

	<p style="text-align: center;"><b>कार्यालयः प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,</b>  <b>सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</b>  <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b>  <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421</b>  <b>PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in</b></p>	 <b>आजादी का</b> <b>अमृत महोत्सव</b>
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**SHOW CAUSE NOTICE**

Intelligence developed by Directorate of Revenue Intelligence, Indore Zonal Unit (hereinafter referred to as 'DRI') suggested evasion of Customs duty by certain importers by way of under-valuation of "Walnut Kernel" at Adani Port and Special Economic Zone (hereinafter referred to as 'Mundra SEZ'). Further, intelligence developed by DRI indicated that three firms namely **Divashri International Private Limited (IEC: AAJCD3404F)**, **Divine Overseas (IEC: ASRPS4990C)** both having registered office at 944, RB Estate Loharka Road, Amritsar, Punjab-143001 and **Nutrain International Private Limited (IEC: AAICN3425D)** having registered address at Opposite Wipro Limited, Basement 472, Chaman Lal Setia Exports Limited, Phase-III, Udyog Vihar, Gurugram, Haryana (hereinafter all three firms are referred to as 'the importers') indulged in duty evasion by way of under-valuation of "Walnut Kernel" at Mundra SEZ. All the three importers were importing "Walnut Kernel" from Chile, USA & Afghanistan under customs tariff item (CTI) 0802 32 00 at Mundra SEZ and clearing the imported goods by way of under-valuation at the Unit Price of 1.1 - 1.3 USD per Kgs in Domestic Tariff Area (DTA) to evade Customs duty under the category of Traded Goods. Further, Walnut Kernel under Customs Tariff Item (CTI) 0802 32 00 of the First Schedule to the Customs Tariff Act, 1975 attracts BCD at the rate of 100% and IGST at the rate of 5%.

2. Accordingly, one consignment of "Walnut Kernel" imported by Divashri International Private Limited covered under DTA Thoka No. 2006462 dated 18.03.2024 lying at Fast Track CFS Private Limited in Mundra SEZ was put on hold for examination by the officers of DRI.

3. On 20-21.03.2024, a search was conducted at the registered premises of Nutrain International Private Limited situated at 472, Chaman Lal Setia Exports Limited, Phase-III, Udyog Vihar, Gurugram, Haryana. During the search proceedings, Shri Anupam Suneja who is proprietor in Divine Overseas and one of the two directors in Divashri International Private Limited was present. Shri Sankesh Sethia who is one of the two directors in Nutrain International Private Limited was also present. Further, various import and other documents of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited were found at the said premises. During the search, the officers also found the stamps of Divashri International Private Limited, Divine Overseas, Nutrain International Private Limited, Bright Gate General Trading LLC, Dubai, Hangjingouqu Deposit Gold Trade Co. Ltd, and Supernova General Trading FZE. On being asked, as to why the stamps of these companies were lying in the premises, both Shri Anupam Suneja and Shri Sankesh Sethia had no satisfactory answer. The proceedings were recorded under Panchnama dated 20-21.03.2024 (RUD-1) drawn on the spot.

3.1 During the search proceedings, two mobile phones and one SD card belonging to Shri Anupam Suneja were also recovered and under reasonable belief that the mobile phones belonging to Shri Anupam Suneja may contain evidence which may be useful in further investigation, therefore, it was decided to extract the data of two mobile phones and one SD card through forensic analysis. A forensic analyst was called for the purpose of extraction of the data from the devices. Further, Ms. Himani Bharti, Digital Forensic Evidence Examiner of Systools Software Private Limited extracted the data from two mobiles, one SD card and emails accounts. Further, extraction from the above devices were copies to two hard disks of 1 TB.

One hard disk of 1 TB of Seagate having S. No. NT19FMBV contains the working copy of data of both the mobile, SD Card, Email accounts and other hard disk 1 TB of Seagate having S. No. NT19FKY2 contains master copy of both the mobiles, SD card and email accounts. (RUD-2)

4. On 23.03.2024, search was conducted at the registered premises of Divashri International Private Limited and Divine Overseas situated at 944, RB Estate Loharka Road, Amritsar, Punjab- 143001. During the search proceedings, Shri Naresh Kumar Suneja who is one of the two directors in Divashri International Private Limited was present. He informed that all the business activities of Divashri International Private Limited and Divine Overseas are done by his son, Shri Anupam Suneja. The premises was residential cum office premises built in 03 story building. Shri Naresh Kumar Suneja informed that one small room at backside in ground floor was used by his son for business purposes during his visit. There was display board of Divashri International Private Limited. Further, some import documents of Divashri International Private Limited and Divine Overseas were found at the said premises and were resumed. The proceedings were recorded under Panchnama dated 23.03.2024 (RUD-3) drawn on the spot.

5. **Examination of the Goods imported by Divashri International Private Limited under DTA Thoka No. 2006462 dated 18.03.2024 at Fast Track CFS Private Limited, Plot No.3, Block-C, Sector-11, Adani Ports & SEZ Limited, Taluka Mundra, Distt. Kutch, Mundra – 370421**

5.1 On 21-22.03.2024, DRI officer in the presence of Shri Milind Kumar Dashrath Bhosle, Documentation Head of the SEZ Unit, Fast Track CFS Private Limited who handles all the customs related documents on behalf of the said SEZ Unit, Shri Gagan Preet Singh Aulakh, G-Card Holder having No. G/MNDR1/20234432 and authorised person of M/s. Divashri International Private Limited and independent panchas examined the goods covered under the DTA Thoka No. 2006462 dated 18.03.2024. Shri Milind Kumar Dashrath Bhosle informed that the goods were lying in the warehouse as the said cargo was imported under Import Bill of Entry No. 1005508 dated 14.03.2024 and the same was de-stuffed before filing the DTA Thoka Number No. 2006462 dated 18.03.2024 as per SEZ norms. There were a total of 2200 boxes having the description of "Walnut Kernel" and weight of the same was marked as 10 Kg on those boxes. It was found that there were stickers pasted on each boxes having description of name and address of exporter as "AL RUBAYAT FOODSTUFF TRADING LLC, 101, First Floor, Toufiq Building, AL-RAS, DEIRA, DUBAI, UAE and name and address of importer was "Divashri International Private Limited, 944, R.B. Estate, Loharka Road, Amritsar-143001, Punjab, India, GST: 03AAJCD3404F1ZB, IEC: AAJCD3404F". The goods were packed in two plastic sheet and further stuffed in boxes. The quality of the Walnut Kernel was very good and was packed in vacuumized packing. All the proceedings were recorded under Panchnama dated 21-22.03.2024. (RUD-4)

5.2 Therefore, the aforesaid grossly undervalued goods imported by Divashri International Private Limited, were seized vide Seizure Memorandum dated 01.04.2024 (RUD-5) with direction that the aforesaid goods should not be removed, parted with or dealt with in any manner from their present place without prior written permission of DRI.

#### 6. **Statements of Concerned Persons**

During the course of investigation, Statements of the concerned persons were also recorded under Section 108 of the Customs Act, 1962 on various dates, which are discussed below:

6.1 **Statement of Shri Anupam Suneja, director of Divashri International Private Limited and proprietor of Divine Overseas, was recorded on 21.03.2024 under Section 108 of the Customs Act, 1962 (RUD-6), wherein he, inter-alia, stated as under: -**

- his name is Anupam Suneja S/o Naresh Kumar Sunjeja; his Aadhar Number is 480071629563; he is residing at G-811. Suncity, Sector 54-55, Gurugram, Haryana; his permanent address is 944, RB Estate Loharka Road, Amritsar, Punjab- 143001; he studied Arts upto higher senior secondary; his email id is anupam.suneja@gmail.com and his firms email IDs are divashrltd@gmail.com. and divine.overseas.in@gmail.com.
- he started working with his father in the manufacturing factory of Tweed and blankets during the period 2000 to 2005; the factory was owned by his father; thereafter, he started working in the profession of property brokerage and construction till 2015 in Amritsar; the business of brokerage and construction took a hit around 2015 and in absence of good opportunities, he shifted to the business of Cattle feed and worked in this business till 2017 in Amritsar, Punjab; he started working on commission basis in the business of Dry fruits till 2019 in Amritsar & Delhi; thereafter, he started his own proprietorship firm Divine Overseas having IEC number ASRPS4990C; he started importing Walnut & Pistachios in the name of Divine Overseas; he also opened another firm Divashri International Pvt. Ltd. in which he and his father are directors; he is the managing director in. Divashree International Pvt. Ltd having IEC number AAJCD3404F; both the above mentioned firms are currently functioning.
- the annual turnover of Divine Overseas is around 6-7 Crores and Principal and only place of Business is 944, RB Estate, Loharka Road, Amritsar; Walnut & Pistachios are imported in the name of Divine Overseas and most of the imports in the name of Divine Overseas are done from Jebel Ali Port, Dubai at Mundra Port.
- walnut are supplied to Divine Overseas by overseas suppliers Royal Crown General Trading FZE, United Arab Emirates; AL Rubayat Foodstuff Trading LLC, United Arab Emirates; Arica Global Trading LLC, United Arab Emirates and Truenut Food Manufacturing, United Arab Emirates; walnuts imported in the name of Divine Overseas are of Chile Origin; pistachios are procured from overseas supplier Atcom, Dubai and these are of Iran Origin.
- the annual turnover of Divashri International Private Limited is around 12-13 Crores and Principal and only place of Business is 944, RB Estate. Loharka Road, Amritsar.
- on being asked, he stated that Walnut & Pistachios are imported in the name of Divashri International Private Limited and most of the imports in the name of Divine Overseas are done from Jebel Ali Port, Dubai to Mundra Port; walnuts are supplied to Divashri International Private Limited by overseas suppliers Royal Crown General Trading FZE, United Arab Emirates; AL Rubayat Foodstuff Trading LLC, United Arab Emirates; Arica Global Trading LLC, United Arab Emirates and Truenut Food Manufacturing, United Arab Emirates. Walnuts imported in the name of Divashri International Private Limited are also of Chile Origin; pistachios are procured from overseas supplier Atcom, Dubai and these are also of Iran Origin; he did not contact all these overseas suppliers and Shri Mohit Bhardwaj placed the order with overseas suppliers at his recommendation.
- he did not have any other place, so he registered both of these firms at the same address; both of these firms are functioning at the above mentioned address.
- after importing walnuts and pistachios, these are sold in the domestic market to M/s. VKC Nuts, M/s. Sri Sai, M/s. KBS Enterprises, M/s. Sip Enterprises etc.; he also sold these imported goods viz. Walnuts & Pistachios to his own another firm.
- Inshell Walnuts are available between the range of 250 to 400 per Kilograms and Kernel Walnuts are available between the range of 650 to 800 per Kilograms at domestic market; he also sold the Inshell Walnuts & kernel at the above referred market prices; there are two type of Walnut Kernels i.e. Split and Quarter kernel and they usually import assorted size walnut kernel; Split kernels are around 60 rupees more costlier than Quarter kernel.
- Walnut Kernels are obtained by breaking the Inshell walnuts; For example, if they are breaking one Kilograms of Inshell walnuts then maximum half kilograms of kernels can be obtained.

- Inshell Walnuts are imported at the rate of USD 1.1 to USD 1.2 per kilograms and Walnut Kernels are imported at the rate of USD 1.2 to 1.3 per kilograms.
- four persons are on regular payroll at Divine Overseas and Divashri International Pvt. Ltd; same persons are working in both these firms viz, myself, Sanjiv Kumar who looks after import, Mohit Bhardwaj who looks after accounts and Shri Anurag who looks after movement of goods; Shri Sanjiv Kumar works from his home and from the premises of M/s. Chaman Lal Setia Exports Ltd. situated at Opp. Wipro Ltd. Basement, 472, Chaman Lal Setia Exports Ltd., Phase-III, Udyog Vihar, Gurugram, Haryana 122001; Shri Mohit Bhardwaj does the work from Dubai, Shri Anurag does the work from Kudli, Haryana.
- he pays Rs. 10,000/- monthly to Shri Mohit Bhardwaj, Rs. 10,000/- monthly to Shri Anurag & Rs. 3,000/- per container to Shri Sanjiv Kumar; he doesn't have any proof in support of these claims and he always paid this amount in cash.
- Import documents such as Commercial Invoices, Packing list, Phyto certificates, Country of Origin certificates, Bills of Lading etc. are received by him on whatsapp from Shri Mohit Bhardwaj.
- On being asked that what is his relation with M/s. Chaman Lal Exports Ltd, he stated that Shri Sankesh Setia is his aunt's i.e. father's sister's son and Shri Sankesh Setia is one of the directors in M/s. Chaman Lal Exports Ltd; Shri Sankesh Setia also has one elder brother whose name is Shri Sukaran Setia.

**6.2 Statement of Shri Sukarn Setia, director of Nutrain International Private Limited, was recorded on 23.03.2024 under Section 108 of the Customs Act, 1962 (RUD-7), wherein he, inter-alia, stated as under:-**

- his name is Sukarn Setia S/o Shri Rajeev Setia; his Aadhar Number is 323641608654; he is residing at House Number A-11/18, DLF Phase 1, Gurugram-122002; he completed his B.Com. from Khalsa College under Gurunanak Dev University, Amritsar; his email id is [sukarnsetia@gmail.com](mailto:sukarnsetia@gmail.com) and his mobile number is 9811616255 and his company's i.e. M/s. Nutrain International Pvt. Ltd. email id is [nutrain2022@gmail.com](mailto:nutrain2022@gmail.com).
- he started working as Director in Chamanlal Setia Exports limited in 2001 and he worked there till 2019 which does the work of Export of Rice; he used to look after export sales & marketing; Since he used to travel a lot for the business of Chamlal Setia Exports Limited, he had made many contacts in the industry and he decided to start dry fruits business and he started the business of dry fruits in 2019 and is engaged in the same business till date; he mainly deals in Pistachios, Walnuts & Almonds; sometimes, he also deals in Wet Dates.
- He has Import Export Code No. AAICN3425D in the name of M/s. Nutrain International Private Limited; he import dry fruits in the name of his company i.e. Nutrain International Private Limited from Iran, United States of America & Chile; they have imported walnuts from Chile & United States of America; Almonds from Iran & United States of America and Pistachios from Iran & Unites States of America.
- on being asked, he stated that there are two directors in Nutrain International Private Ltd; he & his Brother Shri Sankesh Setia; he is the Managing Director in the firm and he is engaged in day to day operation also; after importing the above said dry fruits, the imported cargo is placed in cold storage warehouses at Kudli, Haryana and Gurugram, Haryana, if they don't have any customer lined up; further, sometimes when they already have a customer for the imported cargo then they send the imported cargo of dry fruits directly to the buyer; their main market is Mumbai, Rajasthan & Delhi.
- mainly, they import dry fruits through Mundra Port and Nhava Sheva Port, depending upon the freight.
- market price of Walnuts In shell ranges from Rs. 200 to Rs. 300 per Kilograms and walnut kernels in the price range of 400 to 550 rupees per kilogram; the fluctuation in the market price depends upon the quality of the walnuts; walnut In shell are walnut

wherein kernel is covered by shell and after breaking the shells walnut kernel is obtained; kernel is the edible part of walnuts; shells of the walnuts are of no use.

➤ around 480 grams to 600 grams of kernel can be obtained from 1 Kilogram of Inshell Walnut and this also depends on the quality and origin of the walnut; for example, Serr type of Inshell Walnuts give the yield i.e. Kernel of 580 to 620 grams in 1 kilogram; further, Chandler type of Inshell Walnuts give the yields i.e. Kernel of 470 to 520 grams in 1 kilogram.

➤ on being asked, he stated that they import both Serr and Chandler type of walnuts In shell but mainly they import chandler type of In shell walnuts; further, kernels imported by them are of Serr type; kernel of chandler type In shell walnuts are more costly compared to Serr because of the good colour and more oil content; Grade 3 is the lowest quality of kernels, Grade 3 is non-edible and can be used in oil extraction only; Grade 2 is better than Grade 3 and edible; Grade 1, light, Extra light is the best qualities of kernels of walnuts.

➤ he doesn't remember the exact value of kernels sold by them;

➤ Chandler type of walnuts In-shell are imported by them are of between the range of 1.1 to 1.3 USD Per kilogram; they have mostly imported Chandler type of walnuts In-shell; kernels of walnuts imported by them has a price range of 1.2 USD to 1.3 USD per kilograms; price of kernels can go upto 2.9 USD per kilograms if they are of Chile and United States of America origin and if they are of good quality; price can go upto 5 USD for per kilograms if those are of Afghanistan origin.

➤ they have business and family relation with Shri Anupam Suneja; Shri Anupam Suneja is his maternal uncle's son; he stated that he want to remain silent about his business relations with Shri Anupam Suneja.

➤ On being asked that the import related documents of Divine Overseas & M/s. Divashri International Private Limited were recovered from the premises of Chaman Lal Setia Exports Limited and to tell the reason as to why the documents were placed in the premises of Chaman Lal Setia Exports Limited, he stated that he will inquire about the reason behind it and inform in due course.

➤ On being asked, he stated that his brother Shri Sankesh Setia had told him that documents related to the import of Divine Overseas & Divashri International Private Limited were recovered during the search proceedings from the premises of Chaman Lal Exports Limited; he reiterated that he want to inquire about the reasons as to why the import documents related to Divine Overseas & M/s. Divashri International Private Limited were placed in the office.

➤ On being asked that Chandler type of Inshell Walnuts imported by him are between the range of 1.1 to 1.3 USD Per kilogram and kernels of walnuts imported by him had a price range of 1.2 USD to 1.3 USD per kilograms and he also stated that 480 grams to 600 grams of kernel can be obtained from 1 Kilogram of Inshell Walnut and price of kernel imported by him is also same as the Inshell Walnuts and to tell the exact reason behind that, he stated that the kernels imported by them are of low quality, that is the reason behind the low prices of kernels; Further, he doesn't remember the exact sale price of the products imported.

➤ On being asked to state the market price of low quality kernels in last one year, he stated that it is around 280 to 400 rupees per kilogram.

➤ On being asked that it is clear from his statement that kernels are more costly in comparison to Inshells and he has imported these at almost same price and thus it appears that he is engaged in undervaluation of imported goods and to offer comments on the same, he stated the reason for lower prices of kernels is because their kernels are mostly broken kernels and Grade-2 kernels obtained from Serr quality of Inshell walnuts; however, **they are depositing Rupees One Crore for voluntary payment of customs duty.**

➤ he stated that he wants to render his full co-operation in the matter and he will present himself before the officer as and when called upon.

**6.3 Statement of Shri Sukarn Setia, director of Nutrain International Private Limited, was recorded on 08.04.2024 under Section 108 of the Customs Act, 1962 (RUD-8), wherein he, inter-alia, stated as under:**

- after completing his 8 months diploma in Business Management from London City College, London, he became director in their family firm namely, Chamanlal Setia Export Limited in the year 2001 and worked as director till 2022; they have two partnership firms namely, Setia Overseas and Virgo Overseas wherein he and his brother Shri Sankesh Setia are partners; they have one Private Limited company namely, Nutrain International Private Limited wherein he and his brother, Shri Sankesh Setia are directors; Setia Overseas, Virgo Overseas and Nutrain International Private Limited were created in the year 2013, 2020 and 2022 respectively;
- on being asked to peruse his statement dated 23.03.2024 recorded under Section 108 of the Customs Act, 1962 at Directorate of Revenue Intelligence, Delhi Zonal Unit wherein on being asked to state his relation with Shri Anupam Suneja, Director of Divashri International Private Limited and proprietor of Divine Overseas at Question No. 10 and wherein he stated that he wanted to remain silent about his business relations with Shri Anupam Suneja and to state whether he still wants to remain silent about his business relationship with Shri Anupam Suneja and his firm Divashri International Private Limited and Divine Overseas, he stated that Shri Anupam Suneja is his maternal uncle's son and his cousin; his father's name is Shri Naresh Suneja;
- he had created proprietorship firm namely Divine Overseas in the name of Shri Anupam Suneja in the year 2019 and Divashri International Private Limited in the name of Shri Anupam Suneja and his father Shri Naresh Suneja in the year 2022; both are directors in Divashri International Private Limited; Shri Anupam Suneja and his father Shri Naresh Suneja reside in Amritsar, however, Shri Anupam Suneja has been in Gurugram for the last 3 to 4 months and looks after certain work of both the firms; monthly salary are being paid to him and his father from firms accounts; both the firms were created for import purpose; he stated that the orders for import on behalf of both the firms were being placed by him and imported goods were sold in domestic market by him only.
- On being asked to peruse his statement dated 23.03.2024 recorded under Section 108 of the Customs Act, 1962 at Directorate of Revenue Intelligence, Delhi Zonal Unit wherein on being informed that the import related documents of Divine Overseas and Divashri International Private Limited were recovered from registered premises of Chaman Lal Setia Export Limited and on being asked that he had stated that he will inquire about the reason behind it and to state the reason of the same, he stated that as the orders for import on behalf of Divashri International Private Limited and Divine Overseas were placed by him and imported goods were sold by him in domestic market, documents were kept at registered premises of Chaman Lal Setia Export Limited i.e. 472, Chaman Lal Setia Exports Limited, Phase-III, Udyog Vihar, Gurugram, Haryana; he also stated this is also registered premises of Nutrain International Private Limited.

**6.4 Statement of Shri Anupam Suneja, director of Divashri International Private Limited and proprietor of Divine Overseas, was recorded on 10.04.2024 under Section 108 of the Customs Act, 1962 (RUD-9), wherein he, inter-alia, stated as under: -**

- after completing his senior secondary school from Amritsar, Punjab, he tried his hands in certain businesses, however could not succeed; he has two firms namely Divashri International Private Limited and Divine Overseas; himself and his father are directors in Divashri International Private Limited and he is proprietor in Divine Overseas.
- On being asked to peruse his statement recorded on 21.03.2024 at Directorate of Revenue Intelligence, Delhi Zonal Unit wherein he stated that he had started his own proprietorship firm namely Divine Overseas having IEC ASRPS4990C and one another firm Divashri International Private Limited having IEC AAJCD3404F wherein he and

his father are directors and to peruse statement of Shri Sukarn Setia, Director in Nutrain International Private Limited recorded on 08.04.2024 under Section 108 of the Customs Act, 1962 wherein he stated that he had created proprietorship firm namely Divine Overseas in his name in the year 2019 and Divashri International Private Limited in his and his father's name in the year 2022 and to state who had created both the firms, he admitted that the statement tendered by him on 21.03.2024 recorded under Section 108 of the Customs Act, 1962 at Directorate of Revenue Intelligence, Delhi Zonal Unit was not true; Shri Sukarn Setia is his cousin and he had created, Divine Overseas a proprietorship firm in the year 2019 in his name and Divashri International Private Limited in the name of him and his father, Shri Naresh Sunjea in the year 2022; he along with his father have been residing in Amritsar, Punjab; further, he has been in Gurugram, Haryana for the last 3 to 4 months only and looks after certain works given by his cousin, Shri Sukarn Setia; monthly salary are being paid to him and his father from these firms; both the firms were created by his cousin, Shri Sukarn Setia for import purpose; he put his dated signature on his statement dated 21.03.2024 and statement of Shri Sukarn Setia dated 08.04.2024 in token of having seen the same.

- On being asked to peruse his statement dated 21.03.2024 recorded under Section 108 of the Customs Act, 1962 at Directorate of Revenue Intelligence, Delhi Zonal Unit wherein he had stated that he did not contact foreign suppliers and the orders were placed by Shri Mohit Bhardwaj and to peruse statement of Shri Sukarn Setia, Director in Nutrain International Private Limited recorded on 08.04.2024 under Section 108 of the Customs Act, 1962 wherein he had stated that the orders for import on behalf of both the firms were being placed by him and imported goods were sold in domestic market by him only, he admitted that the statement tendered by him on 21.03.2024 under Section 108 of the Customs Act, 1962 at Directorate of Revenue Intelligence, Delhi Zonal Unit was not true; Shri Mohit Bhardwaj did not place orders to foreign suppliers; the orders for import on behalf of both the firms were placed by Shri Sukarn Setia and imported goods were also sold in domestic market by him only; he put his dated signature on his statement dated 21.03.2024 and statement of Shri Sukarn Setia dated 08.04.2024 in token of having seen the same.
- On being asked to peruse his statement dated 21.03.2024 recorded under Section 108 of the Customs Act, 1962 at Directorate of Revenue Intelligence, Delhi Zonal Unit wherein he stated that the import documents such as Commercial Invoices, packing list, Phyto certificates, Country of Origin Certificate and Bill of Lading were received by him on WhatsApp from Mohit Bhardwaj and to confirm, he admitted that he did not receive any of these documents from Shri Mohit Bhardwaj on WhatsApp as the orders for import of goods in the name of Divashri International and Divine Overseas were placed by his cousin Shri Sukarn Setia; these documents were forwarded to him by his cousin, Shri Sukarn Setia only; he put his dated signature on his statement dated 21.03.2024 in token of having seen the same.
- On being asked that during the search conducted on 20/21.03.2024 at registered premises of Nutrain International Private Limited situated at Basement 472, Chaman Lal Setia Exports Limited, Phase-III, Udyog Vihar, Gurugram, Haryana, documents pertaining to import and domestic sale of Divashri International Private Limited and Divine Overseas were recovered and to state the reason for keeping the documents at registered premises of Nutrain International Private Limited, he stated that his cousin, Shri Sukarn Setia is Director in Nutrain International Private Limited and which has its registered address at Basement 472, Chaman Lal Setia Exports Limited, Phase-III, Udyog Vihar, Gurugram, Haryana; as the orders for import on behalf of both the firms were being placed by Shri Sukarn Setia and imported goods were also sold in domestic market by him, the import and domestic sale documents in respect of Divashri International Private Limited and Divine Overseas were kept at *the said address*.

- On being asked that during the search conducted on 20/21.03.2024 at registered premises of Nutrain International Private Limited situated at Basement 472, Chaman Lal Setia Exports Limited, Phase-III, Udyog Vihar, Gurugram, Haryana he was found present there and to state reason for his presence at said address, he stated that as stated earlier, he had been in Gurugram, Haryana for the last 3 to 4 months and looks after certain works given by his cousin, Shri Sukarn Setia, therefore, he was there.

**6.5 Statement of Shri Sukarn Setia, director of Nutrain International Private Limited, was recorded on 22.04.2024 under Section 108 of the Customs Act, 1962 (RUD-10), wherein he, inter-alia, stated as under: -**

- On being asked to peruse his statement dated 23.03.2024 wherein he stated that Walnut Kernel imported by him has a price range of 1.2 to 1.3 USD per Kgs and also stated that price of the kernel can go upto 2.9 USD per Kgs if they are of Chile and USA origin and if they are of goods quality. Further he stated that the price can go upto 5 USD per kgs if those are of Afghanistan origin and to justify price declared for Walnut Kernel, he had stated that in his statement recorded on 23.03.2024, he stated that the Walnut Kernel imported by him was of low quality, therefore, it had a price range of 1.2 to 1.3 USD per Kgs only.
- On being asked that he had stated that the walnut Kernel imported by him was of low quality and to peruse Panchnama dated 21/22.03.2024 drawn at M/s Fast Track CFS Private Limited, Adani Port & SEZ Limited, Mundra SEZ for examination of the imported Walnut Kernel and covered under DTA Thoka No. 2006462 dated 18.03.2024 wherein it was found that the quality of Walnut Kernel was very good and in vaccumised packaging and to comment, he stated that Walnut Kernel is obtained from Walnut Inshell and Walnut Kernel always has higher price than Walnut Inshell; he admitted that the declared price of Walnut Kernel was at lower side and they also paid differential customs duty.
- On being asked to state actual transaction price of the imported Walnut Kernel cleared under DTA sale, he stated that Walnut Kernel is obtained from Walnut Inshell and Walnut Kernel always has higher price than Walnut Inshell; however in the passage of time if the Walnut Kernel is not sold immediately, its price starts lowering being perishable in nature; Walnut Inshell has self-life of 12 months in cold storage condition whereas Walnut Kernel has self-life of 6 months in cold storage condition; due to this reason, if the Walnut Kernel is not sold within time, its price goes down; therefore, the price of the imported Walnut Kernel vary depending upon i.e. weather, supply demand, availability, stock with supplier.

**6.6 Statement of Shri Gagan Preet Singh Aulakh S/o Shri Aulakh Aarjeet Singh, G-Card holder in Luvkush Shipping Services having Licensed Customs Broker No. 2016KNDL10042 having address at T.C.X-N-49, Main Market, Gandhidham-370 201 was recorded on 18.06.2024 under Section 108 of the Customs Act, 1962 (RUD-11), wherein he, inter-alia, stated as under: -**

- he is G-card holder in Luvkush Shipping Services, a Customs broker firm having address at T.C.X-N-49, Main Market, Gandhidham-370 201 and having Licensed Customs Broker No. 2016KNDL10042; he completed his Bachelor of Commerce degree from Tulani College, Gandhidham in the year 2014; he started working in Luvkush Shipping Services since 2016; on being asked he stated that Luvkush Shipping Services also started working since 2016; it is a proprietorship firm and Shri Luv Sharma is owner of Luvkush Shipping Services; Shri Luv Sharma is F-card holder; he looks after all the import work in Luvkush Shipping Services and Shri Luv Sharma looks after the work of export in Luvkush Shipping Services; Shri Luv Sharma has authorized him to tender statement against the summons 202406DDJ3000000D0D2 and he submitted authorization in this regard.

- Luvkush Shipping Services do customs clearance work mainly at Mundra, Kandla and Delhi port and we also do clearance work Mundra SEZ.
- they receive import documents i.e. Invoice, packing list, Bill of lading, country of origin certificate etc. from the importer for filing Bill of Entry; they created check list on the basis of import documents and send it to the importer for confirmation; after confirmation of check list, it was forwarded to SEZ Unit / Warehouse for approval and filing Bill of Entry; the SEZ Unit / Warehouse filed the Bill of Entry before the customs; Customs assessed the Bill of Entry and duty payment challan was generated; on being asked he stated that they filed Bill of Entry for Warehouse and DTA sale on behalf of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited.
- Shri Sukarn Setia who is director in Nutrain International Private Limited had contacted him for clearance of Walnut kernel at Mundra SEZ on behalf of Divashri International Private, Divine Overseas and Nutrain International Private Limited; import documents were sent by him for filing Bills of Entry on mail docs.seaventurelogistics@gmail.com or on his whatsapp number 9727918918; after assessment of DTA Bills of Entry and generation of challans, he had informed Shri Mohit for payment of duty and who paid duty for DTA clearance of the imported goods on behalf of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited; Shri Sukarn Setia had informed him that Shri Mohit is accountant and will pay duty.
- they also cleared Walnut Inshell on behalf of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited at Mundra SEZ.
- Walnut Kernel is obtained from Walnut Inshell and Walnut Kernel always has higher price than Walnut Inshell; he admitted that the declared price of Walnut Kernel is at lower side.
- his duty was limited to clearance of the imported goods and E-way bills for transportation of goods were not arranged by Luvkush Shipping Services.

**6.7 Statement of Shri Sukarn Setia, director of Nutrain International Private Limited, was recorded on 09.07.2024 under Section 108 of the Customs Act, 1962 (RUD-12), wherein he, inter-alia, stated as under: -**

- on being asked to log in into iCloud so that chat / conversations can be obtained, he stated that he had purchased his iPhone 13 Promax in the year 2021 and he had created log in ID and password in the year 2021 itself; he forgot his iCloud log in ID and password and he was not able to remember the same.
- On being asked that on going through the domestic sale invoices of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited, it is found that the imported goods have been sold at different prices in domestic market which ranges between Rs. 250 to Rs.588 and to explain, he stated that he had purchased walnut kernel from Dubai of mixed quality basis and in bulk; after customs clearance for DTA sale, they had sorted the goods as per the quality and sold accordingly, therefore, there was difference in domestic sale prices.

**7. Divashri International Private Limited vide their letter dated 05.04.2024 informed that they have made payment of Rs. 7 Crores against parcel customs duty vide Demand Draft No. 859374 dated 05.04.2024. (RUD-13)**

**7.1 Divine Overseas vide their letter dated 05.04.2024 informed that they have made payment of Rs. 3 Crores against parcel customs duty vide Demand Draft No. 859373 dated 05.04.2024. (RUD-14)**

**7.2 Nutrain International Private Limited vide their letter dated 05.04.2024 informed that they have made payment of Rs. 1 Crores against parcel customs duty vide Demand Draft No. 859375 dated 05.04.2024. (RUD-15)**

7.3 Specified Officer, APSEZ, Mundra vide their mail dated 16.04.2024 forwarded challans regarding payment of customs duty vide challans No. APSEZ/41-43/2024 dated 06.04.2024 deposited on 08.04.2024. (RUD-16)

8. Shri Sukarn Setia, director of Nutrain International Private Limited tendered his iPhone 13 Promax mobile during his statement recorded on 23.03.2024 under Section 108 of the Customs Act, 1962 for the purpose of investigation and the same was seized vide seizure memorandum dated 19.04.2024. (RUD-17)

9. Divashri International Private Limited vide their mail dated 16.04.2024 requested for transfer of seized goods into Refrigerated Container on account of perishable nature of goods. Divashri International Private Limited also informed that they will bear the entire expenses and cost of keeping the goods in Refrigerated container. DRI IZU vide letter dated 17.04.2024 informed Specified Officer Mundra SEZ that DRI IZU has no objection regarding the shifting of the goods to Refrigerated container at Fast Track CFS Private Limited considering perishable nature of the goods. Further, it was requested that the goods may be shifted to a Refrigerated container at Fast Track CFS Private Limited in presence of SEZ officer under Panchnama proceedings. (RUD-18)

9.1 Specified Officer Mundra SEZ vide their mail dated 03.05.2024 informed that the goods have been shifted to refrigerated container at Fast Track CFS Private Limited vide Panchnama dated 25.04.2024. (RUD-19)

10. Divashri International Private Limited vide their mail dated 23.04.2024 and 25.04.2024 requested for provisional release of the seized goods covered under DTA Thoka Number 2006462 dated 18.03.2024. (RUD-20) This unit vide letter dated 25.04.2024 informed the Commissioner of Customs, Mundra that as the case is still under investigation and the goods are perishable in nature, this office has no objection for provisional release of the seized goods as per Board Circular No. 35/2017-Customs dated 16.08.2017 and other prevailing guidelines. (RUD-21)

11. Assistant Commissioner of Customs vide letter dated 28.05.2024 informed the Specified Officer, APSEZ, Mundra Port that the competent authority has granted permission for provisional release of the seized goods imported vide DTA Thoka Number 2006462 dated 18.03.2024 against submission of Bond of Full value of Rs. 65,00,000/- . Further, it was informed that the importer had submitted Bond and Bank Guarantee of Rs. 65,00,000/- and 56,00,000/- respectively. (RUD-22)

12. DRI vide letter dated 22.04.2024 (RUD-23) requested the Director, Central Forensic Science Laboratory, Bhopal for forensic analysis of mobile phone of Shri Sukarn Setia seized under the Customs Act, 1962, vide seizure memorandum dated 19.04.2024.

12.1 Director, Central Forensic Science Laboratory vide their letter 16.05.2024 forwarded examination report / opinion dated 03.05.2024. (RUD-24)

#### **INVESTIGATION BY DRI**

13. Material evidences recovered / retrieved during Investigation: -

13.1 During the search conducted at registered premises of Nutrain International Private Limited on 20-21.03.2024, various import and other documents of Divashri International Private Limited, Divine Overseas were found. The officers also found the stamps of Divashri International Private Limited, Divine Overseas, Nutrain International Private Limited, Bright Gate General Trading LLC, Dubai, Hangjingouqu Deposit Gold Trade Co. Ltd, and Supernova General Trading FZE.

13.2 Further, analysis of extracted forensic data of both the mobile phones of Shri Anupam Suneja reveals Shri Sukarn Setia, Director in Nutrain International Private Limited had created a WhatsApp group wherein Customs Broker had requested to provide KYC documents and scanned copies of letter heads and Shri Sukarn Setia from his mobile number (9800020202-Sami Delhi 3) forwarded courier receipt of original documents dispatch. Further, Customs Broker requested to pay the duty in respect of DTA Thoka Number 2020414 dated 20.12.2022 for import of Walnut Kernel in the name of Divashri International Private Limited and Shri Sukarn Setia forwarded transaction number and payment receipt of duty payment. Further, Customs Broker had forwarded DTA Thoka Number and requested for e-way bill and Shri Sukarn Setia requested to call one Shri Nagpal for e-way bill. In one of the conversation, Customs Broker had requested to submit COO Certificates issued by any of the respective chamber of commerce from the country "Chile" in respect of Divashri International- FSSAI query and Shri Sukarn Setia forwarded Country of Origin certificate. In one of the conversation, Customs Broker has forwarded Check list / Bill of Entry for approval and Shri Sukarn Setia directed to revise the Check list / Bill of Entry and then approved. (RUD-25)

13.3 Director, Central Forensic Science Laboratory vide their letter 16.05.2024 forwarded examination report / opinion dated 03.05.2024 in respect of data recovered and retrieved from the iPhone 13 Promax mobile of Shri Sukarn Setia and extracted data reveals that new user accounts were created on 7:00 PM. Thus, after knowing that search proceedings have been initiated on 20.03.2024, Shri Sukarn Setia had deleted his mobile data and created new user accounts. (RUD-26)

14. Whereas during course of investigation, from statement tendered by Shri Anupam Suneja, proprietor of Divine Overseas and director of Divashri International Private Limited, Shri Sukarn Setia, director of Nutrain International Private Limited, import documents of Divine Overseas and Divashri International Private Limited recovered from the registered premises of Nutrain International Private Limited, forensic analysis of mobile phone of Shri Sukarn Setia and other evidences available on record, it transpired that as part of a well planned conspiracy, Shri Sukarn Setia created Divine Overseas and Divashri International Private Limited solely for the purpose of evasion of Customs Duty by way of gross under-valued import invoices for import of Walnut Kernel. He also imported one consignment in the name of Nutrain International Private Limited

#### 15. Inshell Walnut and Walnut Kernel (Walnut Shelled) :

To extract the edible part (kernels), walnuts undergo several processing operations including harvesting, hulling, drying, and shelling. During these operations, large quantities of by-products (leaves, hulls, shells, broken kernels) are produced and often underutilized, resulting in their wasted potential value. Walnuts are available as shelled (without shell) or with the shell (whole walnut). The ones which are shelled or the outer cover is removed are known as walnut kernels which is the inside fruit. When kernels are removed from the In-shell Walnut, there is yield in the range of 50% to 60% depending upon the types of walnut In-shell.

#### 16. Import of Walnut In shell by Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited.:

All the three importers have also imported walnut In shell and the import data of walnut In shell for the period march, 2023 to march, 2024 at Port and Mundra SEZ are as follows;

##### I. Divashri International Private Limited:-

S. N. o.	Port	BE Number	BE date	Country of Origin	Invoice Curren cy	Item Description	Quant ity	UQC	Uni t Pri ce
1	INMUN1	6325091	08-06-2023	US	USD	Walnut In shell	20000	KGS	1
2	INMUN1	6325267	08-06-2023	US	USD	Walnut In shell	20000	KGS	1
3	INMUN1	6514317	21-06-2023	US	USD	Walnut In shell	20000	KGS	1

4	INMUN1	6225735	02-06-2023	US	USD	Walnut In shell	20000	KGS	1.3
5	INMUN1	6225735	02-06-2023	US	USD	Walnut In shell	20000	KGS	1.3
6	INNSA1	6962306	20-07-2023	CL	USD	Walnut In shell	18000	KGS	1
7	INNSA1	6962375	20-07-2023	CL	USD	Walnut In shell	18000	KGS	1
8	INMUN1	2265070	23-02-2024	CL	USD	Walnut In shell	18000	KGS	1.1
9	INMUN1	2456410	07-03-2024	CL	USD	Walnut In shell	18000	KGS	1.2
10	INMUN1	2456634	07-03-2024	CL	USD	Walnut In shell	18000	KGS	1.2
11	INMUN1	9561560	06-01-2024	CL	USD	Walnut In shell	18500	KGS	1.2

## II. Divine Overseas:-

S. No.	Port	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	INNSA1	4402727	29-01-2023	CL	USD	Inshell Walnuts (Grade-2)	19100	KGS	1.4
2	INNSA1	4402728	29-01-2023	CL	USD	Inshell Walnuts (Grade-2)	18900	KGS	1.4

## III. Nutrain International Private Limited:-

S. No.	Port	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	INMUN1	7300146	11-08-2023	CL	USD	Walnut In shell	18000	KGS	1
2	INNSA1	7254413	08-08-2023	CL	USD	Walnut In shell	18000	KGS	1.3
3	INMUN1	7300251	11-08-2023	CL	USD	Walnut In shell	18000	KGS	1

## Import at Mundra SEZ;

### I. Divashri International Private Limited :-

S. No.	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	2000116	03-Jan-23	CL	USD	Walnuts In shell	86075	KG	1.1
2	2005671	07-Mar-24	CL	USD	Walnut In shell	18000	KG	1.2
3	2010466	12-Jun-23	US	USD	Walnut In shell (Grade-2)	20000	KG	1.3

### II. Divine overseas :-

S.No.	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	2011764	03-Jul-23	AF	USD	Walnuts In shell	40000	KG	1.2

### III. Nutrain International Private Limited :-

S.No.	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	2016087	23-Aug-23	CL	USD	Walnut In shell	18000	KG	1.1
2	2016086	23-Aug-23	CL	USD	Walnut In shell	18000	KG	1.1
3	2017164	06-Sep-23	CL	USD	Walnut In shell	18000	KG	1.1
4	2014511	01-Aug-23	CL	USD	Walnut In shell	18000	KG	1
5	2014510	01-Aug-23	CL	USD	Walnut In shell	18000	KG	1
6	2015330	11-Aug-23	CL	USD	Walnut In shell	18000	KG	1.1
7	2016623	31-Aug-23	CL	USD	Walnut In shell	18000	KG	1.1

The import data of ports and Mundra SEZ for the period march, 2023 to march, 2024 reveals that all three importers have imported "Walnut In shell" including Grade 2 at the unit price of 1.1-1.4 USD per kgs from USA, Chile and Afghanistan. Further, the importers have also imported "Walnut kernel" at the similar price of "walnut In shell" at Mundra SEZ i.e. 1.1 - 1.3

USD per Kgs. When kernels are removed from the In shell Walnut, there is production in the range of 50% to 60%. It shows that the minimum unit price of Walnut kernels is always more than double of the unit price of Walnut In shell. Therefore, all the three importers were importing "Walnut Kernel" by way of under-valuation at the Unit Price of 1.1 - 1.3 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

### **17. Provisions of Law relevant to this case:**

Undervaluation is resorted to with the intent to avoid payment of Customs duties. The various provisions of law/ rules relevant to import of the goods in general, liability of goods to confiscation and liability of persons concerned for penalty for improper importation of goods, are summarized below:

#### **(A) Provisions under Customs Act, 1962**

**17.1** Section 2(33) of the Customs Act, 1962: "*prohibited goods*" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

**17.2** Section 2(39) of the Customs Act, 1962: "*smuggling*", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

**17.3** Section 11A (a) of the Customs Act, 1962: "*illegal import*" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

**17.4** Section 17 of the Customs Act, 1962:

(1) *An importer entering any imported goods under section 46 or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

(2) *The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*

(3) *For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.*

(4) *Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

#### **17.5 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**

**17.5.1** In terms of Rule 11 of the CVR, 2007, the importer or his agent shall furnish a declaration disclosing full and accurate details relating to the value of imported goods; and any other statement, information or document including an invoice of the manufacturer or producer of the imported goods. The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

**17.5.2** Rule 12 of the CVR, 2007, which pertains to the Rejection of Declared Value specifies that – (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

**17.5.3** Further, as per Rule 12 of CVR, 2007 - The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed; (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price; (c) the sale involves special discounts limited to exclusive agents; (d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production; (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value; (f) the fraudulent or manipulated documents. It is also specified that in case the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

**17.5.4** Section 14 (1) of the Customs Act, 1962 stipulates that – for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the ‘transaction value’ of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. Further, in terms of proviso to the said section, the transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.

**17.5.5** As per the Rule 2 (1) (g) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007), the ‘Transaction Value’ means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962. As per Rule 2 (1) (d) of CVR, 2007 “identical goods” means imported goods - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued; (ii) produced in the country in which the goods being valued were produced; and (iii) produced by the same person who produced the goods; Rule 2 (1) (f) defines “similar goods” as goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark; produced in the country in which the goods being valued were produced; and produced by the same person who produced the goods being valued;

**17.5.6** As per Rule 3(1) of the CVR, 2007, subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

**17.5.7** Rule 4 of the CVR, 2007, relates to transaction value of identical goods and specifies that 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.

**17.5.8** Rule 5 relates to Transaction value of similar goods and specified that 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.

**17.5.9** Rule 6 specifies that if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

**17.5.10** Rule 7 relates to the Deductive value method and specifies that (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 deductions of commission,

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; the costs of transport and insurance; the customs duties and other taxes payable in India.

**17.5.11** Rule 8 relates to the Computed value method and specifies that the Computed value 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.

**17.5.12** The Residual method under Rule 9 of the CVR, 2007 specifies that (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the Principals and general provisions of these rules and on the basis of data available in India; Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

**17.6 SECTION 28 (4).** 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 willful misstatement; 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 refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

**17.7 SECTION 46:** Entry of goods on importation:-

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

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

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

**17.8 SECTION 111(m) of the Customs Act, 1962-Confiscation of improperly imported goods, etc.**

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

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

**17.9 SECTION 112:** Penalty for improper importation of goods, etc.- Any person-

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

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with*

any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 216 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is the higher:

**17.10 SECTION 114A of the Customs Act, 1962- Penalty for short-levy or non-levy of duty in certain cases-**

*“Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

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

*Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

*Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

*Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :*

*Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

*Explanation. - For the removal of doubts, it is hereby declared that –*

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.”

**17.11 Section 114AA of the Customs Act, 1962 - Penalty for use of false and incorrect material**

*“If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”*

**17.12 Section 124:- Issue of show cause notice before confiscation of goods, etc. - No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -**

- (a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter:

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

**17.13 Section 125.** Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

#### **(B) RELEVANT PROVISIONS OF SEZ ACT, 2005:**

Definitions — In this Act, unless the context otherwise requires

.....

(o) "import" means—

(i) *bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or*

(ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

Section 21: Single enforcement officer or agency for notified offences.—

1. *The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*

2. *The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.*

3. *Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.*

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*

2. The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.

**(C). RELEVANT PROVISIONS OF SPECIAL ECONOMIC ZONES RULES, 2006:**

47 (4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under. 47 (5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

**18. Valuation of the goods covered under DTA Thoka Number 2006462 dated 18.03.2024/30.05.2024. (Live Consignment)**

18.1 In the case of the consignment imported under DTA Thoka Number 2006462 dated 18.03.2024, the value declared at the time of import did not specify the actual value of the goods as similar goods were imported at the significantly higher value at which at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

18.2 Therefore, it appears that the invoice submitted at the time of import of the said consignment was a false document in terms of Rule 11 of CVR, 2007. Thus, it is evidently clear that the transaction value declared by the importer for goods covered under DTA Thoka Number 2006462 dated 18.03.2024 is liable to be rejected under Rule 12 of the CVR, 2007. For the purpose of re-determination of assessable value of these goods, Rule 3 to Rule 9 of the said Valuation Rules has been applied. As the value of the subject goods cannot be determined under the provisions of sub-rule (1) of Rule 3 of the CVR, 2007, the same is required to be determined by sequentially proceeding in terms of Rule 4 to Rule 9 of the Customs Valuation Rules, 2007. Efforts were made to ascertain the value of the subject goods by perusing the NIDB data relating to contemporaneous import of identical goods of same in all respects, including physical characteristics, quality and reputation as the goods being valued, produced in the country in which the goods being valued were produced, produced by the same person who produced the goods in terms of Rule 4 of CVR, 2007. As no such data is available, the value of subject goods could not be ascertained under Rule 4 of CVR, 2007. Therefore, the same is required to be determined by sequentially proceedings to Rule 5 of the CVR, 2007.

18.3 Further, it was gathered that other importers imported similar goods at the ports at the same time and the details of the same are as follows:

**I. Country of Origin Chile:-**

S.No.	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INMUN1	3730999	14-12-2022	Shelled Walnuts Broken And Pieces	USD	3.25
2	INMUN1	4345991	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
3	INMUN1	4346816	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
4	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
5	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
6	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
7	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
.8	INNSA1	4722158	20-02-2023	Walnut Kernels	USD	3.02
9	INMUN1	4776903	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
10	INMUN1	4776905	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
11	INMUN1	4889665	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
12	INMUN1	4888495	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3

13	INMUN1	4889081	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
14	INMUN1	4889662	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
15	INNSA1	5063823	15-03-2023	Walnut Kernels	USD	3.09
16	INNSA1	5570651	18-04-2023	Walnut Kernels (Grade 2)	USD	2.1
17	INNSA1	6574611	24-06-2023	Walnut Shelled (Grade 2)	USD	2.25
18	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
19	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
20	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
21	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
22	INBDM6	7337838	13-08-2023	Shelled Walnut (1800 Ctn/10kg)	USD	2.1
23	INMUN1	7544067	26-08-2023	Shelled Walnuts	USD	2.85
24	INMUN1	7681332	05-09-2023	Shelled Walnuts	USD	2.8
25	INBDM6	7906064	19-09-2023	Shelled Walnut (2000 Ctn/10kg)	USD	2.11
26	INNSA1	8100315	30-09-2023	Walnut Kernels	USD	2.6
27	INNSA1	8102634	01-10-2023	Walnut Kernels	USD	2.6
28	INMUN1	8235010	10-10-2023	Shelled Walnuts	USD	2.8
29	INBDM6	8578496	02-11-2023	Shelled Walnut 80% Extra Light Halves Machine Cracked (1800 Ctn/10kg)	USD	2.1
30	INNSA1	8631583	04-11-2023	Walnut Kernels	USD	2.1
31	INNSA1	8633808	05-11-2023	Walnut Kernels	USD	2.6
32	INBDM6	8704580	09-11-2023	Shelled Walnut Chandler Halves 80/20 (1800 Ctn/10kg)	USD	2.1
33	INMUN1	8944462	25-11-2023	Walnut Kernels	USD	2.6
34	INMUN1	8944478	25-11-2023	Walnut Kernels	USD	2.66
35	INNSA1	9495044	01-01-2024	Walnut Kernels	USD	3.25
36	INBDM6	9534970	05-01-2024	Shelled Walnut 80% Extra Light Haves Machine Cracked (1800 Ctn/10kg)	USD	2.1
37	INNSA1	4875436	04-08-2024	Walnut Kernels	USD	2.2

## II. Country of Origin USA:-

S. No	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INNSA1	4847998	01-03-2023	WALNUTS CHANDLER KERNEL LIGHT	USD	3.13
2	INNSA1	4986485	10-03-2023	WALNUT KERNELS	USD	3.12
3	INNSA1	5089516	17-03-2023	WALNUTS CHANDLER KERNEL LIGHT	USD	3.13
4	INNSA1	5416032	07-04-2023	WALNUT KERNELS-LIGHT HALVE PIECES	USD	3.12
5	INNSA1	5453749	10-04-2023	WALNUT KERNELS	USD	3.02
6	INNSA1	5840636	07-05-2023	WALNUT KERNELS	USD	3.02
7	INNSA1	6623877	28-06-2023	WALNUTS CHANDLER KERNEL LIGHT	USD	3.13
8	INNSA1	6613330	28-06-2023	WALNUT CHANDLER KERNEL LIGHT	USD	3.13
9	INNSA1	6624485	28-06-2023	WALNUT CHANDLER KERNEL LIGHT	USD	3.13
10	INNSA1	6689293	03-07-2023	WALNUT CHANDLER KERNEL LIGHT	USD	3.13
11	INNSA1	7016157	24-07-2023	WALNUT CHANDLER KERNEL LIGHT	USD	3.13

## III. Country of Origin Afghanistan:-

S. No.	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INATRB	6216040	01-06-2023	Walnut Kernel	USD	7.2
2	INATRB	6403379	14-06-2023	Walnut Kernel	USD	2.5
3	INMUN1	6492003	20-06-2023	Walnuts Kernel	USD	5
4	INMUN1	6491026	20-06-2023	Walnuts Kernel	USD	5
5	INATRB	6496583	20-06-2023	Walnuts Kernel	USD	8
6	INATRB	6528345	22-06-2023	Walnut Kernel	USD	7.2
7	INATRB	6570638	24-06-2023	Walnuts Kernel Broken	USD	4
8	INATRB	6570638	24-06-2023	Walnuts Kernel	USD	5

9	INATRB	6570638	24-06-2023	Walnuts Kernel	USD	7
10	INATRB	6698182	03-07-2023	Walnut Unshelled	USD	8
11	INATRB	6797255	10-07-2023	Walnut Kernel	USD	7.3
12	INATRB	6797879	10-07-2023	Walnut Unshelled Sort (1)	USD	7.6
13	INATRB	7183405	03-08-2023	Walnuts Unshelled Sort 2	USD	5.79
14	INATRB	7212381	05-08-2023	Walnut Kernel	USD	8
15	INMUN1	7579957	29-08-2023	Walnuts Kernel	USD	4.7

**18.4** On perusal of NIDB import data, the value of the contemporaneous import of the similar goods at different ports is detailed above. Accordingly, it appears that the value declared by the importer appears to be under-valued in comparison with contemporary values available in NIDB data, which resulted in short levy of Customs duty. Hence, the value declared is not found to be the transaction value and is liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Import Goods) Rules, 2007. Walnut Kernel have been imported in the name of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited during the period December, 2022 to March, 2024 from Chile, USA and Afghanistan, therefore, the contemporaneous imports about the same time of similar goods having comparable quantity have been taken which is available in NIDB data, hence the value is re-determined under the provisions of Rule 5 of the said Rules ibid. Further, as per sub rule 2 of Rule 5 if the more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods, therefore, the value has been re-determined as USD 2.1 from Chile.

**18.5** Accordingly, actual value of the goods covered under DTA Thoka Number 2006462 dated 18.03.2024 has been re-determined under Section 14 read with Rule 5 of the CVR, 2007 which provides for valuation on the basis of transaction value of similar goods and specified that 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. After doing the same, the assessable value has been arrived at and differential duties upon the same have been calculated. (Annexure-I)

**19. Valuation of the undervalued goods cleared in respect of past consignments:-**

**19.1** In the case of past consignment imported by Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited under DTA Thoka Numbers as mentioned in Table-II, III & IV of Para 20.2, the value declared at the time of import did not specify the actual value of the goods as similar goods were imported at the significantly higher value at which at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

**19.2** Therefore, it appears that the invoices submitted at the time of import of the said past consignments imported under DTA Thoka Numbers were false document in terms of Rule 11 of CVR, 2007. Thus, it is evidently clear that the transaction value declared by the importers for the goods covered under past consignments is liable to be rejected under Rule 12 of the CVR, 2007. For the purpose of re-determination of assessable value of these goods, Rule 3 to Rule 9 of the said Valuation Rules have been applied. As the value of the subject goods cannot be determined under the provisions of sub-rule (1) of Rule 3 of the CVR, 2007, the same is required to be determined by sequentially proceeding in terms of Rule 4 to Rule 9 of the Customs Valuation Rules, 2007. Efforts were made to ascertain the value of the subject goods by perusing the NIDB data relating to contemporaneous import of identical goods of same in all respects, including physical characteristics, quality and reputation as the goods being valued, produced in the country in which the goods being valued were produced, produced by the same person who produced the goods in terms of Rule 4 of CVR, 2007. As no such data is available, the value of impugned goods could not be ascertained under Rule 4 of CVR, 2007. Therefore, the same is required to be determined by sequentially proceedings to Rule 5 of the CVR, 2007.

**19.3** On perusal of NIDB import data the value of the contemporaneous import of the similar goods at other ports is detailed at Para 18.3 above. Accordingly, it appears that the value declared by the importer appears to be under-valued in comparison with contemporary values available in NIDB data, which resulted in short levy of Customs duty. Hence, the value declared is not found to be the transaction value and is liable for rejection under Rule 12 of the Customs Valuation (Determination of value of imported Goods) Rules, 2007. Walnut Kernel have been imported in the name of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited during the period December, 2022 to March, 2024 from Chile, USA and Afghanistan, therefore, the contemporaneous imports about the same time of similar goods having comparable quantity have been taken which is available in NIDB data, hence the value is re-determined under the provisions of Rule 5 of the said Rules ibid. Further, as per sub rule 2 of Rule 5 if the more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods, therefore, the value has been re-determined as USD 2.1, 2.5 and 3.02 per Kgs for imports made from Chile, USA and Afghanistan respectively.

**19.4** Accordingly, actual value of the goods covered under DTA Thoka Numbers (Past consignments) has been re-determined under Section 14 read with Rule 5 of the CVR, 2007 which provides for valuation on the basis of Transaction value of similar goods and specified that 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. After doing the same, the assessable value has been arrived at and differential duties upon the same have been calculated. (Annexure- II, III & IV)

## 20. Duty Liability

**20.1** The differential duty in respect of goods imported under DTA Thoka Number 2006462 dated 18.03.2024 filed by Divashri International Private Limited, which were seized under Section 110 of the Customs Act, 1962, appears liable to be recovered under Section 12 read with Section 17(4) and Section 125 of the Customs Act, 1962 is computed in Annexure I to this notice. Similarly, the differential duty liable to be demanded under Section 28 (4) of the Customs Act, 1962 in relation to the imports of goods vide DTA Thoka Numbers in respect of past consignments in the name of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited is computed in Annexure II, III & IV.

**20.2** The gist of the relevant details appearing in the said 'Annexure-I, II, III & IV' is produced in the Table-I, II, III & IV, respectively, as under:

**TABLE-I**  
**Divashri International Private Limited (live Consignment)**

S. No.	Thoka Number	Thoka date	Declared/Asses sed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2006462	30-05-2024	2235874	3894124	2459461	4283536	1824075

**TABLE-II**  
**Divashri International Private Limited**

S. No.	Thoka Number	Thoka date	Declared/Asses sed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2020414	22-12-2022	5069396.25	7074596.25	5576335.88	7782055.875	2205719.995
2	2004112	02-03-2023	3172164.84	4426914.844	3489381.33	4869606.328	1380224.998
3	2006105	11-04-2023	2010769.5	3502069.5	2211846.45	3852276.45	1640430
4	2006104	11-04-2023	7801785.66	19502856.86	8581964.23	21453142.55	12871178.32

5	2006487	17-04-2023	7666058.72	13134158.72	8432664.59	14447574.59	6014910.001
6	2006488	17-04-2023	2555352.91	4378052.906	2810888.2	4815858.197	2004969.997
7	2007607	03-05-2023	6715063.04	11599294.04	7386569.34	12759223.44	5372654.103
8	2022006	27-10-2023	1592253.58	4340541.575	1751478.93	4774595.733	3023116.803
9	2024078	21-11-2023	1764366.91	4809728.829	1940803.6	5290701.712	3349898.112
10	2000095	01-01-2024	7158135.35	19513339.19	7873948.88	21464673.11	13590724.23
11	2000446	06-01-2024	3748703.75	7118703.75	4123574.12	7830574.125	3707000.005
12	2000583	09-01-2024	1752519	3327994.003	1927770.9	3660793.403	1733022.503
13	2002571	01-02-2024	3980158.65	6402238.65	4378174.52	7042462.515	2664287.995
14	2003744	14-02-2024	8686738.42	15129313.27	9555412.27	16642244.6	7086832.33
Total			63673467	124259802	70040813	136685783	66644970

**TABLE-III**  
**Divine Overseas**

S.No.	Thoka Number	Thoka date	Declared/Asses sed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2005157	25-03-2023	5586347.25	10608347.25	6144981.98	11669181.98	5524200.00
2	2012279	07-07-2023	7352517.62	15229133.12	8087769.38	16752046.44	8664277.06
3	2022142	28-10-2023	2029842.32	3854624.72	2232826.55	4240087.19	2007260.64
4	2023103	08-11-2023	2028636.95	3852335.75	2231500.65	4237569.33	2006068.68
5	2024079	21-11-2023	2027431.58	3850046.78	2230174.74	4235051.46	2004876.72
6	2025146	01-12-2023	1777464.01	3375364.01	1955210.41	3712900.41	1757690.00
7	2025145	01-12-2023	1777464.01	4845432.01	1955210.41	5329975.21	3374764.80
8	2026781	20-12-2023	3469608.86	9458280.86	3816569.75	10404108.95	6587539.20
Total			26049313	55073565	28654244	60580921	31926677

**TABLE-IV**  
**Nutrain International Private Limited**

S.No.	Thoka Number	Thoka date	Declared/Asses sed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2009705	01-06-2023	8676087	15110762	9543696	16621838	7078142

**Summary of Investigation by DRI:-**

**21. From the investigation carried out by DRI, as described in the foregoing paras, the following facts appear to emerge: -**

21.1 Shri Sukarn Setia created proprietor ship firm namely Divine Overseas in the name of Shri Anupam Suneja in the year 2019 and Divashri International Private Limited in the name of Shri Anupam Suneja and his father Shri Naresh Suneja in the year 2022. Shri Anupam Suneja is his maternal uncle's son and his cousin. Both the firms were solely formed for the purpose of evasion of Customs Duty by way of under valuation. He also imported one consignment in Nutrain International Private Limited wherein he is a director. He is beneficial owner of the goods i.e Walnut Kernel imported in the name of all three firms. The orders for import on behalf of both the firms were being placed by him and imported goods were sold in domestic market by him only. He imported Walnut Kernel from Dubai by way of gross under valuation at Mundra SEZ. Based on the under-valued invoices for the purpose of evasion of customs duty, the Bills of Entry were filed in the name of Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited for clearance of the imported goods. This fact was also admitted by Shri Sukarn Setia and Shri Anupam Suneja in their statement recorded on 08.04.24 and 10.04.2024 respectively under Section 108 of the Customs Act, 1962. Shri Sukarn Setia during his voluntarily statement recorded on 22.04.2024, on being informed that it was found during the examination of goods covered under DTA Thoka 2006462 dated 18.03.2024 that the quality of Walnut Kernel was very good and in vaccumised packaging, he stated that Walnut Kernel is obtained from Walnut Inshell and Walnut Kernel always has higher price than Walnut

Inshell. Further, he admitted that the declared price of Walnut Kernel was at lower side and they also paid differential customs duty.

**21.2** The import data of ports and Mundra SEZ for the period march, 2023 to march, 2024 reveals that all three importers imported "Walnut In shell" including Grade 2 at the unit price of 1.1-1.4 USD per kgs from USA, Chile and Afganistan. Further, they also imported "Walnut kernel" at the similar price of "walnut In shell" at Mundra SEZ i.e. 1.1 - 1.3 USD per Kgs. When kernels are removed from the In shell Walnut, there is production in the range of 50% to 60%. It shows that the minimum unit price of Walnut kernels is always more than double of the unit price of Walnut In shell. Therefore, all the three importers were importing "Walnut Kernel" by way of under-valuation at the Unit Price of 1.1 - 1.3 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

**21.3** It further appears that the actual value of the imported goods had not been declared in the said invoices or the Bills of Entry and that importer had not only failed to make a truthful declaration regarding the contents of the Bills of Entry, but had also used under-valued invoices for the purpose of filing the said Bills of Entry. It appears that by not declaring the actual value of the imported goods, importer had contravened the provisions of Section 46(4) of the Customs Act, 1962.

**21.4** Circular No. 17/2011- Customs dated 08.04.2011 issued by Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide F.No.450/26/2011-Cus. IV, Section 17 of the Customs Act, 1962 provides for self-assessment of duty by the importer himself on the goods imported, by filing a Bill of Entry in the electronic form. The importer at the time of self-assessment is required ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting Bill of Entry. It was seen that the importer had submitted under-valued invoices and had failed to disclose the correct value of the goods in respect of the imported goods at the time of importation.

**21.5** From the facts given above it appears that Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited had wilfully mis-declared the value of the goods. The all three importers had submitted fabricated invoices to evade Customs duty by wilful mis-statement of value of the goods. Hence, it appears that the Customs duty short paid is recoverable in terms of clause (b) of Section 28(4) of the Customs Act, 1962 due to wilful mis-statement of value of the goods by the importers before the Customs Authorities.

**21.6** It further appears that Divashri International Private Limited, Divine Overseas and Nutrain International Private had suppressed the actual value of the value of the goods and not declared the correct value. Hence, suppressing facts from Assessing Officer about the actual value of the goods, Customs duty was evaded. The same is recoverable in terms of clause (c) of Section 28(4) of the Customs Act, 1962 due to suppression of actual value of the goods.

## **22. Demand of differential duty, liability to confiscation and penalty.**

**22.1** The declared value of Rs. 22,35,874/- (Rupees Twenty-Two Lakhs Thirty-Five Thousand Eight Hundred and Seventy-Four only) of the goods imported by Divashri International Private Limited vide DTA Thoka No. 2006462 dated 18.03.2024/30.05.2024 (live consignment) seized vide Seizure Memo dated 01.04.2024, mentioned in Table – I of Para 20.2 and as detailed in Annexure I to the Investigation Report, is liable to be rejected under Rule 12 of CVR, 2007 and is proposed to be re-determined as Rs. 38,94,124/- (Rupees Thirty Eight Lakhs Ninety Four Thousand One Hundred and Twenty Four Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

**22.2** The declared value of Rs. 6,36,73,467/- (Rupees Six Crores Thirty Six Lakhs Seventy Three Thousand Four Hundred and Sixty Seven only) of the goods imported and cleared by Divashri International Private Limited in past in respect of 14 Thoka Numbers (past consignments) mentioned in Table –II of Para 20.2, and as detailed in Annexure II to the Investigation Report, is liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as Rs. 12,42,59,802/- (Rupees Twelve Crores Forty Two Lakhs Fifty Nine Thousand Eight Hundred and Two Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

**22.3** The declared value of Rs. 2,60,49,313/- (Rupees Two Crores Sixty Lakhs Forty-Nine Thousand Three Hundred and Thirteen only) of the goods imported and cleared by Divine Overseas in past in respect of 08 Thoka Numbers (past consignments) mentioned in Table –III of Para 20.2, and as detailed in Annexure III to the Investigation Report, is liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as Rs. 5,50,73,565/- (Rupees Five Crores Fifty Lakhs Seventy Three Thousand Five Hundred and Sixty Five Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

**22.4** The declared value of Rs. 86,76,087/- (Rupees Eighty Six Lakhs Seventy Six Thousand and Eighty Seven only) of the goods imported and cleared by Nutrain International Private Limited in past in respect of 01 DTA Thoka Number (past consignment) mentioned in Table – IV of Para 20.2, and as detailed in Annexure IV to the Investigation Report, is liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as Rs. 1,51,10,762/- (Rupees One Crore Fifty One Lakh Ten Thousand Seven Hundred and Sixty Two Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

**22.5** It appears that **Divashri International Private Limited** have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods vide DTA Thoka No. 2006462 dated 18.03.2024 / 30.05.2024 (live consignment) seized vide Seizure Memo dated 01.04.2024 having re-determined assessable value of Rs. 38,94,124/- (Rupees Thirty Eight Lakhs Ninety Four Thousand One Hundred and Twenty Four Only) and cleared in the past under Bills of Entry mentioned in Table II of Para 20.2 (past consignments), having total re-determined assessable value of Rs. 12,42,59,802/- (Rupees Twelve Crores Forty Two Lakhs Fifty Nine Thousand Eight Hundred and Two Only) by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**22.6** It appears that **Divine Overseas** have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods cleared in the past under DTA Thoka Numbers mentioned in Table III of Para 20.2 (past consignments), having total re-determined assessable value of Rs. 5,50,73,565/- (Rupees Five Crores Fifty Lakhs Seventy Three Thousand Five Hundred and Sixty Five Only) by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**22.7** It appears that **Nutrain International Private Limited** have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods cleared in the past under DTA Thoka Numbers mentioned in Table IV of Para 20.2 (past consignments), having total re-determined assessable value of Rs. 1,51,10,762/- (Rupees One Crore Fifty One Lakh Ten Thousand Seven Hundred and Sixty Two Only) by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**22.8** Further, in respect of the goods covered under DTA Thoka No. 2006462 dated 18.03.2024 / 30.05.2024 (live consignment) as explained above, differential duty of Rs. 18,24,075/- (Rupees Eighteen Lakhs Twenty Four Thousand and Seventy Five Only), as worked out in the Annexure I and mentioned in Table-I of Para 20.2, appears liable to be

recovered from **Divashri International Private Limited** under Section 12 read with Section 17(4) & Section 125 of the Customs Act, 1962 before clearance under Section 47 of the Customs Act, 1962 along with applicable interest thereon under Section 28AA *ibid*.

**22.9** Further, in respect of **past consignments** covered by DTA Thoka Numbers, **differential duty amounting to Rs. 6,66,44,970/- (Rupees Six Crores Sixty Six Lakhs Forty Four Thousand Nine Hundred and Seventy only)**, as worked out in the Annexure II and mentioned in Table II of Para 20.2, appears liable to be recovered from **Divashri International Private Limited** under Section 28 (4) of the Customs Act, 1962 along with **interest as applicable** under Section 28AA *ibid*.

**22.10** Further, in respect of **past consignments** covered by DTA Thoka Numbers, **differential duty amounting to Rs. 3,19,26,677/- (Rupees Three Crores Nineteen Lakhs Twenty Six Six Hundred and Seventy Seven only)**, as worked out in the Annexure III and mentioned in Table III of Para 20.2, appears liable to be recovered from **Divine Overseas** under Section 28 (4) of the Customs Act, 1962 along with **interest as applicable** under Section 28AA *ibid*.

**22.11** Further, in respect of **past consignments** covered by DTA Thoka Numbers, **differential duty amounting to Rs. 70,78,142/- (Rupees Seventy Lakhs Seventy Eight Thousand One Hundred and Forty Two only)**, as worked out in the Annexure IV and mentioned in Table IV of Para 20.2, appears liable to be recovered from **Nutrain International Private Limited** under Section 28 (4) of the Customs Act, 1962 along with **interest as applicable** under Section 28AA *ibid*.

**22.12** Further, as the duty was short paid by wilful mis-statement and suppression of facts by the importer, as discussed in paras 21.5 and 21.6 above, **Divashri International Private Limited**, **Divine Overseas** and **Nutrain International Private Limited** appears liable for penalty under the provisions of section 114A of the Customs Act, 1962.

### **23. Role played by various persons**

#### **23.1 Role played by Shri Sukarn Setia, Director of Nutrain International Private Limited.**

Shri Sukarn Setia created proprietor ship firm namely **Divine Overseas** in the name of Shri Anupam Suneja in the year 2019 and **Divashri International Private Limited** in the name of Shri Anupam Suneja and his father Shri Naresh Suneja in the year 2022. Shri Anupam Suneja is his maternal uncle's son and his cousin. Both the firms were solely formed for the purpose of evasion of Customs Duty by way of under valuation. He also imported one consignment in **Nutrain International Private Limited** wherein he is director. He is beneficial owner of the goods i.e Walnut Kernel imported in the name of all three firms. He imported Walnut Kernel from Dubai by way of gross undervaluation at Mundra SEZ. The orders for import on behalf of **Divine Overseas** and **Divashri International Private Limited** were being placed by him and imported goods were sold in domestic market by him only. Based on the under-valued invoices for the purpose of evasion of customs duty, the Bills of Entry were filed in the name of **Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited** for clearance of the imported goods. This fact of orders for import on behalf of **Divashri International Private Limited** and **Divine Overseas** were being placed by him and imported goods were sold in domestic market by him only was also admitted by him in his statement recorded on 08.04.2024 under Section 108 of the Customs Act, 1962. Further, for all the Bills of Entry filed in the name of **Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited**, Shri Sukarn Setia, appears to have done the acts of omission and commission which appear to have rendered the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, Shri Sukarn Setia appears liable for penalty under the provisions of Section 112(a) and Section 112(b) of the Customs Act, 1962.

Further, Shri Sukarn Setia, knowingly and intentionally submitted invoices, declarations under the provisions of CVR, 2007, which did not divulge the actual value of the imported goods. It therefore appears that the documents and declarations used/ made at the time of the import of the consignments were knowingly and intentionally false / incorrect. Accordingly, Shri Sukarn Setia appears liable for penalty under the provisions of Section 114AA of the Customs Act, 1962.

**23.2 Role played by Shri Anupam Suneja, Director of Divashri International Private Limited and proprietor in Divine Overseas.**

Shri Anupam Suneja is proprietor of Divine Overseas and one of the two directors in Divashri International Private Limited. Divine Overseas was created in his name by his cousin, Shri Sukarn Setia in the year 2019. Divashri International Private Limited was also created in his and his father's name by his cousin, Shri Sukarn Setia in the year 2022. Shri Anupam Suneja was aware that both the firms were solely formed for the purpose of evasion of Customs Duty by way of under valuation. Walnut Kernels were imported from Dubai by way of gross under valuation at Mundra SEZ. He was getting monthly salary from the firm's accounts. Based on the under-valued invoices for the purpose of evasion of customs duty, the Bills of Entry were filed in the name of Divashri International Private Limited and Divine Overseas for clearance of the imported goods. Further, for all the Bills of Entry filed in the name of Divashri International Private Limited and Divine Overseas, for clearance of the imported goods, Shri Anupam Suneja, appears to have done the acts of omission and commission which appear to have rendered the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, Shri Anupam Suneja appears liable for penalty under the provisions of Section 112(a) and Section 112(b) of the Customs Act, 1962.

**24.** The investigation in the matter has revealed that Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited has imported "Walnut Kernel" by way of under-valuation at Mundra SEZ. During this period, Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited had filed DTA Thoka Numbers for import of "Walnut Kernel", at Mundra SEZ having total assessable Value of ₹12,81,53,926/- (Live and past consignments), ₹5,50,73,565/- and ₹1,51,10,762/- respectively (as detailed in Annexure- I, II, III & IV) by way of gross under-valuation. In view of the above stated under-valuation, wilful mis-statement and suppression of facts, Divashri International Private Limited, Divine Overseas and Nutrain International Private Limited has evaded payment of differential Customs duty aggregating ₹ 6,84,69,045/- (Live and past consignments), ₹ 3,19,26,677/- and ₹ 70,78,142/- respectively alongwith interest as applicable, as detailed in Annexures- I, II, III & IV attached with this Notice.

**24.1** The DTA Thoka Number 2006462 dated 18.03.2024/30.05.2024 (live consignment) provisionally assessed on execution of Bank Guarantee for Rs. 56 Lakhs by Divashri International Private Limited may be finally assessed on payment of differential duty of Rs.18,24,075/- (Rupees Eighteen Lakhs Twenty-Four Thousand and Seventy-Five Only) or differential duty may be adjusted and appropriated against the bank guarantee.

**24.2.1 Total duty of 7 Crores deposited by Divashri International Private Limited voluntarily during the course of investigation on 08.04.2024 appears liable to be adjusted and appropriated against recoverable differential duty of Rs. 6,66,44,970/- (Rupees Six Crores Sixty Six Lakhs Forty Four Thousand Nine Hundred and Seventy-Five only) and applicable interest.**

**24.2.2 Total duty of Rs. 3 Crores deposited by Divine Overseas voluntarily during the course of investigation on 08.04.2024 appears liable to be adjusted and appropriated against recoverable differential duty of Rs. 3,19,26,677/- (Rupees Three Crores Nineteen Lakhs Twenty-Six Thousand Six Hundred and Seventy-Seven only) and applicable interest.**

**24.2.3 Total duty of Rs. 1 Crore deposited by Nutrain International Private Limited voluntarily during the course of investigation on 08.04.2024 appears liable to be adjusted and appropriated against recoverable differential duty of Rs. 70,78,142/- (Rupees Seventy Lakhs Seventy Eight Thousand One Hundred and Forty Two only) and applicable interest.**

**25.1 Now, therefore, M/s Divashri International Private Limited (IEC: AAJCD3404F) and its beneficial owner Shri Sukarn Setia, with regard to the imports made vide Thoka Numbers specified in Table I & II of Para 20.2 above, are hereby called upon to show cause, in writing, to the Principal Commissioner of Customs, Custom House, Mundra, Gujarat within 30 days of receipt of this notice as to why:**

- (i) The value of the goods imported vide Thoka Number No. 2006462 dated 18.03.2024/30.05.2024 should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as Rs. 38,94,124/- (Rupees Thirty-Eight Lakhs Ninety-Four Thousand One Hundred and Twenty-Four Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;
- (ii) The goods imported vide Thoka No. 2006462 dated 18.03.2024/30.05.2024 which were seized under Seizure Memo dated 01.04.2024 having re-determined value of Rs.38,94,124/- (Rupees Thirty-Eight Lakhs Ninety-Four Thousand One Hundred and Twenty-Four Only), should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962;
- (iii) In case, redemption of above confiscated goods, if any, is allowed under Section 125 of the Customs Act, 1962, differential duty amounting to Rs. 18,24,075/- (Rupees Eighteen Lakhs Twenty-Four Thousand and Seventy-Five Only) should not be charged and recovered from Divashri International Private Limited under Section 12 read with Section 17(4) & Section 125 of the Customs Act, 1962 before clearance of the said goods under Section 47 of the Customs Act, 1962;
- (iv) The applicable interest on the duty so paid in short at (iii) above should not be demanded and recovered under Section 28AA of the Act ibid;
- (v) The value of the goods imported vide 14 Thoka Numbers specified in Table II of Para 20.2 above should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as Rs.12,42,59,802/- (Rupees Twelve Crores Forty-Two Lakhs Fifty-Nine Thousand Eight Hundred and Two Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;
- (vi) The goods, imported vide 14 Thoka Numbers specified Table II of Para 20.2 above, having re-determined value of Rs. 12,42,59,802/- (Rupees Twelve Crores Forty-Two Lakhs Fifty-Nine Thousand Eight Hundred and Two Only), should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- (vii) The differential duty payable i.e. Rs. 6,66,44,970/- (Rupees Six Crores Sixty Six Lakhs Forty Four Thousand Nine Hundred and Seventy only) should not be demanded and recovered from them under the provision of section 28(4) of the Customs Act, 1962;
- (viii) The applicable interest on the duty short paid should not be demanded and recovered from them under Section 28AA of the Act ibid;
- (ix) Penalty should not be imposed on Divashri International Private Limited under Section 114A of the Customs Act, 1962;
- (x) Penalty should not be imposed on Shri Sukarn Setia under Section 112(a) and Section 112(b) of the Customs Act, 1962;
- (xi) Penalty should not be imposed on Shri Sukarn Setia under section 114AA of the Customs Act, 1962.

(xii) An amount of **Rupees 7 Crores** already deposited voluntarily towards differential duty liability should not be appropriated against the aforesaid demands of duty and interest liability.

**25.1.2** Shri Anupam Suneja, Director of Divashri International Private Limited (IEC: AAJCD3404F) with regard to the imports made vide Thoka Numbers specified in Table I & II of Para 20.2 above, is hereby called upon to show cause, in writing, to the Principal Commissioner of Customs, Custom House, Mundra, Gujrat within 30 days of receipt of this notice as to why:

(i) Penalty should not be imposed on Shri Anupam Suneja under Section 112(a) and Section 112(b) of the Customs Act, 1962;

**25.2** M/s Divine Overseas (IEC: ASRPS4990C), and its beneficial owner Shri Sukarn Setia, with regard to the imports made vide Bills of Entry specified in Table III of Para 20.2 above, are hereby called upon to show cause, in writing, to the Principal Commissioner of Customs, Custom House, Mundra, Gujrat within 30 days of receipt of this notice as to why:

(i) The value of the goods imported vide 08 Thoka Numbers specified in Table III of Para 20.2 above should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as **Rs.5,50,73,565/- (Rupees Five Crores Fifty Lakhs Seventy Three Thousand Five Hundred and Sixty Five Only)** in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR(I), 2007.

(ii) The goods, imported vide 08 Thoka Numbers specified in Table III of Para 20.2 above, having re-determined value of **Rs. 5,50,73,565/- (Rupees Five Crores Fifty Lakhs Seventy Three Thousand Five Hundred and Sixty Five Only)**, should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

(iii) The differential duty payable i.e. **Rs. 3,19,26,677/- (Rupees Three Crores Nineteen Lakhs Twenty Six Thousand Six Hundred and Seventy Seven only)** should not be demanded and recovered from them under the provision of section 28(4) of the Customs Act, 1962;

(iv) The applicable interest on the duty short paid at (iii) above should not be demanded and recovered from them under Section 28AA of the Act ibid;

(v) Penalty should not be imposed on Shri Sukarn Setia under Section 112(a) and Section 112(b) of the Customs Act, 1962;

(vi) Penalty should not be imposed on Divine Overseas under Section 114A of the Customs Act, 1962;

(vii) Penalty should not be imposed on Shri Sukarn Setia under section 114AA of the Customs Act, 1962.

(viii) An amount of **Rupees 3 Crores** already deposited voluntarily towards differential duty liability should not be appropriated against the aforesaid demands of duty and interest liability.

**25.2.2** Shri Anupam Suneja, Proprietor of Divine Overseas (IEC: ASRPS4990C) with regard to the imports made vide Thoka Numbers specified in Table III of Para 20.2 above, is hereby called upon to show cause, in writing, to the Principal Commissioner of Customs, Custom House, Mundra, Gujrat within 30 days of receipt of this notice as to why:

(i) Penalty should not be imposed on Shri Anupam Suneja under Section 112(a) and Section 112(b) of the Customs Act, 1962;

**25.3** M/s Nutrain International Private Limited (IEC: AAICN3425D) and Shri Sukarn Setia, Director, Nutrain International Private Limited with regard to the imports made vide Thoka Number specified in Table IV of Para 20.2 above, are hereby called upon to show cause, in

writing, to the Principal Commissioner of Customs, Custom House, Mundra, Gujrat within 30 days of receipt of this notice as to why:

- (i) The value of the goods imported vide 01 Thoka Number specified in Table IV of Para 20.2 above should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as **Rs.1,51,10,762/- (Rupees One Crore Fifty-One Lakh Ten Thousand Seven Hundred and Sixty-Two Only)** in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR(I), 2007.
- (ii) The goods, imported vide 01 Thoka Number specified in Table IV of Para 20.2 above, having re-determined value of **Rs. 1,51,10,762/- (Rupees One Crore Fifty One Lakh Ten Thousand Seven Hundred and Sixty Two Only)**, should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- (iii) The differential duty payable i.e. **Rs. 70,78,142/- (Rupees Seventy Lakhs Seventy Eight Thousand One Hundred and Forty Two only)** should not be demanded and recovered from them under the provision of section 28(4) of the Customs Act, 1962;
- (iv) The applicable interest on the duty short paid at (iii) above should not be demanded and recovered from them under Section 28AA of the Act ibid;
- (v) Penalty should not be imposed on Shri Sukarn Setia, Director, Nutrain International Private Limited under Section 112(a) and Section 112(b) of the Customs Act, 1962;
- (vi) Penalty should not be imposed on Nutrain International Private Limited under Section 114A of the Customs Act, 1962;
- (vii) Penalty should not be imposed on Shri Sukarn Setia under section 114AA of the Customs Act, 1962.
- (viii) An amount of **Rupees 1 Crore** already deposited voluntarily towards differential duty liability should not be appropriated against the aforesaid demands of duty and interest liability.

26. The aforementioned Noticees are required to show cause to the Adjudicating Authority within 30 days of receipt of this notice and are further required to indicate in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no mention is made about this in their written replies, it will be presumed that they do not desire any personal hearing and the case will be decided on the basis of evidence on record. If no cause is shown against the action proposed to be taken within 30 days from the date of receipt of this notice or having shown cause, they do not appear before the respective Adjudicating Authority when the case is posted for personal hearing, the case will be decided ex-parte based on the evidence on record.

27. Scanned copies of all the Relied Upon Documents as enlisted in 'Annexure-A' are enclosed with this Notice. However, in case the Noticee wishes to inspect any of the documents relied upon by the department in this Show Cause Notice and desires to obtain further copies thereof, he may do so by prior appointment with the Deputy Director, DRI, Indore Zonal Unit, 1<sup>st</sup> Floor, BSNL Telephone Exchange Building, Transport Nagar, Indore (M.P.) on any working day within one month from the date of receipt of this notice, otherwise it shall be presumed that the noticee have nothing to say and all the documents in legible form have been received by them as mentioned in this notice. Documents collected during investigation of this case but not relied upon in this Show Cause Notice may be collected from the above office of DRI within thirty days of receipt of this Notice.

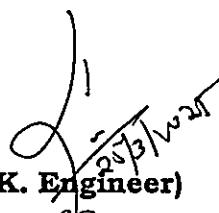
28. This notice is issued without prejudice to any other action that may be taken in respect of the above goods and / or the persons / firms mentioned in the notice under the provisions of the Act and / or any other law for the time being in force in the Republic of India.

29. This notice is restricted only to the goods imported and cleared under the Bill of Entry as mentioned in Annexure- I to IV to this Show Cause Notice.

30. The Noticee(s) have an option to make an application under Section 127B of the Customs Act, 1962 prior to adjudication of the case to the Hon'ble Settlement Commission to have the case settled in such form and in such manner specified in the rules.

31. The Department reserves its right to amend, modify or supplement this notice at any time prior to its adjudication.

**Encl.: Annexure - A with Relied Upon Documents,  
Annexure - I, II, III & IV**

  
(K. Engineer)  
Pr. Commissioner of Customs  
Customs House Mundra.

F.No. GEN/ADJ/COMM/143/2025-Adjn

**To the Noticees,**

1. Divashri International Private Limited (IEC: AAJCD3404F), having registered office at 944, RB Estate Loharka Road, Amritsar, Punjab-143001.
2. Divine Overseas (IEC: ASRPS4990C) having registered office at 944, RB Estate Loharka Road, Amritsar, Punjab-143001.
3. Nutrain International Private Limited (IEC: AAICN3425D) having registered address at Opposite Wipro Limited, Basement 472, Chaman Lal Setia Exports Limited, Phase-III, Udyog Vihar, Gurugram, Haryana.
4. Shri Sukarn Setia S/o Shri Rajeev Setia, House Number A-11/18, DLF Phase 1, Gurugram-122002
5. Shri Anupam Suneja S/o Naresh Kumar Sunjeja, G-811. Suncity, Sector 54-55, Gurugram, Haryana

**Copy to:-**

1. The Additional Director, Directorate of Revenue Intelligence (DRI), Indore Zonal Unit Zonal First Floor, Telephone Exchange Building, Transport Nagar, Indore-452014.
2. The Assistant/Deputy Commissioner (EDI), Custom House, Mundra.
3. Guard File.