the earlier notice (which deals with goods cleared from KASEZ), without any independent inquiry/investigation with respect to goods cleared from Mundra port. Consequently, the impugned notice is not left with any independent basis to support itself and to undergo adjudication by your Honour since it has already been adjudicated once by Ld. Commissioner of Customs, Kandla.

(vii) The earlier notice is already adjudicated by Ld. Commissioner of Customs, Kandla. Hence, the impugned notice that is issued in continuation of earlier notice, cannot be re-adjudicated.

(viii) The current proceedings would amount to re-adjudication of one and same set of evidences qua goods cleared under Kandla jurisdiction or would amount to part-adjudication of one and the same show cause notice by different adjudicating authorities again based on one and same of evidences qua goods cleared under Kandla jurisdiction, which is anathema to law.

(ix) It is most respectfully submitted that in the facts and circumstances where the earlier notice is already adjudicated in an adverse manner by Ld. Commissioner of Customs, Kandla and the impugned notice having been issued without any independent

inquiry/investigation as duly noted by Hon'ble Tribunal, the current adjudication proceedings would either amount to re-appreciation and re-adjudication of one and the same set of evidences as contained in earlier notice (without any review by department of adjudication order already passed) or may amount to adjudication in vacuum, given the absence of any independent evidence to be appreciated & adjudicated upon other than those already covered by earlier order.

(x) In view of above, it is prayed to vacate the impugned notice considering that both the eventualities in para supra makes the impugned notice untenable in the eyes of law.

(xi) Your Honour may kindly appreciate that the mechanism to initiate rejection of declared value is prescribed in rule 12 of Customs Valuation Rules, 2007 (CVR).

(xii) However, instead of delving into rule 12, the impugned notice would cite earlier notice which dealt with goods that were cleared at some other port, at some other time and in totally different and distinguishable facts and circumstances.

(xiii) The earlier show cause notice dealt with goods that were cleared by way of filing bills of entry before Custom officers at KASEZ and not before Customs House, Mundra.

(xiv) As per rule 12 (1) of CVR, "when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence.." This basic requirement of law is not fulfilled in the impugned notice.

(xv) Kind attention of your Honour is invited to the settled legal position, by which, In Avis Electronics Pvt. Ltd. case [2000 (117) E.L.T. 571 (Tri.-LB)], a Larger Bench of Hon'ble Tribunal has held that when a particular thing is directed to be performed in a manner, statutorily, it should be performed in that manner itself and not otherwise. Similarly, in Commissioner of Central Excise v. Jellalpure Tea Estate [2011 (268) E.L.T. 14 (Gau.)], the Hon'ble High Court of Gauhati held that "what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all."

(xvi) By relying upon the above dictum, it is humbly submitted that the impugned notice lacks legal authority to bypass the procedure prescribed in rule 12 by citing continuity of earlier notice.

(xvii) On this ground alone, the impugned notice is liable to be vacated, for having failed the mandate of rule 12 of CVR.

(xviii) Without prejudice to above, it is submitted that simultaneous invocation of rule 9 and rule 10 of CVR is not tenable in the eyes of law inasmuch as these rules deal with different situations. As a matter of fact, as per Rule 3(4) *ibid*, if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9. There is no mention of rule 10. In other words, determination of value under rule 10 is not provided in law.

(xix) As per rule 10 (4), no addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

(xx) Hence, the principles of natural justice warrants that the impugned notice ought to have notified M/s. Jia about the quantum of addition, if any, by specifying the sub-rule of rule 10 under which such an addition is proposed to be made.

(xxi) In our humble submission, the notice, for want of any specific quantum of addition and details of sub-rule of rule 10 under which it is proposed in the present form, is not in accordance with law.

(xxii) Thus, the provisions of rule 9, being the last of the rules prescribed in rule 3 for determining value, is also breached.

(xxiii) As per proviso to rule 9 (1), the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(xxiv) Since the proviso contains a caveat that price must be the sole consideration for the sale or offer for sale and assuming the worst that price was not the sole consideration for the sale or offer for sale, the onus lay squarely on department to quantify the addition as per the requirement of rule 10 (4).

(xxv) There is neither any addition in terms of rule 10 (4) nor there is any specific allegation that price is not the sole consideration for the sale or offer for sale for the goods under consideration, to deny application of proviso to rule 9 (1).

(xxvi) Thus, the notice hits a dead end where it neither complies with rule 9 in providing details of the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade nor gives details of additions, if any, in accordance with rule 10 (4) of CVR.

(xxvii) Consequently, the notice is not supported by any legal authority to determine the value of goods exceeding the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time (February, 2017 & March, 2017) and place of importation (Mundra) to M/s. Jia in the course of international trade. This, however, is not done.

(xxviii) It may be kindly appreciated from the legal position as above that the impugned notice, fails the requirement of rule 9 as well as rule 10 of CVR. Hence, on this ground also, the impugned notice is liable to be vacated.

(xxix) The goods under consideration are as follows:

Sl.	Bill of Entry No. & Date	Description of goods	Show Cause Notice No. & Date
1.	8507039 dated 10.02.2017	Decorative LED par Light 54L	GEN/ADJ/ADC/146/2022- Adjn dated 09.02.2022
2.	8508332 dated 10.02.2017	Decorative Disco LED Par Light Small	
3.	8687768 dated 27.02.2017	Decorative LED Par Light 54L	GEN/ADJ/ADC/153/2022- Adjn dated 14.02.2022

(xxx) The earlier show cause notice relies upon an opinion given by Shri Bhasker G. Bhatt, Chartered Engineer in respect of goods imported by and cleared from KASEZ to DTA (and not Mundra).

(xxxi) The Chartered Engineer suggested the following values to the aforesaid items:

Sl.	Description of goods	Suggested value (Rs.)
1.	Decorative LED par Light 54L	Rs. 1650
2.	Decorative Disco LED Par Light Small	Rs. 6400

(xxxii) According to Chartered Engineer, he visited users of identical items in the city of Ahmedabad; that he searched for the imported goods through internet and electronic media; that he carried out market inquiry; that he considered material cost, arm length profit involved in trading, tax, etc.

(xxxiii) As per rule 9 (2)(v) of CVR, 2007, no value shall be determined under the provisions of this rule on the basis of the price of the goods for the export to a country other than India. The print out of the details retried by Chartered Engineer from internet and electronic media, which he has attached to the report does not state that the goods appearing therein were meant for export to India only and not to a country other than

India Moreover, details of users or market enquiry carried out by him is also not forthcoming from his report.

(xxxiv) In view of above, it is felt necessary to cross-examine Shri B. G. Bhatt, Chartered Engineer before advancing any further submission.

(xxxv) Accordingly, it is prayed to allow us to cross-examine Shri B. G. Bhatt, Chartered Engineer after giving an advance notice of 15 days.

(xxxvi) It is submitted that the impugned notice does not rely upon any oral or documentary evidence to support the assumptions of “actual transaction value” in respect of goods covered by bills of entry stated in both the notices.

(xxxvii) Without prejudice to above, the earlier notice while relying upon oral evidence (though retraced by concerned person) alleges that “actual price/transaction price as negotiated with the overseas supplier (FOB) in USD” of 66 LED Christmas Light, 99 LED Christmas Light and 110 LED Christmas Light is USD 2.50, 2,75 and 3.00 respectively.

(xxxviii) The Chartered Engineer with all the shortcomings in his report suggested value of Rs. 1650 and Rs. 6400 of Decorative LED par Light 54L and Decorative Disco LED Par Light Small.

(xxxix) Both the above prices are less than the value proposed in Annexure-“A” to the Show Cause Notices, which is evident from below comparison:

Sl.	Item	Value Proposed (USD/pc)	Conversion 1USD=IRs.	Value proposed (Rs/pc) in SCN	Value suggested by Chartered Engineer (Rs.)
1.	Decorative LED par Light 54L	31.06*	67.85	2107.42	1650
2.	Decorative LED par Light 54L	31.06*	68.4	2124.50	1650
3.	Decorative Disco LED par light small	121.12^	68.4	8284.61	6400

\* Show Cause Notice dated 14.02.2022.

^ Show Cause Notice dated 09.02.2022.

(xxxx) Your Honour may kindly appreciate from the submissions made hereinabove as well as from the record that–

(i) The current adjudication would amount to re-appreciation and re-adjudication of earlier notice of one and same show cause notice by two different adjudicating authorities.

(ii) The impugned notice does not satisfy the legal requirement of Rule 12 of CVR is not satisfied;

(iii) The impugned notice does not satisfy the legal requirement of Rule 3, 9 and 10 of CVR;

(xxxxi) The impugned notices seek to reject transaction value but do not specify what is/was “payable” if what was/is paid is not acceptable. Thus, show cause notice de hors section 14 of Customs Act, 1962. Instead of this, it seeks to rely upon the report of Chartered Engineer.

(xxxxii) However, the value proposed in the impugned notices are not the same as Chartered Engineer. This renders even these values baseless.

(xxxxiii) Even the value suggested by Chartered Engineer are not in accordance with provisions of Customs Valuation Rules, 2007.

(xxxxiv) Chartered Engineer's report cannot be relied unless we must be permitted to cross-examine him for shortcomings detailed hereinabove.

(xxxxv) At the cost of repetition, it is submitted that the notices does not abide by the legal dictum that "what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all".

(xxxxvi) Hence, the impugned notices are not tenable in the eyes of law.

In view of above, it is prayed to give due consideration to the above facts and legal submissions and vacate the impugned notices issued to M/s. Jia Lighting & Audio Equipment, Delhi, in entirety and oblige.

#### **DISCUSSION AND FINDINGS:-**

**13.** The present adjudication proceedings are being undertaken in compliance with the directions issued by the Hon'ble Tribunal vide Order Nos. 10852-10854 dated 12.04.2024, whereby the matter was remanded with a specific direction to decide the subject show case notices after the main Show Cause Notice dated 08.09.2021, issued by Commissioner, Kandla, attains requisite evidentiary finality. It is observed from the records that the said Show Cause Notice dated 08.09.2021 has since been adjudicated by the Commissioner of Customs, Kandla, vide Order-in-Original No. KND-CUSTOM-000-COM-07-2024-25 dated 17.07.2024. A copy of the said Order-in-Original is already available with M/s. Jia Lighting and Audio Equipment, they being one of the co-noticees in the said proceedings. In view of the above, as the Show Cause Notice dated 08.09.2021 has since attained evidentiary finality upon its adjudication by the competent authority, the subject show cause notices are now taken up for adjudication on merits.

**14.** The issues before me to decide are:

- (i) Whether assessable value declared by importer/assessed at the time of clearance of goods is liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, if Yes, determination of re-determined value.
- (ii) Whether duty is to be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962
- (iii) Whether the goods are liable for confiscation under Section 111(d) and/or 111(m) of the Customs Act 1962 or not.
- (iv) Whether penalty should be imposed on M/s. Jia Lighting and Audio Equipment, under Section 112(a)/(b), 114A and/or 114AA of the Customs Act, 1962 or not.

**15.** Intelligence was developed by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, indicating that M/s. Zip Zap Exim Pvt. Ltd. (ZZEPL), a Delhi-based entity operating a trading unit in Kandla Special Economic Zone (KASEZ), had, in concert with its domestic buyers/actual importers, devised a modus operandi to circumvent normal customs procedures and effect clearances of imported goods into the Domestic Tariff Area (DTA) through gross undervaluation, thereby evading substantial customs duty. The intelligence further revealed that dealings with overseas suppliers were in fact undertaken by the domestic buyers, and that ZZEPL merely acted as a facilitating conduit for undervalued clearances, charging commission for such facilitation. Investigations established that ZZEPL imported Knitted Polyester Fabrics as well as various electrical goods such as LED flood lights, rope lights, decorative lighting, mini torches, rechargeable batteries and similar items, which were first brought to their KASEZ unit and thereafter cleared into DTA through Bills of Entry filed in the names of several domestic buyers, including M/s. Jia Lighting and Audio Equipment. Pursuant thereto, a Show Cause Notice dated 08.09.2021 was issued to ZZEPL and co-noticees, wherein M/s. Jia Lighting and Audio Equipment was implicated as one of the DTA buyers. In parallel, it was noticed that M/s. Jia Lighting had themselves imported and

cleared similar electrical goods through Mundra Port under three Bills of Entry listed in Table below. The present proceedings arise from allegations that these imports were also undervalued and that the declared transaction values are liable to rejection under the Customs Valuation Rules, 2007.

Sl .	Bill of Entry No. & Date	Description of goods	Quantity	Declared unit Price per Doz/Piece	Exchange rate	Declared Assessable Value (in Rs.)	Show Cause Notice No. & Date
1.	8507039 dated 10.02.2017	Decorative LED par Light 54L	377.67 Doz i.e. 4532 pieces	15.46 USD/Doz	1 USD= 68.4 INR	4,03,366	GEN/ADJ/ADC/146/2022-Adjn dated 09.02.2022
2.	8508332 dated 10.02.2017	Decorative Disco LED Par Light Small	676.67 Doz i.e. 8120 pieces	9.74 USD/Doz	1 USD= 68.4 INR	4,55,316	
3.	8687768 dated 27.02.2017	Decorative LED Par Light 54L	4532 pieces	1.29 USD/Piece	1 USD= 67.85 INR	4,01,157.96	GEN/ADJ/ADC/153/2022-Adjn dated 14.02.2022

**16.** In this context, it is pertinent to note that the subject show cause notices have been issued in continuation of the investigation undertaken by the Directorate of Revenue Intelligence in respect of the operations of M/s. Zip Zap Exim Pvt. Ltd. and various domestic buyers, including M/s. Jia Lighting and Audio Equipment, which investigation culminated in the issuance of the comprehensive Show Cause Notice dated 08.09.2021 by Commissioner, Kandla. The said SCN dated 08.09.2021 has since been adjudicated vide Order-in-Original dated 17.07.2024 passed by the Commissioner of Customs, Kandla. As the subject show cause notices draw upon and rely upon the factual findings, evidentiary material and conclusions emerging from the investigation culminating into issuance of SCN dated 08.09.2021, it becomes necessary and appropriate to refer to the same and to examine its evidentiary value in the adjudication of the subject show cause notices.

**17.** The noticee has contended that the present proceedings effectively amount to a re-adjudication or re-appreciation of the very same evidences that were already examined and decided in the OIO dated 17.07.2024 passed by the Commissioner of Customs, Kandla in respect of the earlier SCN dated 08.09.2021. I have carefully considered the above issue. It is noted that the present proceedings arise from the impugned Show cause notices dated 09.02.2022 and 14.02.2022, which pertains exclusively to the valuation of goods imported by the noticee through Mundra Port. The adjudication undertaken herein is therefore confined to the three Bills of Entry filed at Mundra port, as given in the table above and the transaction value declared therein. The earlier OIO dated 17.07.2024 passed by the Commissioner of Customs, Kandla, pertained to a distinct SCN dated 08.09.2021, which concerned undervaluation of goods imported into the Kandla Special Economic Zone (KASEZ) and then cleared into Domestic Tariff Area (DTA) to various DTA buyers. While evidentiary materials may overlap on account of same suppliers, similar goods, and the contemporaneous time period, the cause of action, show cause notices, and import transactions themselves are separate and independent.

**DISCUSSION ON EVIDENCES REFERRED AND RELIED UPON IN THE INVESTIGATION OF DRI, AHMEDABAD IN THE MATTER OF SCN DATED 08.09.2021 ISSUED TO M/S. ZIP ZAP EXIM PVT. LTD. & OTHERS-**

18. Having examined the Order-in-Original dated 17.07.2024 passed by the Commissioner of Customs, Kandla in respect of the Show Cause Notice dated 08.09.2021, it is seen that the investigation conducted by the Directorate of Revenue Intelligence brought on record substantial evidence establishing the role of Shri Gagan Bajaj, proprietor of M/s. Jia Lighting and Audio Equipment, in the undervaluation of electrical goods imported through M/s. Zip Zap Exim Pvt. Ltd. (KASEZ Unit) as well as through independent imports at Mundra.

19. Search was conducted at premises of M/s Jia Lighting & Audio Equipment Co., 1964, Outram Lines, Kingsway Camp, Delhi-110009 on 09.01.2018 under panchnama (RUD-17 to the SCN dated 08.09.2021) in the presence of Shri Anmol Singh Ahluwalia, Manager of the said firm and certain documents were withdrawn for investigation under the said panchnama dated 09.01.2018.

20. Statement of Shri Gagan Bajaj, Proprietor of M/s Jia Lighting & Audio Equipment Co., Delhi was recorded on 20.02.2018(RUD-34 to the SCN dated 08.09.2021) under Section 108 of Customs Act, 1962 in which he inter alia stated that he started M/s Jia Lighting & Audio Equipment Co, a Proprietary concern, trading firm. He was shown the panchnama dated 09.01.2018 drawn at premises of M/s Jia Lighting & Audio Equipment Co., 1964, Outram Lines, Kingsway Camp, Delhi-110009, after going through the same, he agreed with the contents of the same. On being asked about import activities being done in M/s Jia Lighting & Audio Equipment Co., Shri Gagan Bajaj stated that they used to import electrical items such as Decorative Disco LED Par Lights, LED Focus Lights, and their spare parts from China, and sell the same in domestic market; **that the Chinese supplier of these imported electrical /electronic items was M/s KNOWHOW ELECTRONIC COMPANY LTD.** On being asked to explain the imports made from SEZ Unit, M/s ZZEPL, KASEZ, Kandla, Shri Gagan Bajaj stated that Shri Vaibhav Baid, Director of M/s ZZEPL had approached them to make import of aforesaid electronic goods from China through M/s ZZEPL (SEZ unit) since the cost overhead for unit in SEZ was less as compared to direct import from regular ports; that it was decided between Shri Gagan Bajaj and Shri Vaibhav Baid that the electronic goods would be imported in the name of M/s ZZEPL in the SEZ and cleared into DTA to M/s Jia Lighting & Audio Equipment Co.; that they had imported around 40 containers from M/s ZZEPL till then; that misc port expenses from the time of arrival at the Indian Port to the delivery of the goods at SEZ gate were to be borne by M/s ZZEPL and M/s Jia Lighting & Audio Equipment Co. had to bear the transportation cost for getting goods transported from the SEZ to their godown in Delhi; that for the said arrangement, they had paid approx Rs. 30,000/-per container to them (M/s. ZZEPL) which also included their (M/s ZZEPL's) profit margin/commission; that customs duty at the time of import from SEZ unit to DTA was borne by M/s Jia Lighting & Audio Equipment Co. for their consignments. During recording of statement on 20.02.2018, on further being asked, **Shri Gagan Bajaj stated that he used to interact with Mr Feng for the imports from the said Chinese supplier M/s Knowhow Electronic Company Ltd,** whom he met in exhibition in China, for confirming the type of items, quantity and their prices of the imported item; that for the said imports from the said Chinese supplier M/s Knowhow Electronic Company Ltd, in M/s Zip Zap Exim Pvt Ltd, KASEZ and subsequently clearing the same to them in their firm M/s Jia Lighting & Audio Equipment Co, under DTA Bill of Entry, **instructions were issued to the overseas supplier to make two different set of invoices one showing the actual price and another showing lower price as informed by them (Shri Gagan Bajaj and Shri Vaibhav Baid);** that invoice showing original price was signed and sent back to the supplier whereas the invoice with lower value was directly sent to M/s ZZEPL by the overseas supplier for presenting it to customs for clearance purpose; that the bill of entry for DTA clearance was filed by M/s ZZEPL after the goods were brought into the SEZ area and Shri Gagan Bajaj was informed by Shri Vaibhav Baid/Shri Gajraj Singh

Baid about the Customs duty amount; that M/s Jia Lighting & Audio Equipment Co. transferred the duty amount to the account of M/s ZZEPL who used to pay the customs duty on their behalf. **On being further asked about the payment of differential amount to the overseas suppliers over and above declared value, Shri Gagan Bajaj stated that the value which was declared before the customs at the time of Import was sent through the account of M/s ZZEPL and the differential amount was sent to the overseas supplier through channels other than banking channels;** that he had imported the aforesaid electrical goods from China, through M/s ZZEPL (SEZ unit) by resorting to undervaluation; that he was ready to pay the differential duty on account of such undervaluation. Shri Gagan Bajaj further declared the actual price/transaction value of the said goods imported by them through M/s ZZEPL, KASEZ which were the same as that declared in the imports directly made by Shri Gagan Bajaj in his firm.

#### **CERTIFICATE OF CHARTERED ENGINEER-**

**21.** Shri B.G. Bhatt & Co. Chartered Engineer vide his report dated 06.07.2018 provided the approximate FOB value of the imported goods. In order to arrive at the FOB value, the Chartered Engineer, having examined and inspected the imported goods, visited actual user places and cross checked the values by verbal information of their purchases from India suppliers of such imported goods. He has considered MOC (Materials of Construction) of items imported, application in local market and prices available of similar goods of various manufacturer FOB rate of such imported goods/items, as available through internet/electronic media for sale in international market were also viewed and considered to arrive at estimated FOB value of Imported goods/items listed in Annexure-A to the report. While calculating the FOB value of imported goods/items, factors like material cost, manufacturing process cost and arms length profit of the traders, taxes and incidental charges have been duly accounted for.

**22.** During the course of recording of statement on 07.05.2019, Shri Gagan Bajaj, Proprietor of M/s Jia Lighting & Audio Equipment Co., Delhi and the main person of M/s Anand Electric Company, Delhi, was shown the said Annexure-A along with report of Chartered Engineer – B.G. Bhatt & Co. dated 06.07.2018. Shri Gagan Bajaj agreed with the same and stated interalia that he had imported the electrical goods through M/s ZZEPL (SEZ unit) by resorting to undervaluation.

#### **Audio chats retrieved during the investigation-**

**23.** During the course of investigation, various audio files, having conversation of Shri Vaibhav Baid, M/s. ZZEPL with the person mentioned in Column 4 below, with description of date, time, mobile no. of other person, were listened to by Shri Vaibhav Baid, M/s. ZZEPL, on 24.07.2019. The said audio files were retrieved from mobile phone Samsung Model S8 Plus of Shri Vaibhav Baid under panchnama (Para 23.21 of the OIO dated 17.07.2024). He listened to the said audios carefully. The gist of talk & explanation given by Shri Vaibhav Baid against the relevant audio files under his statement are as detailed below:-

Sr.No.	Date	Time	Name of the other person	Mobile No. of other person	Gist of talk	Explanations by Shri Vaibhav Baid
1	2	3	4	5	6	7
1041	06.12.2017	16:27:08	Gagan Bajaj	9810167219	Vaibhav is asking to Gagan Bajaj whether he wanted to send anything to 'gau' – Malpani – to	He was talking with Gagan Bajaj he was asking to him whether he wanted to send any payment to overseas companies of Hong

					which Gagan is saying yes and asking Vaibhav to get it done. – three Companies of Jia - Gagan is sending the bank details of suppliers – Vaibhav will arrange payment tomorrow -	Kong to which Gagan is saying that he will sending the Bank details of three overseas companies in which he wanted to make payment through Shri Vaibhav Baid. This payment is towards the remittance to be sent to overseas supplier for the import made by Gagan Bajaj through their company M/s. Zip Zap Exim Pvt Ltd
1410	06.12.2017	19:15:59	Gagan Bajaj	98101 67219	Remittance as well as local payment - USD – 42430 Rs. 27,57,000 Indian Rupees – 11,88,000 including expenses	This talk is regarding remittance to be sent to overseas supplier through them and other payment is towards their payment which include their profit, sundry expenses to be given to custom officers etc.
472	18.12.2017	12:27:02	Vishal, employ ee of ZZEPL	96872 72455	Vaibhav is asking Vishal to remove Peti	This is regarding the consignment of Decorative Disco LED Focus Light packed in black colour Peti imported by Jia Lighting. The value declared for this item is very low as compared to actual value and to avoid the examination of this item He instructed Vishal to remove the same so that it would not come to the notice of appraiser coming for examination
919	18.12.2017	15:38:30	Gagan Bajaj	98101 67219	Vaibhav is telling that total goods were 240 pieces (big lights – 2 pieces in one peti) but the Bill of Entry filed for 40 pieces. Goods delivered in full. Vaibhav is saying he will manage by setting.	Vaibhav is telling to Gagan Bajaj that total goods were 240 pieces (big lights – Decorative Disco LED Focus Light 2 pieces in one peti) but the Bill of Entry filed for 40 pieces. However Goods delivered in full. Vaibhav is saying he will manage by setting. He stated that subsequently, they had filed DTA bill of Entry for remaining 200 pieces and paid the duty. The copy of DTA bill of entry he will

						submit within a week time.
84	27.12.2017	08:23:06	Vishal	96872 72455	Asking Vishal to Hide the Petty -	This is regarding the consignment of <u>Decorative Disco LED Focus Light packed in black colour Peti imported by Jia Lighting</u> . The value declared for this item is very low as compared to actual value and to avoid the examination of this item he instructed Vishal to remove the same so that it would not come to the notice of appraiser coming for examination.
96	27.12.2017	08:34:01	Vishal		Reg Focus light – Jia – three types – Vishal will show only one type - No problem in Laser light -	Asking Vishal to show only one type and hide other as there was undervaluation in those items

**24.** The investigation, as discussed in the earlier Order-in-Original dated 17.07.2024, has brought on record crucial electronic evidence in the form of audio files retrieved from the mobile phone of Shri Vaibhav Baid under panchnama. The contents of these audio conversations, duly explained by Shri Vaibhav Baid in his statement, clearly reveal that Shri Gagan Bajaj of M/s. Jia Lighting and Audio Equipment was actively involved in arranging remittances to overseas suppliers. Further, the conversation, mentioned at Sr.No. 84, of Shri Vaibhav Baid with his employee Shri Vishal clearly indicates that goods pertaining to Jia lighting were grossly undervalued and they intentionally tried to avoid proper customs examination. These evidences, being contemporaneous and corroborated by statements, establish a systematic modus operandi of undervaluation and misdeclaration adopted by the noticee.

**Whether duty demanded under the impugned notices dated 09.02.2022 and 14.02.2022 can be determined on the basis of investigation carried out by DRI in respect of imports made through SEZ which resulted into issuance of SCN dated 08.09.2021 and OIO dated 17.07.2024.**

**25.** It is observed that the impugned Show Cause Notices dated 09.02.2022 & 14.02.2022 were issued in continuation of the investigation undertaken by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, which culminated in issuance of the comprehensive Show Cause Notice dated 08.09.2021 to M/s. Zip Zap Exim Pvt. Ltd. and various co-noticees. The DRI investigation pertained to import of fabric and electrical goods into the Kandla Special Economic Zone (KASEZ) by resorting to gross undervaluation and their subsequent clearance into the Domestic Tariff Area (DTA). It is noted that the said SCN dated 08.09.2021 incorporated several DTA Bills of Entry filed by M/s. Jia Lighting and Audio Equipment and brought out their role as a domestic buyer/actual importer in the undervaluation scheme. In this background, the independent imports of similar goods made by M/s. Jia Lighting and Audio Equipment directly through Mundra Port were also taken into consideration leading to issuance of the present impugned SCNs dated 09.02.2022 and 14.02.2022 for determination of the correctness of the declared value and duty liability in respect of such imports.

**26.** It is further noted that the investigation culminating in SCN dated 08.09.2021 was a water-tight inquiry conducted by the Directorate of Revenue Intelligence, bringing out in detail the modus operandi adopted for undervaluation of imports into the Kandla Special Economic Zone (KASEZ) and their subsequent clearances into the Domestic Tariff Area (DTA). As recorded in the OIO dated 17.07.2024, the foreign suppliers were issuing two parallel sets of invoices—one showing suppressed values declared before Customs and another reflecting the actual transaction price, which was recovered during the investigation. The DRI also brought on record WeChat communications exchanged between the Chinese suppliers and the SEZ unit/DTA buyers, wherein the prices to be declared before Customs, the higher actual prices, and the modalities for routing the differential payments were discussed in detail. Further, the investigation recovered Letters of Guarantee, differential payment records, and other financial documents establishing that amounts over and above the declared invoice values were remitted abroad through informal, non-banking channels. These findings were supported by voluntary statements of the persons connected with the SEZ unit as well as various DTA buyers whose Bills of Entry were incorporated in the SCN dated 08.09.2021. The adjudicating authority, in the OIO dated 17.07.2024, observed that the investigation was backed by extensive documentary, digital, financial, and oral evidence clearly establishing the practice of undervaluation.

**27.** In quasi-judicial proceedings under the Customs Act, 1962, it is well settled that the Department is not required to establish its case with the standard of proof applicable to criminal trials. The applicable test is that of preponderance of probability, under which the adjudicating authority is required to assess whether the totality of evidence on record tilts the balance towards a conclusion that the facts asserted by the Department are more probable than not. This position has been authoritatively affirmed by the Hon'ble Supreme Court of India in *Collector of Customs, Madras v. D. Bhoormull*, 1983 (13) E.L.T. 1546 (S.C.), wherein it was held that while the initial burden lies on the Department, such burden is not required to be discharged with "mathematical precision", rather, it stands satisfied where the Department establishes a degree of probability on which a prudent person may reasonably rely in drawing the inference sought to be proved. The same principle was reiterated in the matter of *DEVI DASS GARG Versus COMMISSIONER OF CENTRAL EXCISE, DELHI -I2010 (257) E.L.T. 289* (Tri. -Del.), emphasising that the standard of proof required in the Departmental proceedings under the provisions of the Customs Act, 1962 or Central Excise Act, 1944 or of the Rules made thereunder, for confiscation of goods, confirmation of demand for duty evaded, and imposition of penalty is the preponderance of probability. For establishing to be preponderance of probability, the adjudicating authority has to evaluate the evidence of both the sides and decide what is most probable.

**28.** The noticee has contended that the adjudicating authority at Mundra Port cannot rely upon or draw support from the evidences and findings emerging from the investigation conducted in respect of imports routed through the Kandla Special Economic Zone (KASEZ), which formed the basis of the earlier Show Cause Notice dated 08.09.2021. According to the noticee, such reliance would be impermissible particularly in view of the observation of the Hon'ble CESTAT that no independent investigation had been carried out in respect of the impugned goods imported through Mundra Port. In this regard, it is noted that it is an undisputed position that no separate or independent investigation was undertaken in relation to the goods imported by M/s. Jia Lighting and Audio equipment through Mundra Port. The subject Show Cause Notices dated 09.02.2022 and 14.02.2022 have been issued entirely on the basis of the investigation conducted in relation to imports made into the Kandla Special Economic Zone (KASEZ), which formed the foundation of the earlier SCN dated 08.09.2021. It is relevant to note that the Hon'ble CESTAT Ahmedabad, while observing that no separate investigation had been carried out in respect of the Mundra imports, did not set aside the proceedings initiated under the impugned SCNs. Instead, the Tribunal held that adjudication of the present notices may proceed only if the first SCN dated 08.09.2021, upon adjudication, acquires sufficient evidentiary value to support the allegations. Accordingly, it becomes

necessary to examine whether material gathered during the SEZ investigation—such as statements, audio chats referred to in the SCN dated 08.09.2021—can legitimately validate issuance of the present SCNs dated 09.02.2022 and 14.02.2022. This requires evaluating whether such material, when assessed on the touchstone of the preponderance-of-probability standard, can reasonably be applied to the independent imports made by M/s. Jia Lighting and Audio Equipments through Mundra Port.

**29.** During the course of investigation, it is observed from the statement of Shri Gagan Bajaj dated 20.02.2018 that he was in direct contact with the Chinese supplier, and admitted that he used to interact with Mr Feng for the imports from the said Chinese supplier M/s Knowhow Electronic Company Ltd. He has categorically admitted that, in respect of imports routed through M/s Zip Zap Exim Pvt. Ltd., KASEZ, instructions were issued by him to the overseas supplier to prepare two sets of invoices—one reflecting the actual transaction value and the other reflecting a suppressed value to be declared before Customs for the purpose of undervaluation. This clearly establishes a deliberate and systematic mechanism adopted by the noticee to misdeclare the value of imported goods. In the instant cases, I find that the three subject Bills of Entry, covered under the Show Cause Notices dated 09.02.2022 and 14.02.2022, reveal that the foreign supplier of the goods imported through Mundra was the very same supplier, Knowhow Electronic Company Ltd., from whom the noticee had procured similar goods through the SEZ route, as discussed in the foregoing paragraphs. The details of instant Bills of Entry are as below:-

S l.	Bill of Entry No. & Date	Supplier name	Description of goods	Quantity	Declared unit Price per Doz/Piece	Exchange rate	Declared Assessable Value (in Rs.)	Show Cause Notice No. & Date
1	8507039 dated 10.02.2017	Knowhow Electronic company Ltd.	Decorative LED par Light 54L	377.67 Doz i.e. 4532 pieces	15.46 USD/Doz	1 USD= 68.4 INR	4,03,366	GEN/ADJ/ADC/146 /2022-Adjn dated 09.02.2022
2	8508332 dated 10.02.2017	Knowhow Electronic company Ltd.	Decorative Disco LED Par Light Small	676.67 Doz i.e. 8120 pieces	9.74 USD/Doz	1 USD= 68.4 INR	4,55,316	
3	8687768 dated 27.02.2017	Knowhow Electronic company Ltd.	Decorative LED Par Light 54L	4532 pieces	1.29 USD/Piece	1 USD= 67.85 INR	4,01,157.96	GEN/ADJ/ADC/153 /2022-Adjn dated 14.02.2022

**30.** From the above factual matrix, particularly the admissions of Shri Gagan bajaj and other evidences examined during the investigation culminating in the SCN dated 08.09.2021, a relevant inference emerges for the purpose of applying the test of preponderance of probability in the present proceedings. The subject Bills of Entry filed at Mundra Port reveal that M/s. Jia Lighting and Audio equipment procured similar electrical goods from the same overseas supplier—namely M/s. Knowhow Electronic company Ltd.—with whom the noticee admittedly had commercial arrangements during the period when undervalued imports were routed through the Kandla Special Economic Zone (KASEZ). This continuity in supplier, similarity of goods, and the procurement pattern indicates that the nature of commercial dealings between the noticee and the foreign exporters remained materially unchanged, even though the modus of import shifted from direct imports through Mundra Port to the SEZ route. In the context of the standard of proof applicable to quasi-judicial proceedings under the Customs Act, 1962—which requires assessing whether, on a balance of probabilities, the facts asserted by the Department appear more likely than not—these circumstances become relevant and are capable of lending support to the Department’s case.

**31.** In light of the above observations, the continuity in foreign supplier, the similarity of goods, and the procurement pattern admitted by the noticee furnish sufficient grounds to entertain a reasonable doubt regarding the correctness of the transaction

value declared in the subject Bills of Entry. Under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, such reasonable doubt is adequate for rejection of the declared value. I therefore hold that the transaction value declared by the noticee is not acceptable under Rule 12 of the CVR, 2007.

**32.** The noticee has argued that the basic requirement of Rule 12(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 was not fulfilled in the notice as prior to rejection of the declared transaction value the proper officer did not call upon the importer to submit further information including document or other evidence. The noticee has relied upon various case laws in their defence.

**33.** Rule 12(1) mandates that where the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence. In the present case, as already recorded above, the continuity in foreign supplier, similarity in goods, and the procurement pattern admitted by the noticee—when read with the material forming part of the investigation culminating in the SCN dated 08.09.2021—provided objective grounds for formation of such reasonable doubt. The basis for this doubt has been clearly spelt out in the impugned show cause notices. Further, the SCN itself placed the noticee on notice regarding the grounds of doubt and specifically called upon the noticee to show cause and produce any evidence to substantiate the correctness of the declared value. The noticee was thus afforded a full and adequate opportunity to furnish supporting documents or explanations, which satisfies the requirement under Rule 12(1) of calling upon the importer to provide further information. The noticee, however, did not produce any contemporaneous evidence—such as supplier quotations, catalogue prices, remittance details, procurement contracts or negotiated price records—that could dispel the reasonable doubt raised in the SCN. In these circumstances, the requirements of Rule 12(1) stand duly fulfilled. I, therefore, hold that the transaction value declared by the noticee is not acceptable under Rule 12 of the CVR, 2007.

#### **REDETERMINATION OF VALUE-**

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

**34.1** In the instant case, it is noted that since there are no direct evidences with regard to the actual transaction, the value is required to be re-determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007.

#### **DETERMINATION OF VALUE IN TERMS OF PROCEEDING SEQUENTIALLY FROM RULE 4 TO 9 OF CVR, 2007 IN RESPECT OF IMPORTED GOODS:-**

**34.2** Therefore, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9 of CVR, 2007 (in terms of Rule 3(4) of CVR, 2007).

**34.3** Rules 4 and 5 of CVR, 2007 are reproduced a under:-

##### **4. Transaction value of identical goods. –**

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of *identical goods sold for export to India* and **imported at or about the same time as the goods being valued;**

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

#### **5. Transaction value of similar goods.-**

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

**34.4** The above rule position is examined w.r.t the facts of the case, and it is seen that the following aspects are relevant to state that re-determining the values in terms of Rules 4 and 5 is not possible:-

- o There have been multiple types of LED Light Products imported by M/s. Jia Lighting and Audio Equipment and their identical nature in all respects cannot be compared with other goods imported in India by neutral importers.
- o The value of LED Light Products supplied by the foreign suppliers to other neutral importers in India or abroad cannot be applied in the instant case with reference to rule 4 and 5 keeping in mind the significant variations in terms of physical characteristics, quality, brand, model, reputation etc. Likeness in characteristics/ quality/ usability and interchangeability cannot be established.
- o Further all the goods as mentioned in Table above do not fulfill the criteria for determining value under rule 4 and 5 of Customs Valuation (Determination of Value of imported goods) Rules, 2007 read with its interpretative notes as there have not been demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments to be made under these rules. Therefore, in the absence of proper

objective measure, recourse of re-determining value under rule 4 and 5 of the said rules is not appropriate.

### **34.5 VALUATION IN TERMS OF RULE 7 AND 8:-**

Rule 7 and 8 are reproduced as under:-

**“7. Deductive value.-**

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

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

(ii) the usual costs of transport and insurance and associated costs incurred within India; (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

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

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India. (b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

### **8. Computed value.-**

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

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

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

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

**34.6** Further the value in respect of the above goods cannot be re-determined as per Rules 7 and 8 of CVR, 2007 for the following reasons:-

(i) It is noted that deductive or computed value as discussed in Rule 7 and 8 respectively of the said Rules respectively cannot be determined in instant case for the reason that deduction like profits and general expenses as prescribed under rule 7 are not ascertainable in instant case. It is also seen that as per the requirement of rule 8, cost or value of materials in producing the imported goods along with profit and general expenses are also not ascertainable in instant case.

(ii) Fabrication/manipulation of import documents from origination stage i.e. at foreign supplier's end is also indicated in some cases. Hence, it is clear that

application of deductive and computed value method in absence of all relevant details would not be possible.

### 34.7 RESIDUARY METHOD UNDER RULE 9 OF CVR, 2007:-

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

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

- A. Since goods were not physically available, value of the same has been determined using reasonable means consistent with the principles and general provisions of CVR, 2007.
- B. DRI, during the investigation of case of M/s ZZEPL (SCN No. GEN /ADJ /COMM / 218 / 2021 – Adjn - 0/o Cummr – Cus -Kandla dated 08.09.2021), get the goods inspected from Chartered Engineer – B.G. Bhatt & Co. Vide their report dated 06.07.2018, Chartered Engineer – B.G. Bhatt & Co. estimated the value of "Decorative LED Par Light 54L " and "Decorative Disco LED Par Light Small" which are given in Table-B below. DRI has proposed the same value in SEZ Bill of entry number as mentioned in Table-B below in respect of the goods imported by M/s. Jia Lighting and Audio Equipment.
- C. As the goods with same specification had been imported by the DTA importers in case of M/s ZZEPL and the value of the goods stand corroborated with secondary evidences and the same have also been admitted by concerned DTA importers, therefore, value should be considered for the import of similar goods imported at Mundra port under Rule 9 of CVR, 2007.

Table-B

Import B/E No/ Date	Buyer name & IECode- by zip zap	Item Description	Goods Measu rement Unit	Corresponding Rate (in USD/given unit) as finalised in Investigation in respect of M/s Zip Zap by DRI	Curr ency	Basis of Re-determined Unit value of Goods (CE stands for Chartered Engineer and ST stands for Statement)
0009863/ 22.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE LED PAR LIGHT 54L	PCS	31.06	USD	CE Certificate dtd 06.07.18.
8841/ 07.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE LED PAR LIGHT 54L	PCS	31.06	USD	CE Certificate dtd 06.07.18.
0009807/ 22.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE LED PAR LIGHT 54L	PCS	31.06	USD	CE Certificate dtd 06.07.18.
0008832/ 07.06.17.	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18
8593/ 02.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18

0009861/ 22.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18
0008715/ 06.06.17	DAIWIK ENTERPRISES- 0516952030	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18
0008830/ 07.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- 0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE Certificate dtd 06.07.18

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

**34.10** I find that considering the reasonable flexibility as provided under Rule 9, various LED Light Products imported at KASEZ under Bill of entry mentioned in Table-B above are similar to the various LED Light Products imported at Mundra Port under Bill of Entry mentioned in Table-A above.

**34.11** Therefore, I find that the declared value is liable to be re-determined under Rule 9 of CVR,2007 and the re-determined value of imported goods is as per paragraph 38 below.

**35.** From the discussion above, it is apparent that M/s. Jia Lighting and Audio equipment has suppressed the actual transaction value and the mis-declaration of value has been done wilfully with sole purpose of executing this modus of undervaluation to evade duty. Accordingly, I find that it is appropriate to invoke Section 28(4) of the Customs Act, 1962 in the instant case.

#### **CROSS- EXAMINATION-**

**36.** The noticee has requested that an opportunity be granted to cross-examine Shri B G Bhatt, chartered Engineer. In this regard, it is noted that Dr. G.K. Sarkar, representing M/s. Jia Lighting and Audio equipment, had already been afforded the opportunity to cross-examine Shri B.G. Bhatt during the adjudication of the earlier SCN dated 08.09.2021, and the said cross-examination stands duly recorded in Para 148.14 of the OIO dated 17.07.2024. Once cross-examination has already been granted and exercised, there is no justification to permit the same exercise again in the present proceedings, particularly when no new grounds or inconsistencies have been demonstrated. Accordingly, the request for cross-examination of the Chartered Engineer is rejected.

#### **WHETHER SCN DATED 09.02.2022 READ WITH CORRIGENDUM DATED 11.02.2022 IS TIME BARRED-**

**37.** It is further noted that the Hon’ble CESTAT in its order dated 12.04.2024 has directed that the matter be remanded to be heard alongwith or after decision in show cause notice dated 08.09.2021 acquires sufficient evidentiary value and after due observance of natural justice in the impugned SCNs and providing various relied upon materials to the appellant and after considering on submissions including made on the point of limitation vis-à-vis’ of corrigendum by the appellant.

**37.1** In this regard, it is noted that the noticee in their submission dated 30.09.2025 has not put any argument on the point of limitation vis-à-vis’ of corrigendum, however, I proceed to examine the same in light of the directions issued by the Hon’ble Tribunal.

**37.2** I find that the Hon’ble tribunal has recorded the submission of the noticee, in para 9.7 of its order dated 12.04.2024, that the demand raised in respect of BE No. 8507039 dated 10.02.2017 and BE No. 8508322 dated 10.02.2017 vide SCN dated

09.02.2022 read with Corrigendum 11.02.2022 is completely time barred being raised beyond the stipulated time period of five years under Section 28(4) of the Customs Act. Section 28(4) provides to serve the show cause notice within five years. As far as the aforesaid Bills of Entry are concerned, the date of issuance of corrigendum is to be treated as date of issuance of show cause notice. Thus, issuance of SCN itself in respect of aforesaid Bills of Entry is beyond five years. Five years get ended on 09.02.2022, however, date of issuance is 11.02.2022.

**37.3** I have carefully considered the contention regarding limitation in respect of the Show Cause Notice dated 09.02.2022 read with corrigendum dated 11.02.2022. In this regard, it is pertinent to note that, in terms of Section 28 of the Customs Act, 1962, the period of five years prescribed under sub-section (4) is to be computed from the “relevant date” as defined under the Explanation 1 thereto. Relevant provisions of Section 28 are reproduced below:-

**28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded**

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, **the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.**

*Explanation 1.—For the purposes of this section, —relevant date|| means, —*

**(a) in a case where duty is [not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;**

**(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;**

**(c) in a case where duty or interest has been erroneously refunded, the date of refund; (d) in any other case, the date of payment of duty or interest.**

**37.4** As per the said Explanation 1(a), in cases where duty has not been levied or has been short-levied in respect of imported goods, the “relevant date” is the date of order for clearance of goods for home consumption, i.e., the date of grant of Out of Charge (OOC), and not the date of filing of the Bill of Entry. In the instant case, the details of date of OOC are as given below:-

Sl.	Bill of Entry No. & Date	Supplier name	Description of goods	Date of Out of Charge
1.	8507039 dated 10.02.2017	Knowhow Electronic company Ltd.	Decorative LED par Light 54L	13.02.2017
2.	8508332 dated 10.02.2017	Knowhow Electronic company Ltd.	Decorative Disco LED Par Light Small	13.02.2017

**37.5** In the instant case, it is seen from the Indian Customs EDI system (ICES) that the impugned Bills of Entry were granted Out of Charge on 13.02.2017, as detailed in the table above. Therefore, the period of five years prescribed under Section 28(4) of the Customs Act, 1962 is required to be computed from 13.02.2017. Accordingly, the Show Cause Notice dated 09.02.2022 as well as the corrigendum dated 11.02.2022 were both issued within the statutory period of five years from the relevant date. Hence, the objection raised by the noticee before the Hon’ble Tribunal that the proceedings are barred by limitation is devoid of merit and is accordingly rejected.

**QUANTIFICATION OF DUTY-**

**38.** I now proceed to quantify the differential customs duty in respect of the impugned imports on the basis of the re-determined unit value in USD per piece, as adopted in Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn dated 08.09.2021. The said unit rates, having been derived from the investigation and evidentiary material discussed hereinabove, are considered appropriate and are accordingly applied for computation of the assessable value and consequential duty liability in the present proceedings. The noticee in their submission during the course of personal hearing has argued that there is an error in calculation of differential duty. Accordingly, the duty liability has been re-worked on the basis of correct arithmetical computation, and the revised calculation is set out below:-

Sl .	Bill of Entry No. & Date	Description of goods	Quantity	Declared unit Price per Doz/Piece	Exchange rate	Unit Rate in USD per piece as per SCN dated 08.09.2021	Declared Assessable Value (in Rs.)	Re-determined Assessable value (in Rs.)	Re-determined Assessable Value considered in Annexure-A to the respective Show cause notice
1.	8507039 dated 10.02.2017	Decorative LED par Light 54L	377.67 Doz i.e. 4532 pieces	15.46 USD/Doz	1 USD= 68.4 INR	31.06	4,03,366	(4532*31.06*68.4)= 9628252.13	9628252.13
2.	8508332 dated 10.02.2017	Decorative Disco LED Par Light Small	676.67 Doz i.e. 8120 pieces	9.74 USD/Doz	1 USD= 68.4 INR	121.12	4,55,316	<b>(8120*121.12*68.4)=</b> <b>6,72,71,017</b>	<b>6,72,72,294.40</b>
3.	8687768 dated 27.02.2017	Decorative LED Par Light 54L	4532 pieces	1.29 USD/Piece	1 USD= 67.85 INR	31.06	4,01,157.96	(4532*31.06*67.85)= 95,50,831.97	95,50,831.97

Re-determined Assessable value (in Rs.)	BCD (10%)	CVD (6%)*(A+V+BCD)	Edu Cess	Sec & Higher Edu Cess	Additional Duty (4%)*(A+V+BCD+CVD+CESS)	Total Duty	Duty Paid	Differential Duty	Differential Duty as per Annexure-A to the respective SCN
(4532*31.06*68.4)= 9628252.13	962825.21	635464.64	31965.79	15982.89	450979.6272	2097218.176	101044	1996174.176	1996174.176 (SCN-F.No. GEN/ADJ/ADC/146/2022-Adjn dated 09.02.2022)
(8120*121.12*68.4)= 6,72,71,017	6727101.696	4439887.119	223339.7763	111669.8882	3150920.618	14652919.10	114054	<b>14538865.1</b>	<b>14539143.35</b> (SCN- F.No. GEN/ADJ/ADC/146/2022-Adjn dated 09.02.2022)
(4532*31.06*67.85)= 95,50,831.97	955083.197	630354.91	31708.76214	15854.38107	447353.3288	2080354.58	100498.4	1979856.18	19797856.18 (SCN F.No. GEN/ADJ/ADC/146/2022-Adjn dated 14.02.2022)

**39.** I have carefully examined the contention of the noticee regarding the alleged errors in the calculation of differential duty and have re-verified the quantification on the basis of the unit rates adopted in the respective Show Cause Notices. Upon scrutiny of the calculation sheets and recalculation of the assessable value by applying the re-determined unit rate in USD per piece, the applicable notified exchange rate for the relevant dates, and the statutory rates of duty prevailing at the time of import, it is observed that the quantification in respect of Bill of Entry Nos. 8507039 dated 10.02.2017 and 8687768 dated 27.02.2017 correctly corresponds with the demand proposed in the Show Cause Notices and no error is found in the computation of differential duty in respect thereof. However, in respect of Bill of Entry No. 8508332 dated 10.02.2017, it is noticed that the figure of differential duty of ₹1,45,39,143.35 mentioned in Annexure-A to the Show Cause Notice F.No. GEN/ADJ/ADC/146/2022-Adjn dated 09.02.2022 appears to contain an arithmetical/calculation error. On correct computation, as worked out above, the differential duty payable comes to ₹1,45,38,865.10, after adjusting the duty already paid at the time of clearance. Accordingly, the duty demand is liable to be confirmed on the basis of the corrected and verified calculations discussed hereinabove, along with applicable interest under Section 28AA of the Customs Act, 1962.

**40.** Accordingly, the re-determined assessable value and the differential duty payable in respect of the impugned Bills of Entry, as verified and worked out hereinabove, are tabulated below:-

Sl.	Bill of Entry No. & Date	Description of goods	Re-determined Assessable Value	Differential Duty	SCN No. and Date
1.	8507039 dated 10.02.2017	Decorative LED par Light 54L	9628252.13	1996174.176	GEN/ADJ/ADC/146/2022-Adjn dated 09.02.2022
2.	8508332 dated 10.02.2017	Decorative Disco LED Par Light Small	6,72,71,017	14538865.100	
		Total	7,68,99,269.13	1,65,35,039.276	
3.	8687768 dated 27.02.2017	Decorative LED Par Light 54L	95,50,831.97	1979856.18	GEN/ADJ/ADC/153/2022-Adjn dated 14.02.2022

**41.** The differential duty in the present case has been determined under Section 28(4) of the Customs Act, 1962. Consequently, the noticee who is liable to pay such duty also becomes liable to penalty under Section 114A of the Customs Act, 1962, which provides for mandatory penalty in cases where duty has been short-levied or not paid by reason of fraud, collusion, wilful misstatement or suppression of facts. Further, in terms of the fifth proviso to Section 114A, where penalty has been imposed under the said section, no penalty shall be imposed under Section 112(a) or Section 112(b) in respect of the same act or omission. Accordingly, once penalty under Section 114A is found imposable in the present matter, separate penalties under Sections 112(a) and 112(b) are not warranted and are liable to be dropped.

#### **CONFISCATION OF GOODS-**

**42.** I find that the noticee has mis-declared the goods in terms of its value while importing the goods through Mundra port as elaborated in earlier paras. The gross undervaluation has been established by carefully examining the evidences placed on record. It is a settled law that once mis-declaration is established, goods become liable for confiscation. Such acts on their part have rendered the subject goods liable for confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962. In this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that when mis-declaration is established, goods are liable for confiscation. This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

**43.** As the impugned goods are liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962, it becomes necessary to examine whether redemption fine under Section 125 of the Act is imposable in lieu of such confiscation. In this regard, it is noted that the subject goods are no longer physically available for confiscation, as they were cleared in the past and are not presently within the custody or control of Customs. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]. Para 23 of the said Judgment is as follows:

*"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."*

**44.** I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I note that the case involves undervaluation of imported goods with the sole intent to evade/short payment of Customs Duty. However, in as much as goods have already been cleared and perhaps already consumed, I believe that the ends of justice would be met if the redemption fine is restricted to approx. 50% of the differential duty.

**45.** With regard to penalty under Section 114AA of the Customs Act, 1962, I find that the noticee has engaged in undervaluation of goods by suppressing their actual transaction value and declaring figures that do not reflect the true consideration paid or payable to the overseas suppliers. The material examined in this order emanating from the SEZ-based investigation establishes that the undervaluation was undertaken with full knowledge and intent, resulting in the submission of false and misleading

documents and declarations before Customs. In the present case, the undervaluation has been found to be deliberate, and the noticee's declarations in the Bills of Entry have been proven incorrect in material particulars relating to value. Therefore, the ingredients of Section 114AA stand satisfied, and the noticee is liable for penalty under the said provision.

**46.** In view of the above discussion and findings, I hereby pass the following order:-

**ORDER-**

**A. ORDER IN RESPECT OF SHOW CAUSE NOTICE F.No. GEN/ADJ/ADC/146/2022-ADJN DATED 09.02.2022 READ WITH CORRIGENDUM DATED 11.02.2022**

(i) I order to reject the total assessable value of Rs. 8,58,682/- (Rs. Eight Lakh Fifty eight thousand Six hundred eighty two Only) declared by them/assessed at the time of clearance of goods, under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same as Rs. 7,68,99,269/- (Rupees Seven Crore Sixty Eight Lakh Ninety Nine Thousand Two Hundred and Sixty Nine only), as discussed in Para 38 and 40 above, under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) I determine and confirm the differential Customs Duty amounting to Rs. 1,65,35,039/- (Rupees One Crore Sixty Five Lakh Thirty Five Thousand and Thirty Nine Only) on the goods imported, under the Bills of Entry, valued (re-determined value) as discussed in Para 38, 39 and 40 above, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962. I drop the remaining demand of Rs. 279/- on account of calculation error as discussed in the foregoing paras.

(iii) I hold that the subject imported goods are liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962. Since the goods are not available for confiscation, I impose a redemption fine of Rs. 80,00,000/- (Rupees Eighty lakhs only) under Section 125 of the Customs Act, 1962.

(iv) I impose a penalty of Rs. 1,65,35,039/- (Rupees One Crore Sixty Five Lakh Thirty Five Thousand and Thirty Nine Only) under Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, penalty under Sections 112(a)/112(b) are not imposable.

(v) I impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs only) under Section 114AA of the Customs Act, 1962.

**B. ORDER IN RESPECT OF SHOW CAUSE NOTICE F.NO. GEN/ADJ/ADC/153/2022-ADJN DATED 14.02.2022 READ WITH CORRIGENDUM DATED 20.03.2023:-**

(i) I order to reject the total assessable value of Rs. 4,01,158/- (Rupees Four Lakh One Thousand One Hundred and Fifty eight Only) declared by them/assessed at the time of clearance of goods under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same as Rs. 95,50,832/- (Rs. Ninety Five Lakh Fifty Thousand Eight Hundred and Thirty two only) under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) I determine and confirm the differential Customs Duty amounting to Rs. 19,79,856/- (Rupees Nineteen Lakh Seventy Nine Thousand Eight Hundred and Fifty Six Only) on the goods imported under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) I hold that the subject imported goods are liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962. Since the goods are not available for confiscation, I impose a redemption fine of Rs. 10,00,000/- (Rupees Ten lakhs only) under Section 125 of the Customs Act, 1962.

(iv) I impose a penalty of Rs. 19,79,856/- (Rupees Nineteen Lakh Seventy Nine Thousand Eight Hundred and Fifty Six Only) under Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, penalty under Sections 112(a)/112(b) are not imposable.

(v) I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) under Section 114AA of the Customs Act, 1962.

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

**(Nitin Saini)**  
**Commissioner of Customs**  
**Custom House Mundra**

F.No. GEN/ADJ/COMM/117/2022-Adjn  
DIN- 20260471MO000054.293

**To (The Noticees):**

M/s. Jia Lighting and Audio Equipment,  
1964, Outram Lines, Kingsway Camp,  
Delhi-110009

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

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