



कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
**OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS:**
**CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-
370421.**
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| | | |
|----------|--|---|
| A | FILE NO. फाइल संख्या | GEN/ADJ/ADC/1297/2023-Adjn-O/o Pr Commr-Cus-Mundra |
| B | OIO NO. आदेश संख्या | MCH/ADJ/AKM/273/2024-25 |
| C | PASSED BY जारीकर्ता | Amit Kumar Mishra/ अमित कुमार मिश्रा, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा। |
| D | DATE OF ORDER आदेश की तारीख | 29.01.2025 |
| E | DATE OF ISSUE जारी करने की तिथि | 29.01.2025 |
| F | SCN No. & Date कारण बताओ नोटिस क्रमांक | GEN/ADJ/ADC/1297/2022-Adjn. Dated 01.01.2024 |
| G | NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक | (i) M/s. V D Biztrade LLP (IEC: AAUFV9187B) (ii) Shri Mayur Chandrakant Dedhia (iii) Shri Navid Arif Rehmanwala (iv) Shri Bhanudas Eknath Borse (v) Shri Rajesh Tulsidas Nakhua (vi) Shri Kishor Bhanushali |
| H | DIN/दस्तावेज़ संख्या पहचान संख्या | 20250171MO0000222D8E |

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,

नवरंगपुरा, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
 Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
 Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –
 - (i) उक्त अपील की एक प्रति और A copy of the appeal, and
 - (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
 This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ऊँटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
 Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
 While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
 An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

On a specific intelligence received indicated that a syndicate had attempted to import various goods at Mundra Port by way of gross mis-declaration at Mundra Port using the IEC of M/s. VD Biztrade LLP, 14th Floor, B Wing, Flat No. 1403, Sunmist Hubtown Solaris, Opp. Telly Gully, Andheri,

Mumbai, Maharashtra (IEC: AAUFV9187B). The details of consignments imported in the name of M/s. VD Biztrade LLP are as under:

| Sr. No . | Container No. | Bill of Lading no. and date | Goods declared in Bill of Lading |
|-----------------|----------------------|------------------------------------|---|
| 1 | PCIU8749320 | HUSG20992000 dated 22.08.2022 | Mannequin Heads |
| 2 | PCIU9019244 | HUUF20066600 dated 22.08.2022 | Leggings |
| 3 | CULU605752 4 | CULVSHK2240188 dated 23.08.2022 | Bags & Hand Bags |
| 4 | IAAU1905575 | A33CX49553 dated 30.08.2022 | Bags & Hand Bags |

2. The preliminary inquiry revealed that all the 04 containers were imported during the months of August-September, 2022 and were lying at Mundra Port without clearance. The inquiry also revealed that aforementioned containers at Sr. No. 1, 2, 4 of above table were lying at the premises of M/s. Landmark CFS Pvt. Ltd., APSEZ Mundra and container at Sr. No. 3 was lying at M/s. T G Terminals CFS, APSEZ, Mundra since August-September-2022.

3. All the above containers examined by the officers of SII, Custom House, Mundra, details of the examination conducted in respect of all the containers are as under:-

| Sr. No . | Container No. | Bill of Lading no. and date | Goods declared in Bill of Lading | Examined under Panchnama |
|-----------------|----------------------|------------------------------------|---|---|
| 1 | PCIU8749320 | HUSG20992000 dated 22.08.2022 | Mannequin Heads | 06.01.2023 at M/s. Landmark CFS Pvt. Ltd., APSEZ, Mundra |
| 2 | PCIU9019244 | HUUF20066600 dated 22.08.2022 | Leggings | 06.01.2023 /07.01.2023 at M/s. Landmark CFS Pvt. Ltd. APSEZ, Mundra |
| 3 | CULU605752 4 | CULVSHK2240188 dated 23.08.2022 | Bags & Hand Bags | 08.01.2023 at M/s. T G Terminals CFS, APSEZ, Mundra |
| 4 | IAAU1905575 | A33CX49553 dated 30.08.2022 | Bags & Hand Bags | 08/09.01.2023 at M/s. Landmark CFS Pvt. Ltd. APSEZ, Mundra |

3.1 Examination of Container No. PCIU8749320:

The good imported under container No. PCIU8749320 (Bill of Lading No. HUSG20992000 dated 22.08.2022) was said to contain Mannequin Heads. However, upon examination, goods such as branded underwear, bags, girls' tops, cardigans etc. were stuffed inside the container. Details of goods which were found in the said container are as below:-

TABLE-I

| Sr. No. | Item Description | | | No of Cartons / Bags | Pcs / Carton | Total Pcs |
|----------------|------------------------------------|--|--|-----------------------------|---------------------|------------------|
| 1 | Underwear Small Bag (branded) | | | 133 | 1000 | 133000 |
| 2 | Underwear Small Bag (unbranded) | | | 36 | 1000 | 36000 |
| 3 | Underwear Big Size Bag (unbranded) | | | 67 | 1200 | 80400 |
| 4 | Unbranded Track Pants (Lower) | | | 5 | 228 | 1140 |
| 5 | Mannequin Heads | | | 20 | 74 | 1480 |
| 6 | Girls Top | | | 1 | 500 | 500 |
| 7 | Girls Top | | | 4 | 360 | 1440 |
| 8 | Cardigan | | | 12 | 230 | 2760 |
| 9 | Girls Top | | | 1 | 480 | 480 |
| 10 | Women Sweat Shirt | | | 5 | 200 | 1000 |
| 11 | Girls Top | | | 2 | 390 | 780 |
| 12 | Girls Long Top | | | 1 | 190 | 190 |
| 13 | Highneck Top | | | 1 | 250 | 250 |
| 14 | Girls Top | | | 1 | 305 | 305 |
| 15 | Girls Top | | | 1 | 300 | 300 |
| 16 | Girls Skirt | | | 2 | 300/220 | 520 |
| 17 | Girls Top | | | 1 | 500 | 500 |
| 18 | Baby Sweatshirt | | | 1 | 300 | 300 |
| 19 | Girls Top | | | 1 | 430 | 430 |
| 20 | Girls Top | | | 1 | 400 | 400 |

These goods were bearing tags of reputed brands. To examine probable angle of IPR violations, the same were detained under the provisions of the Customs Act, 1962.

3.2 Examination of Container No. PCIU9019244:-

The good imported under container No. PCIU9019244 (Bill of Lading No. HUUF20066600 dated 22.08.2022) was said to contain 'Leggings'. However, upon examination, goods such as e-cigarettes, Airpods, Leggings, Undergarments, Clothes, Wrist Watches of various brands, Slippers, Adaptors (branded), Chargers, Mobile Covers etc. were found in the above

container. Details of goods which were found in the said container are as below:-

TABLE-II

| Sr. No. | Item Description | No of Cartons / Bags | Pcs / Carton | Total Pcs |
|----------------|---------------------------------|-----------------------------|---------------------|------------------|
| 1 | Yuoto E-cigarette (5000 Puffs) | 19 | 300 | 5700 |
| 2 | Yuoto E-cigarette (2500 Puffs) | 12 | 400 | 4800 |
| 3 | Mya E-Cigarette (300 Recharges) | 39 | 300 | 11700 |
| 4 | Mya E-Cigarette (300 Recharges) | 54 | 300 | 16200 |
| 5 | Airpods Pro (Apple) | 31 | 100 | 3100 |
| 6 | Airpods (Apple) | 9 | 100 | 900 |
| 7 | Earpods (Apple) | 5 | 200 | 1000 |
| 8 | Black Leggings | 71 | 300 | 21300 |
| 9 | Bra (Different Types) (Bags) | 55 | | 39815 |
| 10 | Panty (Bags) | 33 | | 55580 |
| 11 | Tshirt and Lower Pack | 10 | 250 | 2500 |
| 12 | Wrist Watch (G Shock) | 3 | | 652 |
| 13 | Wrist Watch (Armani) | 7 | | 1650 |
| 14 | Wrist Watch (Rolex) | 10 | | 2930 |
| 15 | Wrist Watch (Casio) | 7 | | 2650 |
| 16 | Wrist Watch (Fossil) | 6 | | 1750 |
| 17 | Wrist Watch (Invicta) | 5 | | 1266 |
| 18 | Wrist Watch (Gucci) | 1 | | 300 |
| 19 | Wrist Watch (Edifice) | 3 | | 900 |
| 20 | Packing Material (Watch) | 2 | | 2000 |
| 21 | Slippers (Nike/Adidas/Puma) | 95 | | 4824 (Pairs) |
| 22 | IPhone Adapter | 10 | 90 | 900 |
| 23 | Samsung Charger | 12 | 100 | 1200 |
| 24 | One Plus Charger | 5 | 100 | 500 |
| 25 | Earphone (Wire & Unbranded) | 25 | 1000 | 25000 |
| 26 | IPhone Charger Adapter Cable | 3 | 168 | 504 |
| 27 | Packing Material (For Earphone) | 2 | 1000 | 2000 |
| 28 | Mobile Covers | 17 | | 6600 |

These goods were also bearing tags of reputed brands. To examine the probable angle of IPR violations, the goods imported were detained under the provisions of the Customs Act, 1962.

3.3 Examination of Container No. CULU6057524:

The good imported under container No. CULU6057524 (Bill of Lading No. CULVSHK2240188 dated 23.08.2022) was said to contain Bags & Hand Bags. However, upon examination, goods such as Bags of various brands, LED Lights, LED Projector, toys etc. were found in the above container. The following goods were found in the container:-

TABLE-III

| Sr. No . | Item Description | No. of Carton s | Pcs / CTN | Total PCS |
|-----------------|------------------------------------|------------------------|------------------|--------------------------|
| 1 | N-296 Jincaito Fashion Bag | 4 | 100 | 400 |
| 2 | N-281 Ajahara (Waist Bag) | 3 | 300 | 900 |
| 3 | N-442 Handbag (Big Size) | 2 | 150 | 300 |
| 4 | N-442 Hand Bag (Small Size) | 9 | | 950 |
| 5 | N-65 Faaion (Back Pack) | 20 | 60 | 1200 |
| 6 | N 392 Trolley Bag (Barrley) | 3 | 35 | 105 |
| 7 | N046 Leather Bags (Grey) | 1 | 50 | 50 |
| 8 | N046 Leather Bags (Grey & Brown) | 1 | 20 | 20 |
| 9 | N 390 Pouch | 2 | 150 | 300 |
| 10 | N-390 Pouch with Belts | 10 | 15 | 150 (with 120 pcs Belts) |
| 11 | SR Lighting (SR 083) LED Lights | 100 | 30 | 3000 |
| 12 | CLB Arvi (Toys Musical Instrument) | 42 | 16/24 | 680 |
| 13 | LED Projector (32*13.8*22.5) | 7 | 8 | 56 |
| 14 | LED Projector 35*14*25.5 | 4 | | 30 |
| 15 | LED Projector 33*13.5*24.5 | 4 | 8 | 32 |
| 16 | Plastic Box | 18 | 11 | 198 |
| 17 | Plastic Box (Mix) | 1 | 38 | 38 |
| 18 | Plastic Box | 3 | 250 | 750 |
| 19 | Gokart Car | 1 | 1 | 1 |
| 20 | Pro Massage Gun | 20 | 10 | 200 |
| 21 | Air Filter | 4 | 1 | 4 |
| 22 | Magnetic Sticks | 21 | 48 | 1008 |
| 23 | SR - 070 (LED Lights) | 7 | 30 | 210 |
| 24 | SR - 071 (LED Lights) | 33 | 24 | 792 |
| 25 | SR - 069 (LED Lights) | 14 | 36/32 | 500 |
| 26 | Reflector (Frosted Cover) | 12 | 850 | 10200 |

| | | | | |
|----|---|----|-------|-------|
| 27 | LED Driver | 3 | 320 | 960 |
| 28 | LED Accessories and Cover | | 1470 | 4410 |
| 29 | Driver | | 560 | 1680 |
| 30 | Wires (Red & Black) | 1 | 6000 | 6000 |
| 31 | Tube | | 3000 | 3000 |
| 32 | Screw M3*6 | 1 | | 15000 |
| | Screw M3*8 | | | |
| | Screw M3*12 | | | |
| 33 | Holder | 1 | 10000 | 10000 |
| 34 | PCB & Springs | 2 | | 8160 |
| 35 | Die Cast Housing Optic Black & Golden LED | 1 | 8 | 13408 |
| | Screw M3*8 | | 3200 | |
| | Screw M2.5*10 | | 3200 | |
| | Wires Red + Black | | 1600 | |
| | Board | | 800 | |
| | Tube | | 800 | |
| | PCB | | 800 | |
| | Springs | | 3000 | |
| 36 | Nynton Helmet | 5 | 19 | 95 |
| 37 | Screws M3*8 | 1 | 1400 | 11000 |
| | Screws M2.5*10 | | 2800 | |
| | Wires Red & Black | | 1400 | |
| | Board | | 3000 | |
| | Tube | | 700 | |
| | PCB | | 700 | |
| | Spring | | 1000 | |
| 38 | Item No. 2029 (Rock Crawler) | 5 | 36 | 180 |
| 39 | Item No. JH933-31 (Driven Town) | 10 | 36 | 360 |
| 40 | Item No. JH933-10 (Container Truck) | 50 | 48 | 2400 |
| 41 | Item No. 92300-4 Asphalt JIE Star | 5 | 48 | 240 |
| 42 | Item No. 92300-3 Asphalt JIE Star | 5 | 48 | 240 |
| 43 | Item No. 92300-5 Asphalt JIE Star | 5 | 48 | 240 |
| 44 | Item No. 92300-1 Asphalt JIE Star | 10 | 48 | 480 |
| 45 | Item No. JH933-A4 Die Cast Car Set of 4 | 14 | 144 | 2016 |
| 46 | Item No. 92300-2 Asphalt JIE Star | 5 | 48 | 240 |
| 47 | Item No. 2024-2 Racing Car | 5 | 60 | 300 |

| | | | | |
|----|----------------------------------|---|-----|------|
| 48 | Item No. 22015 Fire Rescue | 2 | 48 | 96 |
| 49 | Item No. 23048 Military World | 1 | 48 | 48 |
| 50 | Item No. 82702 Metal | 5 | 240 | 1200 |
| 51 | Item No. 36201 Age of Navigation | 4 | 60 | 240 |

These goods were also bearing tags of reputed brands. To examine the probable angle of IPR violations, the goods imported were detained under the provisions of the Customs Act, 1962.

3.4 Examination of Container No. IAAU1905575:

The good imported under container No. IAAU1905575 (Bill of Lading No. A33CX49553 dated 30.08.2022) was said to contain Bags & Hand Bags. However upon examination, goods such as Undergarments, Automobile Parts, Back Pack, Car Vacuum Cleaner, Earphone, Torch, Toys etc. were found in the above container. The following goods were found in the container:-

TABLE-IV

| Sr. No. | Description | No. of bags | Pcs / box | Total Qty |
|----------------|-----------------------------------|--------------------|------------------|------------------|
| 1 | Bra (Big size) | 28 | 3000 | |
| 2 | Bra (Small Size) | 61 | 1000 | 61000 |
| 3 | Underwear | 3 | 1500 | 4500 |
| 4 | Car Parts | 10 | 1000 | 10000 |
| 5 | Back Pack (N-65) | 14 | 60 | 840 |
| 6 | Herculux Car Ton Labe | 9 | 552 | 4968 |
| 7 | Back Pack | 2 | 100 | 200 |
| 8 | E- Bike (Mexller) | 1 | 1 | 1 |
| 9 | Carrot Harvest Bar | 21 | 24 | 504 |
| 10 | Moto Dinosaur | 7 | 96 | 672 |
| 11 | Moto Animal | 6 | 96 | 576 |
| 12 | Baby Learning Table | 18 | 18 | 324 |
| 13 | Music Study Desk | 14 | 16 | 224 |
| 14 | Game Table | 17 | 16 | 272 |
| 15 | Computer Chair | 2 | 2 | 2 |
| 16 | Kaisyou (Fish Thread Twist Proof) | 4 | 20 | 80 |
| 17 | CMIK Fishing | 1 | 300 | 300 |
| 18 | Super Frog | 2 | 350 | 700 |
| 19 | Max (Special Fishing Line) | 1 | 410 | 410 |
| 20 | Fishing Rod | 1 | 25 | 25 |
| 21 | Fishing Gripper | 2 | 100 | 200 |
| 22 | Fishing Frog | 2 | 320 | 640 |
| 23 | Flying (Spinner) | 2 | 48 | 96 |
| 24 | A1 Car Vaccum Cleaner | 1 | 10 | 10 |

| | | | | |
|----|---|----|------|------|
| 25 | Camry Bait Casting Reel | 1 | 50 | 50 |
| 26 | Ishine Design (Loca Collection) | 1 | 25 | 25 |
| 27 | Magnet | 5 | 93 | 465 |
| 28 | Type C Hub (Ipad Pro) | 1 | 14 | 14 |
| 29 | Tape | 1 | 156 | 156 |
| 30 | Fishing Accessories | 1 | 370 | 370 |
| 31 | One for three Retractable Data Cable | 1 | 20 | 20 |
| 32 | Artificial Designing Stone | 1 | 10 | 10 |
| 33 | Metal Round Shape | 1 | 100 | 100 |
| 34 | Fidget Spinner | 1 | 200 | 200 |
| 35 | Peppa Pig Child Tiffin | 5 | 20 | 100 |
| 36 | Fabric Catalogue | 1 | 9 | 9 |
| 37 | Small Duck | 1 | 36 | 36 |
| 38 | Packing Material | 3 | 2500 | 7500 |
| 39 | Frog | 2 | 400 | 800 |
| 40 | Frog | 1 | 200 | 200 |
| 41 | Fishing Thread | 1 | 240 | 240 |
| 42 | Optical Fiber Fusion Splicer | 10 | 1 | 10 |
| 43 | BB-9 (Electric Wheel Chair) | 1 | 1 | 1 |
| 44 | BB-11 (Hair Accessories) | 1 | 100 | 100 |
| 45 | BB-17 (Earrings Silver Colour) | 1 | 35 | 35 |
| 46 | Raj (LED Projector) | 7 | 6 | 42 |
| 47 | Raj (LED Projector Big Size) | 9 | 4 | 36 |
| 48 | BB-13 (ECO Case Mobile Cover) | 2 | 460 | 920 |
| 49 | BB-26 (Mouse and Laptop Pad) | 1 | 39 | 39 |
| 50 | Alerio (Dress Fabric) | 3 | 7/8 | 23 |
| 51 | BB-19 (Artificial Jewellery) | 1 | 122 | 122 |
| 52 | BB-7 (Fifish Pro V6 Plus) (Drone) | 1 | 1 | 1 |
| 53 | Khan (Frog) | 1 | 360 | 360 |
| 54 | BB -8 (Metal Connector) | 1 | 1150 | 1150 |
| 55 | BB – 25 (Mouse and Laptop Pad) | 1 | 103 | 103 |
| 56 | Robo Sweeping | 1 | 6 | 6 |
| 57 | BB-10 (Make up Spreading Sponge with pouch) | 1 | 486 | 486 |
| 58 | Raj (HD Multimedia Projector) | 4 | 10 | 40 |
| 59 | High Pressure Oxygen Sprey with accessories | 1 | 1 | 1 |
| 60 | Wei Long Latiao Spicy Gluten with sauces | 6 | 67 | 402 |
| 61 | Ecoflow Pro (Power Bank) | 4 | 1 | 4 |
| 62 | Fishing Thread (100m) | 1 | 5 | 5 |
| 63 | Bridge Studio (Casa Mento) (Packing Bag) | 2 | 49 | 98 |

| | | | | |
|----|--|-----------------|----------|----------|
| 64 | Khan (Komodo) (Hook) | 2 | 384 | 768 |
| 65 | Earphone (Wired Bluetooth) | 1 | 123 | 123 |
| 66 | BB-23 (Misc. item) Big Butterfly, Butterfly, Cute Crab | 1 | 90 | 90 |
| | Small Duck & Aeroplane) | | | |
| 67 | BB-18 (Earrings) | 1 | 460 | 460 |
| 68 | Dancing Cactus | 1 | 46 | 46 |
| 69 | Torch | 1 | 60 | 60 |
| 70 | BB-1 1 CTN (Battery),1 CTN (Charger) | 2, 10, 5 3,1 | 2, 10, 5 | 2, 10, 5 |
| | 1 CTN (Dykem Steel Red Layout Fluid) | | | |
| | 3 Pcs Belts (Branded),1 Pcs (Watch) | | | |
| 71 | Rapali (Necklace) | 1 | 300 | 300 |
| 72 | Kakde (Photo Sensitive Resin) | 1 | 36 | 36 |
| 73 | Sanjay (Nord Drive System) | 1 | 1 | 1 |
| 74 | Kakde (Inngu) (3D Printer) | 1 | 1 | 1 |
| 75 | Ajay (Sunhot) | 2 | 192/312 | 504 |
| 76 | BB-15 & BB-16 (Various Cosmetic Items) | 2 | 1 | 2 |
| 77 | Astouch (65 Inch Interactive display) | 2 | 1 | 2 |
| 78 | Kakde (SLA 3D Printer) (Model SLA 400) | 1 | 1 | 1 |
| 79 | Rohit HD Solar | 1 | 1 | 1 |

Whereas it appears that as against the description of goods mentioned in Bill of Lading i.e. Bags & Hand Bags, the goods found on physical examination were Projectors, fishing thread, earphones, undergarments, torch, toys etc. Thus, the goods imported were detained under the provisions of the Customs Act, 1962.

3.5 Examination of the goods imported in above containers was conducted panchnamas dated 06.01.2023, 06/07.01.2023, 08.01.2023 and 08/09.01.2023:

| Sr. No. | Container No. | Bill of Lading no. and date | Examination conducted under Panchnama |
|---------|---------------|---------------------------------|---------------------------------------|
| 1 | PCIU8749320 | HUSG20992000 dated 22.08.2022 | 06.01.2023 |
| 2 | PCIU9019244 | HUUF20066600 dated 22.08.2022 | 06/07.01.2023 |
| 3 | CULU6057524 | CULVSHK2240188 dated 23.08.2022 | 08.01.2023 |
| 4 | IAAU1905575 | A33CX49553 dated | 08/09.01.2023 |

| | | |
|--|------------|--|
| | 30.08.2022 | |
|--|------------|--|

4. It appeared that the Importer had imported prohibited goods viz. e-cigarettes, as well as other goods, by way of mis-declaration in the description of goods in the Bill of Lading as Mannequin Heads, Leggings and Bags & Hand Bags in case of all the 04 containers with an intent to clear prohibited along with other goods.

5 VALUATION:

5.1 The goods imported in all the said 04 containers were examined by M/s. Suvikaa Associates, Empaneled CE, Gandhidham, who inspected and valued the goods examined under Panchnamas dated 06.01.2023, 06/07.01.2023, 08.01.2023 and 08/09.01.2023 and submitted its reports vide Reports CUS/206/22-23 dated 23.01.2023, CUS/201/22-23 dated 06.02.2023, CUS/217/22-23 dated 10.02.2023 and CUS/219/22-23 dated 16.02.2023. As per report submitted by M/s. Suvikaa Associates, the value of the goods imported by M/s. VD Biztrade LLP is **Rs. 26,13,26,618/-**.

5.2 Thus, from the examination of the goods imported by M/s. VD Biztrade LLP, it appeared that the importer has imported prohibited goods viz. e-cigarettes, vape tubes along with other items like bags & wallets, watches, electronic items, garments, toys 9Moto Animal, Moto Dinosaur, big Butterfly, Small Duck, Frogs) etc. by way of mis- declaration

6 It appeared that M/s. VD Biztrade LLP had imported prohibited goods viz. e-cigarettes as well as other goods by mis-declaring the same. The goods imported in all the 04 containers, having market price of Rs. 26,13,26,618/- were placed under seizure under the provisions of Section 110(1) of the Customs Act, 1962 vide following Seizure Memos:-

| Sr. No . | Container No. | Bill of Lading No. & Date | Details of Seizure Memo | Valuation as per C.E. certificate (Rs.) |
|-----------------|----------------------|--|---|--|
| 1 | PCIU8749320 | HUSG20992 000 dated 22.08.2022 | F. No. S/43-257/SIIB/VD Biztrade/CHM/22-23 dated 08.02.2023. | Rs. 4,79,45,500/- |
| 2 | PCIU9019244 | HUUF20066 600 dated 22.08.2022 | F. No. S/43-256/SIIB/VD Biztrade/CHM/22-23 dated 08.02.2023. | Rs. 10,13,65,900/- + Rs. 4,88,40,000/- (E-cigarettes) |
| 3 | CULU605752 4 | CULVSHK22 40188 dated 23.08.2022 | F. No. S/43-258/SIIB/VD Biztrade/CHM/22-23 dated 08.02.2023. | Rs. 2,80,44,260/- |
| 4 | IAAU1905575 | A33CX49553 dated | F. No. S/43-259/SIIB/VD | Rs.3,51,30,958/- |

| | | | | |
|--|--|------------|---|--|
| | | 30.08.2022 | Biztrade/CHM/22-23 dated 08.02.2023. | |
|--|--|------------|---|--|

7 STATEMENTS OF VARIOUS PERSONS RECORDED DURING THE COURSE OF INVESTIGATION

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

- (i) Statements of Shri Mayur Chandrakant Dedhia, Partner of IEC Holder, M/s. VD Biztrade LLP were recorded on 10.01.2023, 11.01.2023, 07.08.2023 and 08.08.2023.
- (ii) Statement of Shri Rajesh Tulsidas Nakhua, Authorised representative of M/s. Pushpanjali Logistics was recorded on 11.01.2023.
- (iii) Statement of Shri Bhanudas Eknath Borse was recorded on 11.01.2023, 03.08.2023 and 04.08.2023.
- (iv) Statement of Shri Navid Arif Rehmanwala was recorded on 11.01.2023, 03.08.2023 and 04.08.2023.
- (v) Statement of Shri Kishor Bhanushali, Proprietor of M/s. OM Logistics was recorded on 07.12.2023.

8. The Deputy Commissioner of Customs, Customs House, Mundra vide letter F. No. GEN/ADJ/ADC/1297/2023-Adjn dated 05.07.2023 addressed to M/s. V D Biztrade LLP informed that the Commissioner of Customs, Mundra has granted extension by further period of six months for issuance of show cause notice in the instant case in terms of first proviso to of Section 110(2) of the Customs Act, 1962.

9. Whereas the said seized goods appeared to be in violation of the provision of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Therefore, the IPR holders were requested to forward their verification/assessment reports i.r.o. consignment imported by M/s. V D Biztrade LLP. Accordingly, inspection/verification of goods under the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 was carried out by actual Brand owners through their authorized verification agencies and submitted their reports as the imported products are held to be counterfeit articles and thus, imported in violation of

the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

SUMMARY OF INVESTIGATION

10.1 The investigation conducted and the evidence gathered revealed that the said goods were imported in the name of M/s VD Biztrade during the months of August- September 2022 and were lying at the Mundra Port without clearance. Then, after a lapse of 4 months, when the subject cargo was not cleared, bill of entry for third country export was filed without even clearance of the said cargo. Further, in the month of January 2023, on examination of the goods imported vide the above mentioned 4 containers, it appeared that the importer had imported prohibited goods viz. e-cigarettes, as well as other goods, by way of mis-declaration in the description of goods mentioned in the Bill of Lading.

10.2 From the various statements recorded during the investigation, it appeared that Shri Rajesh Nakhua, Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse (the de-facto/beneficial owners of the goods), Shri Mayur Chandrakant Dedhia (IEC Holder) and Shri Kishor Bhanushali in connivance with each other attempted to smuggle prohibited goods such as e-cigarettes and other consumer goods, which were counterfeit and prohibited to be imported into the country. Further, Shri Mayur Chandrakant Dedhia was in touch with Shri Bhanudas Eknath Borse [+9197692XXXX] and in touch with the supplier Mr Can [+9779823XXXX], supplier in China through whatsapp. He was the actual IEC holder and had lent his IEC to Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala for his personal enrichment, and imported prohibited items along with other items by way of mis-declaration in the Bills of Lading, with a view to smuggle the subject goods without intimation to the Customs authorities and without declaration or payment of appropriate Customs duty.

ARREST OF SHRI NAVID ARIF REHMANWALA, SHRI BHANUDAS EKNATH BORSE AND SHRI MAYUR CHANDRAKANT DEDHIA

11. In view of the above, it appeared that Shri Rajesh Nakhua, Karta of M/s. Om Logistics who presented himself as authorized representative of M/s. Pushpanjali Logistics associated himself with Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse (beneficial owner of the imported goods) and imported by one Shri Mayur Chandrakant Dedhia (IEC Holder of M/s. V D Biztrade LLP). From the above, it also appeared that Shri Bhanudas Eknath Borse, Shri Navid Arif Rehmanwala, Shri Mayur Chandrakant Dedhia in active connivance with Mr. Can of China had imported prohibited goods viz. e-Cigarettes and other branded goods which

were found to be counterfeit and are 'prohibited goods' for import under Section 2(33) of the Customs Act, 1962. Thus, it is safe to conclude that they had knowingly concerned themselves in dealing/carrying, keeping, concealing of smuggled goods which they knew were prohibited goods and had total market value of Rs. 26,13,26,618/- which they knew were liable to confiscation under Section 11 of the Customs Act, 1962. Therefore, the facilitator for clearance of such goods, i.e. Shri Rajesh Nakhua was arrested on 13.01.2023, and the actual beneficial owner of the goods, i.e. Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse were arrested on 04.08.2023 and the IEC holder who lent his IEC for personal enrichment, i.e. Shri Mayur Chandrakant Dedhia was arrested on 08.08.2023 under the provisions of Section 104 of the Customs Act, 1962.

12. CONTRAVENTION OF STATUTORY / LEGAL PROVISIONS:

12.1 Whereas it appeared that the syndicate comprising of Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse, Shri Rajesh Nakhua, Shri Mayur Chandrakant Dedhia and Shri Kishor Bhanushali, in connivance with each other attempted to smuggle prohibited goods viz. e-cigarettes and also other counterfeit consumer goods, in the name of M/s. VD Biztrade LLP, by mis-declaring the description of goods. The import of e-cigarettes is prohibited. They attempted to smuggle e-cigarettes and thereby contravened the provisions of Section 4 of the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019.

From the foregoing paras, it appeared that the above syndicate had also attempted to smuggle various consumer goods like branded bags and wallets, wrist watches, undergarments, slippers which were counterfeit goods, by mis-declaring the description of goods. The import of counterfeit goods is in violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and is prohibited within the meaning of Section 2(33) of the Customs Act, 1962.

Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse, Shri Rajesh Nakhua and Shri Mayur Chandrakant Dedhia in their statements recorded under Section 108 of the Customs Act, 1962 have admitted to have imported e-cigarettes and other counterfeit consumer goods by mis-declaring the same.

12.2 In view of the above, it appeared that the e-cigarettes and other consumer goods smuggled by the above syndicate, in the name of M/s. VD Biztrade LLP, is to be construed as 'smuggling' within the meaning of Section 2(39) of the Act and the said goods fall in the category of 'prohibited' within the meaning of Section 2(33) of the Act and hence become liable for confiscation under section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962. By this act of omission and commission, M/s. VD

Biztrade LLP and the above persons namely Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse, Shri Rajesh Nakhua, Shri Mayur Chandrakant Dedhia and Shri Kishor Bhanushali had rendered themselves liable for penal action under Section 112(a) and/or 112(b) of the Customs Act, 1962. Further, the above persons namely Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse, Shri Rajesh Nakhua, Shri Mayur Chandrakant Dedhia and Shri Kishor Bhanushali have rendered themselves liable for penal action under Section 112(a) and/or 112(b), 114, 117 of the Customs Act, 1962.

13 ROLE PLAYED BY VARIOUS PERSONS INVOLVED:

13.1 ROLE PLAYED BY SHRI RAJESH TULSIDAS NAKHUA:

Shri Rajesh Tulsidas Nakhua in connivance with Kishore Bhanushali managed to convince Shri Mayur Chandrakant Dedhia, the IEC holder of M/s. VD Biztrade LLP to lend his IEC to Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse (beneficiary owners of the goods) for consideration of Rs.25,000/-. Shri Rajesh Tulsidas Nakhua had looked after all the work related to import of M/s. V D Biztrade LLP at Mundra and he guided Shri Mayur Chandrakant Dedhia, Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse to mis-declare the goods in documents to evade customs duty and restrictions on the subject goods. Shri Rajesh Tulsidas Nakhua also guided Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse for smooth clearance of the consignments from Customs. Further, upon getting knowledge about initiation of enquiry regarding said consignments, he guided them to file the bills of entry for re-export. It appeared that Shri Rajesh Tulsidas Nakhua played active role in ensuring clearing the imported goods, which is not only prohibited by virtue of the Prohibition Of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage And Advertisement) Act, 2019 demonstrates that the entire activity right from planning, creation, monitoring and managing of all the operations was with a mala fide intention of clearing e-cigarettes & other branded goods which are prohibited to be imported.

Thus, it appeared that Shri Rajesh Tulsidas Nakhua had knowingly associated himself in an attempt to import prohibited and other counterfeit branded foods by misdeclarign the same as Mannequin Heads and Bags, which he knew or had reason to believe were false and incorrect in material particulars. The aforementioned acts of commission and omission on the part of Shri Rajesh Tulsidas Nakhua rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b), 114A and 117 of the Customs Act, 1962.

13.2 ROLE PLAYED BY SHRI NAVID ARIF REHMANWALA/ SHRI BHANUDAS EKNATH BORSE:

Shri Navid Arif Rehmanwala, a trader of garments in connivance with **Shri Bhanudas Eknath Borse** had imported the subject consignments of e-cigarettes and counterfeit consumable goods. **They were the actual beneficiary of the imported goods.** He in connivance with Shri Bhanudas Eknath Borse decided to import the goods from China and contacted Shri Rajesh Nakhua to arrange IEC for them and handle the Custom clearance work. Though they had imported goods such as Undergarments, Mobile Accessories, Sleepers and other mobile accessories, they tried to clear the goods by declaring only one item like Leggings and tried to clear other items without declaring. Shri Bhanudas Eknath Borse was in touch with supplier in China and the IEC holder Shri Mayur Chandrakant Dedhia. It appeared that they used IEC of M/s. V D Biztrade to import the prohibited goods and other counterfeit goods by way of mis-declaration, which were intended to be sold in domestic market. Though the goods were imported for home consumption, when he failed to clear the goods he decided to re-export the goods and decided to file bills of entry for Third Country Export purpose. The acts of commission and omission on the part of Shri Navid Arif Rehmanwala rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b), 114A and 117 of the Customs Act, 1962. The acts of commission and omission on the part of Shri Bhanudas Eknath Borse rendered the goods liable for confiscation under Section 111(d), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b), 114 and 117 of the Customs Act, 1962.

13.3 ROLE PLAYED BY SHRI MAYUR CHANDRAKANT DEDHIA:

Shri Mayur Chandrakant Dedhia, Partner of M/s. VD Biztrade LLP, handed over his IEC to Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala, at the insistence of Shri Rajesh Tulsidas Nakhua and Shri Kishor Bhanushali, for personal gain. He allowed his IEC to be used for importing prohibited and counterfeit goods for a consideration of Rs. 25,000 per container. Furthermore, forensic examination of his mobile number revealed a contact of Chinese Supplier on Mayur Dedhia's phone. It was further revealed that he was in direct communication with the supplier in China, identified as Mr. Can (9779823XXXX), as well as Shri Bhanudas Eknath Borse(+9197692XXXX) via WhatsApp, with Shri Rajesh Tulsidas Nakhua (+9198700XXXX), Shri Kishor Bhanushali (+9198674XXXX). The screenshots of such communications retrieved during the forensic examination of the mobile phone are following to this paragraph. Failing to clear the container for three or four months, he followed Shri Kishore Bhanushali's suggestion and attempted to re-export it to elude customs. Further, he informed receipt of 15 plus 10 in his bank to Shri Kishor

Bhanushali via whatsapp chat dated "05-04-2023 / 05:21:21" which in verbatim is as:- "*Bhai rcevd in Bank 15 and 10 in afternoon*".

From the above, it appeared that Shri Mayur Chandrakant Dedhia had knowingly indulged himself in smuggling of prohibited and counterfeit goods. Thus, the acts of commission and omission on the part of Shri Mayur Chandrakant Dedhia rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b) and 114AA of the Customs Act, 1962.

13.4 ROLE PLAYED BY SHRI KISHOR BHANUSHALI, OWNER OF M/S. OM LOGISTICS

Summons dated 30.10.2023; 08.11.2023 and 24.11.2023 were issued to Shri Kishor Bhanushali to tender his statement. It appeared that he avoided joining the investigation as the summons dated 30.10.2023, 24.11.2023 issued to him were not honored by him, which elaborates the fact that he acted in utter disregard to the legal obligations casted upon him; that Shri Kishor Bhanushali *interalia* in his statement dated 07.12.2023 had accepted that he knows Shri Rajesh T. Nakhua since long and has helped him from time to time. It further appeared that he used to receive money in cash or in account of M/s. Om Logistics from Shri Rajesh T. Nakhua and subsequently had made payments towards the container handling charges and warehousing charges in respect of various consignments cleared by various clients of Shri Rajesh T Nakhua previously. Further, he had accepted being a facilitator of Shri Rajesh T. Nakhua in his statement. He admitted in his statement dated 07.12.2023 that he introduced Shri Mayur Dedhia with Shri Rajesh T. Nakhua. Further it appeared that he convinced Shri Mayur Dedhia to allow his IEC to be used by Shri Bhanudas Eknath Borse. Shri Mayur Dedhia and Shri Bhanudas Eknath Borse got in touch with each other and in connivance with each other, the subject goods were imported from China. Thus, it appeared that Shri Kishor Bhanushali concerned himself by being a mediator and facilitator in the subject imported consignment. The acts of commission and omission on the part of Shri Kishor Bhanushali rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b), 114A, 117 of the Customs Act, 1962.

14.1 Accordingly, **M/s. V D Biztrade LLP** were called upon to show cause as to why:-

- (i) The goods as mentioned in Annexure-A to the SCN having total value of Rs. 26,13,26,618/- (Rupees Twenty Six Crores Thirteen Lakhs Twenty Six Thousand Six Hundred Eighteen Only) should not be

confiscated under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962;

(ii) Penalties should not be imposed upon them under Section 112(a), 112(b) and 114AA of the Customs Act, 1962.

14.2 The following persons were also called upon to show cause as to why called upon to show cause as to why Penalty should not be imposed upon them separately under Section 112(a), 112 (b), 114AA and 117 of the Customs Act, 1962:

- (i) Shri Navid Arif Rehmanwala,
- (ii) Shri Bhanudas Eknath Borse,
- (iii) Shri Rajesh Tulsidas Nakhuwa,
- (iv) Shri Mayur Chandrakant Dediha, and
- (v) Shri Kishor Bhanushali.

15. DEFENCE SUBMISSIONS:

15.1 SHRI MAYUR CHANDRAKANT DEDHIA submitted reply on behalf of his and M/S. VD BIZTRADE LLP.

- That, this noticee confines its reply relating to the imports made under container nos. CULU6057524 and IAAU1905575 which belong to us and not for the container Nos PCIU874320 and PCIU 9019244 which were imported by Shri Bhanudas Eknath Borse and Shri Navi Arif Rehmanwala under the IEC of this noticee.
- prohibited items E Cigarette etc. were imported by Shri Bhanudas Eknath Borse and Shri Navi Arif Rehmanwala who were not known to this noticee, but the noticee had allowed Mr. Kishore Bhanushali to use their IEC for monetary consideration on assurance to import only legal goods.
- Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala imported prohibited goods e cigarettes in their containers for which they were only responsible and that this noticee is not concerned with the import of goods made by them except for use of the IEC by these beneficiary importers and as such confines the reply to this notice relating to the imports made by us under container nos. CULU6057524 and IAAU1905575 only.
- And as such the IEC is not the factor to determine the ownership of the goods but a system of importing or exporting the goods and that it is not necessary that the IEC holder should also be the importer of goods and there may be circumstances that for non-availability of the IEC and in the course of emergency to import the IEC of others is used by the beneficial importer and the present case is the example of such situation when this noticee had allowed use of the IEC by Shri Bhanudas Eknath

Borse and Navid Arif Rehmanwala to import goods which were legally importable on assurance given by Shri Kishore Bhanushali and that this noticee did not know Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanala as also emerged in the course of investigation and as such allowing use of the IEC by beneficiary imported does not involve violation of provisions of Customs Act,1962 whereas it was enjoined on the part of Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanala that they would not import any prohibited items under the given IEC and they are only responsible for the imports made by them of goods contained in container nos. PCIU874320 and PCIU 9019244. That, it was non else than a breach of trust with this noticee by Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanala.

- That under the container Nos. CULU6057524 and IAAU1905575 which were actually imported by us ,no prohibited items such as e cigarettes were found and as such the imputation of allegations of imports of prohibited item e cigarette under our IEC in the instant show cause notice is base less , legally not tenable as the imports of prohibited item e cigarette have been made by Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala only and the allegation of having imported the prohibited e cigarette be done away with from this noticee.
- At the outset we deny that there has been any mis declaration of goods on our part. That, the bill of lading may not mention details of all the items and as such a generic description of goods is given whereas the relevant invoice, packing list are the relevant documents to exhibit details of items relating to the bill of lading .That, the goods imported by this noticee amongst other goods were LED Projector, LED light , Toys and Electronic goods items which required BIS registration and as the goods were not with the BIS certification we decided to keep the goods in the warehouse and had filed in to bond bill of entry Nos.1000268 dated 06.01.23 and 1000127 dated 04.01.23 for goods of container nos. CULU6057524 & IAAU1905575. That, the bill of entry was filed as per the invoice Nos. XY22-034 dated 26.08.22 and invoice no.XY22-033 dt.04.01.23 and that physical examination of goods was conducted by the team of Custom officers on 08.01.23 and 09.01.23 much after the goods were warehoused in the bond on 04.01.23 and 06.01.23. That, on physical verification of goods wit reference to the import documents, no discrepancy was noticed and the quantity of goods were also found as declared by this Noticee. That, having regard to the anticipated time lag of approximately three months required or BIS certification of the supplier for the relevant imported goods we expressed our intention to the appraising group to allow re-export the goods from the docks itself to the shipper which remained pending on account of initiation of the investigation by the Custom officers of SIIB Branch, Mundra. Therefore there has been no act of omission and commission on the part of this

noticee rendering the goods confiscation under Section 110(1) of the Customs Act,1962 and no penalty is imposable upon this noticee,

- In general terms the market survey of the goods is done by the Custom officers under proper Panchanama in presence of representative of the importer which does not appear to have been done by the Chartered Engineer. It is also not understood as to how the Chartered Engineer determined the price of ail the impugned goods without any cost of inputs of the supplier, processing charges, administrative charges, whole sellers margin, retailers margin, abstergent to determine the assessable value etc and hence the price determination done by the Chartered Engineer is not acceptable and it suffers from legal infirmity. It is also for the fact that the exercise of price determination by the Chartered Engineer is carried out in the absence of any representative of the importer and as such it is not possible to know that the price of the goods is determined for the imported goods in question or of any other goods. That, the aforementioned containers were filed for re-export, as there is no question of duty evasion or implications hence the valuation determined by the chartered Engineer, sum total Rs. 26,13,26,618/- is therefore void legally not sustainable. Therefore the valuation determined is not necessary and not acceptable to this noticee.
- That, nothing has emerged in the course of investigation carried out by the Custom officers in the instant case that there was any act of Omission or Commission on the part of this noticee and that the entire gimmick is done by Shri Rajesh T Nakhua along with Kishore Bhanushali CHA (Om logistics) and as such for no act of omission and commission. we may be absolved from imposition of penalty proposed in the instant show cause notice under the provisions of Section 112(a), 114 AA and 117 of the Customs Act,1962.
- **That, having regard to the delay in Custom clearances at Mundra Port the shipper has required us to re-export his goods shipped by him under container nos. CULU6057524 and IAAU1905575 so as to secure his cost of goods and as such this noticee be permitted re-export of impugned goods from the docks.**
- In view of the foregoing, it is most humbly submitted that this noticee be absolved from the charges of import of prohibited item belonging to others (namely Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala) and for no mis-declaration of quantity of goods found in the container nos. CULU6057524 and IAAU1905575. In the course of Custom's investigation with reference to the declared quantity in the import documents. We hereby request that the goods under our two containers be allowed to be re-exported from the docks only as the shipper is pressing hard for getting the goods back.

15.2 Shri Navid Arif Rahmanwala Noticee No. 3 & Shri Bhanudas Eknath Borse (Noticee No 4) made their written submissions 11.03.2024 wherein they interalia stated that:

- The allegations are made without any basis or material much less legally admissible material. Hence the SCN is bad in law required to be quashed and proceedings are required to be dropped.
- It is submitted that since the Bill of Entry for Warehousing was filed by the Consignee (Importer) for Re-Export, on 03.01.2023, much prior to the detention/seizure of the goods in question by the Customs, SIIB, on 6/7/8 January 2023, the goods in question did not fall within the definition of “goods meant for home consumption” or “imported goods” and as such the said goods fell outside the scope and purview of the provisions of section 14, 15 and 17 of the Customs Act, 1962 for the purposes of Valuation of Goods, as well as to determine the date for, determination and assessment of the rate of duty chargeable thereupon.
- It is submitted that in the light of this disclosure before the office of Customs, SIIB, on the basis of the Bill of Entry for Warehousing for Re-Export which was electronically presented to the Proper Officer as defined under the Customs Act, 1962 being in charge of the Warehouse where the goods were stored, the office of Customs, SIIB, after initial investigations including recording the statements various noticees, whilst instructing the Consignee (Importer) to proceed with the process of obtaining permission for Re-Export, allowed the present noticees to leave, suggesting thereby that the investigations were closed, else they would have proceeded to issued them a show cause to pay duty on the basis of assessment of the same made under section 14, 15 & 17 of the Customs Act, 1962. It appears that after nearly 6 to 8 months, the office of DRI, Ahmedabad, started its own investigations, in connection with investigations for the same subject matter as was already investigated and looked into by the office of Customs, SIIB, who are also “proper officers” as defined under the Customs Act, 1962, just as the officers of DRI; Needless to say that the officers of DRI do not possess any special or additional powers to investigate under the Customs Act, 1962, which are unavailable with the officers of Customs, SIIB; In fact, the officers of DRI do not possess any powers as Proper Officers under the Customs Act, 1962 to, sit in Appeal or Revision or Re-adjudication or Re-assessment or Re-investigation and / or Reconsideration of the same material which was already investigated by the officers of Customs, SIIB, before the office of DRI took over the case from Customs, SIIB, only on the ground and excuse that a similar case was being investigated by them. It is submitted that present case is not in any way concerned with the other alleged case/s detected and being investigated by DRI. There is not even a remote nexus or connection of the present case with the other case/s being investigated or may have been investigated by DRI as there is no

mention of such other similar case/s in the present SCN, infect there is not even a whisper about the investigations of so-called similar case/s in the SCN. The modus operandi as alleged by DRI to be same/similar was an incorrect claim as nothing came on record during the course of investigations which could have justified an investigation by DRI, in as much as in the present case, the Bill of Entry was filed for Warehousing for Re-export and not for Clearance for Home; Consumption; Moreover, there is not a single Order or direction passed by the Commissioner of Customs, transferring the investigations to DRI and for what reasons; Such delegation of authority and power to investigate once delegated to and exercised by the Customs, SIIB, has to be subjected to due process of law by the passing of a fresh order, direction or notification by the Commissioner of Customs directing transfer of the said investigations from Customs, SIIB, Mundra Port to DRi, Zonal Unit, Ahmedabad; Needless to say that, neither any, of the Remand Applications filed by DRI nor their reply to the Bail Plea of the Applicant before the Ld. Magistrate, nor before the Hon'ble Court, there was even a remote reference' to any such Order, Direction or Notification by any Commissioner of Customs, with reasons, delegating powers to the office of DRI to either continue with the investigations in this case by taking up the case from Customs, SIIB, or to reinvestigate into the said case afresh. In the absence of any such Order, Direction or Notification, it is submitted that the investigation by the DRI, Zonal Unit, Ahmedabad, in the instant case is void ab initio, in as much as the noticees cannot be put twice in peril for the same cause of action by investigations at the hands of two investigating agencies;

- It is submitted that without prejudice to the above, the noticees upon receiving summons from DRI voluntarily attended the office of the DRI and subjected themselves to investigations, under reasonable belief and expecting that the said inquiry was a routine inquiry in the light of request for Re-export remaining pending under a Bill of Entry for Warehousing for Re-export which was filed much prior to the initiation of investigations by Customs, SIIB, Mundra Port. Under such circumstances, any violation of the provisions and/or offence under the Customs Act, 1962 cannot be made out in the present case either against the noticees or against any other person/s. The said questionable issue, will have to be determined based on the finding whether the request of the Importer (Consignee) seeking permission of Re-export under the Bill of Entry for Warehousing was made prior to 06.01.2023 when Customs, SIIB, allegedly started investigations by drawing panchnama of the containers. In the present case, clearly the request for Re-Export was made on 03.01.2023. Hence, any investigation conducted after 03.01.2023 has to be considered in the light of the above request for Re-Export, which is prior in point of time to the alleged detention/seizure by the Customs, SIIB and later by DRI;

- It is submitted that due process of law has been followed by the noticees in the instant case in as much as the appropriate Bill of Entry for Warehousing for Re-export was filed under section 69 of the Customs Act, 1962. Copy of the said Bill of Entry for Warehousing and Bill of Lading was submitted to the Hon'ble Court during the hearing of the Bail plea of the noticees and a copy of the same was also furnished to the DRI through the Ld. Prosecutor; However, in reply to the bail application, there was no comment made upon the same' from the DRI; The misnomer in the case of the DRI lies in the fact that they believe that the Bill of Entry was filed in the instant case for Home Consumption, which is incorrect. The case of DRI about mis-declaration is also based on the erroneous reasonable belief that the goods were brought in under a Bill of Entry or Home Consumption under section 68 of the Customs Act, 1962. However, as Stated earlier, having been warehoused in the SEZ the goods cannot be considered as having been imported into India and therefore there being no attempt to import the said goods, an allegation of mis-declaration, even if allegedly justified, cannot be considered as an offence in the instant case as there was no attempt to evade duty in the instant case and therefore no case for violation of any of the provisions of the Customs Act, 1962 can be said to be made out against the noticees; Further, facts of the case does not disclose any offence of either Evasion of Customs Duty or even.
- It is submitted that reading the definition of the term "import" along with the provisions of section 53 of the SEZ Act, and applying the same to the facts of the present case, it would be abundantly clear that "goods imported from outside India" can be brought into an SEZ area on a Port, Airport, Inland Container Depot, Land Stations etc. as notified under section 7 of the Customs! Act, 1962, which will be deemed and treated as "goods outside the customs territory of India". Consequently, such goods which are deemed as "goods outside the customs territory of India" cannot be treated as dutiable goods on which the proper officer under the SEZ would be required to assess and; determine the rate of duty chargeable thereupon, since the goods were not meant for home consumption under a Bill of Entry for Home Consumption; The goods were imported into the country and housed in a warehouse in a SEZ and were lying in the SEZ on 03.01.2023 when the Bill for Warehousing for Re-Export was filed and the same is pending as yet; In fact, when the Customs, SIIB and the DRI both, one after another, stepped in to investigate the same, the goods were yet lying in the warehouse at the SEZ covered under a Bill of Entry for Warehousing for Re-Export and not for home consumption; Consequently, by any stretch of imagination can it be claimed by the Customs, "SIIB or DRI that the goods in the instant case were liable to be either seized, detained I even confiscated on allegations of evasion of duty, and/or mis declaration in terms of description, value or even nature of goods; As long as the goods were not

meant to be taken out of the territory of the SEZ there is no offence under the Customs Act 1962 or any other law for the time being in force is made out in the instant case;

- It is submitted that the exorbitant valuation of the goods to has been based on a valuation Report of a private valuer Suvikaa Associates, Professsonal Consultants, in departure of the provisions of section 14, 15 and 17 of the Customs Act, 1962. The Customs Act does not permit Market Value of the goods to be considered for valuation; The valuation of the goods is supposed to be based on the Transaction Value of Goods i.e. the Price actually paid or payable, overseas for the Goods sold for Export to India for delivery at the time of place of exportation; Such transaction value is supposed to include in the addition to the price of the goods, amounts paid or payable towards, costs and services including commissions, brokerage, freight insurance, loading, unloading and handling charges. It is abundantly clear that just to show it as a big case, the office of the Customs, SIIB, and DRI have taken into consideration extraneous circumstances to arrive at the value of the goods, without taking recourse to the required and permissible costs, and expenses as provided for under section 14 of the Customs Act, 1962. Needless to say that, the valuation of the goods is not a circumstance which can be or will be considered by the Proper Officer of the SEZ whilst taking into consideration for disposal the pending Application and request for Re-export under the Bill of Entry for Warehousing; As such it is submitted that the exorbitant valuation of the goods as alleged by the DRI should not be a circumstance to be taken into consideration whilst hearing and deciding the present SCN; The valuation is required to be taken into consideration only at the time of determination of the rate of duty and the assessment of duty on the nature of goods, which is not permissible in the instant case, since admittedly there is no Bill of Entry filed for home consumption seeking to subject the goods to determination and assessment of customs duty and payment of the same prior to clearance;
- It is submitted that a perusal of Relied Upon Documents shows that there is nothing on record to suggest that there is a mis-declaration of goods in the instant case. No documents have been annexed in the RUD to suggest and prove that the goods in question were mis-declared to gain any sort of illegal benefit and gain. In the absence of any such documents to suggest and prove mis-declaration of goods, no adverse presumption can be drawn against the noticees and/or any other person/s in the matter.
- It is submitted that as stated earlier that since the Bill of Entry for Warehousing was filed by the Consignee (Importer) for Re-Export, on 03.01.2023, much prior to the detention/seizure of the goods in question by the Customs, SIIB, on 6th 7th/8th January 2023, the goods in question did not fall within the definition of "goods meant for home consumption" or "imported goods" and as such the said goods fell outside the scope and

purview of the provisions of section 14, 15 and 17 of the Customs Act, 1962 for the purposes of Valuation of Goods, as well as to determine the date for, determination and assessment of the rate of duty chargeable thereupon, in view of the above SIIB and/or DRI to be the factual position it was incumbent upon the Customs; material on record to suggest and prove that prior to filing of the said Bill of Entry for Re-Export, attempt or attempts were made by the noticees to clear the goods for home consumption by mis-declaration of the same, However, no such material is placed on record either by the Customs, SIIB or DRI by way of investigation to prove that attempt/s were made to clear the goods for home consumption by mis-declaration of the same. It is submitted that the both Customs, SIIB and DRI failed to collect any such material during the course of investigation as, infact, no such attempt/s were made in the instant case, hence no material was found by the Investigating Agencies to suggest and prove the same.

- It is submitted that the Department has miserably failed to bring on record any material to suggest and prove the contravention of any of the provisions of the Customs Act, 1962 and/or any other law for the time in force.
- It is submitted that the act of seizure of the E-Cigarettes by the office of Customs, SIIB and/or, DRI is outside the scope and purview of the Customs Act, 1962.
- It is submitted that the statements of the noticees under section 108 of the Customs Act, 1962, recorded by the officers in connection with the alleged consignment has been retracted. Moreover, the said statements are not in consonance with the facts of the case in as much as the alleged admission regarding import of the consignment is contradictory to the status of the goods which having been detained in Export Zone and not cleared therefrom out of the Port into the city for disposal.

15.3 Shri Kishore Bhanushali of M/s. Om Logistics through mail dated 05.11.2024 has submitted that

- Our company, OM Logistics, is a forwarding company that facilitates importers and exporters by providing services all over India. In this case, we received documents from V D Biztrade LLP for 3rd country export purposes as instructed by them and forwarded documents to the Customs House Agent (CHA).
- During our discussion with CHA, we were informed that a 3rd country export Bill of Entry (BOE) can be filed for this shipment, as the export can be done directly from the Special Economic Zone (SEZ).
- We received the documents from V D Biztrade LLP specifically for 3rd country export purposes, with no intention or instruction to clear the shipment for imports in India. In accordance with established procedures, the Bill of Entries were filed explicitly mentioning 'for export

Purpose only' and same were mentioned in Invoice and Packing List received from V D Biztrade LLP.

➤ We would like to emphasize that this is our normal course of business, and we provide similar services to importers and exporters across India, including contacting CHA at ports import / export and forwarding relevant documents and instructions as provided by our clients. In view of the above, we kindly request your honor to please take a lenient view on this matter and provide us with your support and guidance.

15.4 Shri Mayur Dedhia through their advocate submitted their written submissions during personal hearing on 25.11.2024 wherein they interalia submitted that:

- this noticee reiterated in submission in the reply to the show cause notice that the goods of container Nos. CULU6057524 and IAAU1905575 were meant for import for re-export only as per the Bills of Entry No. 1000268 dated 06.01.2023 & 1000127 dated 04.01.2023 filed by this noticee and as such BIS issue was not involved in respect of some of the items such as LED Projector, LED Light , toys and electronic goods as these were warehoused and were not to be cleared for home consumption but were to be exported from the docks only. Thus the BIS needed not to be sticked upon in the instant case
- the goods contained in our said two containers were meant for export from the docks and the relevant invoice represented true transaction value .That, the payment of the said goods was left to be made by this noticee to the shipper and hence the declared value had merit to be accepted by Customs and the suggestions made by the Chartered Engineer on valuation were not warranted. That, when the payment of invoice has not been done by this noticee as such there was no question of flow of any additional consideration other than the invoice value from us to the shipper and hence the valuation suggested by the chartered Engineer merit to be discarded.
- The beneficiary importer is defined under the Customs Act, 1962 as mentioned in our reply to the show cause notice and this noticee had allowed the use of IEC code by our Custom Broker Mr. Kishore Bhanushali for import of permissible goods with due intimation to us and that we neither knew nor allowed Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala for import of goods of their requirement and that nothing has emerged in the course of investigations made by Mundra Customs that this notice had ever consented the said two persons to import items which were not declared properly and which were restricted items and that having allowed these persons to use the IEC does not constitute any offence under the Customs Act,1962 as the definition if importer also incorporates beneficiary importer or any person holding himself out to be the importer and that it is emerged in the course of investigation that the goods in the container nos. PCIU

8719320 and PCIU9019244 belonged to them. That, these persons are solely responsible if any mis-declared or restricted goods were imported by them without knowledge of this noticee and this noticee be absolved from any responsibility relating to any violation of provisions of Customs Act, 1962 done by these noticees intentionally or unintentionally.

➤ Last but not the least this noticee has suffered acute financial losses due to not having been able to export these goods from the docks for reason that the consignment was held up for investigations and that nothing has emerged against us in the investigation that we have done any act of omission or commission in violation of provisions of Customs Act, 1962 and hence we most humbly request your good selves to allow us clearance of the goods contained in Container Nos CULL6057524 and JAAN1905575 from the docks with no imposition of penalty under the Customs Act 1962 and oblige.

16. RECORDS OF PERSONAL HEARING

- Following the principles of natural justice, opportunities of personal hearing was granted on dated 18.10.2024, 30.10.2024 to all notices. However, no one appeared for hearing on the scheduled date and time.
- The Importer M/s. VD Biztrade LLP through letter dated 27.10.2024 sought adjournment and requested to re-schedule the hearing. Accordingly, next date for hearing was fixed on 25.11.2024 for all notices. Shri Mayur Chandrkant Dedhiya, Partner of M/s. V D Biztrade LLP attended hearing with his representative on 25.11.2024 and submitted written submissions by re-iterating the same.
- Shri Navid Arif Rehmanwala appeared for hearing on 25.11.2022 on behalf of him and Shri Bhanudas Eknath Borse and reiterated his submissions dated 23.11.2024 and demanded cross examination of the officers involved in the investigation by their advocate.
- Shri Kishore Bhanushali, Proprietor of M/s. Om Logistics attended hearing on 25.11.2024 stating that he had nothing to do with the import documentation. However, the CHA filed documents for third country re-export on his direction on request of the Importer. He further stated that he will e-mail the written submissions within two days.
- Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse were given last opportunity on 27.12.2024 to defend their case with justifiable facts and submissions. However, no one appeared for personal hearing. Only mail dated 28.12.2024 has been received from their Advocate M/s. Rizwan G. Merchant, Advocate wherein they have provided their Vakalatnama on behalf of the said 02 Noticees. However, I noticed that the said Vakalatnama received after date of hearing and no request for further hearing was made.

DISCUSSIONS AND FINDINGS

17. I have gone through the facts of the case, Show Cause Notice dated 01.01.2024 and the noticee's submissions both, in written and in person. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the goods having total value of Rs. 26,13,26,618/- (Rupees Twenty Six Crores Thirteen Lakhs Twenty Six Thousand Six Hundred Eighteen Only) are liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 or otherwise.
- ii. Whether penalties under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 is liable to imposed on M/s. V D Biztrade or otherwise.
- iii. Whether penalty is liable to be imposed upon Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse, Shri Rajesh Tulsidas Nakhua, Shri Mayur Chandrakant Dedhia & Shri Kishor Bhanushali under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 or otherwise.

18. I find that the present show cause notice is centered on the goods imported through four containers Container covered under 04 Bill of Ladings wherein good were declared as Mannequin Heads, Leggings & Bags & Hand Bags. However, upon examination undeclared goods were found which were prohibited in nature also. I noticed that these 04 Containers were imported August-September 2022 and were lying at the Mundra Port without clearance. After a lapse of 4 months, when the subject cargo is not cleared, bill of entry for third country export was filed without even clearance of the said cargo. Examination of the goods was conducted in the month of January 2023 and upon examination, prohibited goods viz. e-cigarettes, counterfeited goods of reputed brands infringing IPR Rules, as well as other goods were found which were imported by way of mis-declaration in the description of goods mentioned in the Bill of Lading. Details of the said goods imported vide 04 Containers have already been mentioned in Show Cause Notice and previous paras of this Order also. The same are not being repeated for the sake of brevity. However the outcome of the examination is required to be discussed here and for the same I am discussing it here.

18.1 I find that the Importer declared the description of the goods in the import documents as "*Mannequin Heads*" for the goods imported through Container No. **PCIU8749320** (Bill of Lading No. HUSG20992000 dated 22.08.2022). However upon examination of the goods under panchnama

dated 06.01.2023, goods such as branded underwear, bags, girls' tops, Mannequin Heads, Clothes, cardigans etc. were found instead to declared goods. Thus, I find that goods were found undeclared in respect of description, qty, IPR and other particulars.

18.2 I find that the Importer declared the description of the goods in the import documents as "Leggings" for the goods imported through Container No. **PCIU9019244** (Bill of Lading No. HUUF20066600 dated 22.08.2022). However upon examination of the goods under panchnama dated 06.01.2023, goods such as **e-cigarettes**, Airpods, Leggings, Undergarments, Clothes, Wrist Watches of various brands, Slippers, Adaptors (branded), Chargers, Mobile Covers etc were found instead to declared goods. Thus, I find that goods were found undeclared in respect of description, qty, IPR and other particulars. I find that e-cigarettes is prohibited for import as per Import policy. I will discuss this issue in detail in upcoming paras.

18.3 I find that the Importer declared the description of the goods in the import documents as "*Bags & Hand Bags*" for the goods imported through Container No. **CULU6057524** (Bill of Lading No. CULVSHK2240188 dated 23.08.2022). However upon examination of the goods under panchnama dated 06.01.2023, goods such as Bags of various brands, LED Lights, LED Projector, toys etc. were found instead to declared goods. Thus, I find that goods were found undeclared in respect of description, qty, IPR and other particulars.

18.4 I find that the Importer declared the description of the goods in the import documents as "*Bags & Hand Bags*" for the goods imported through Container No. **IAAU1905575** (Bill of Lading No. A33CX49553 dated 30.08.2022). However upon examination of the goods under panchnama dated 06.01.2023, goods such as Undergarments, Automobile Parts, Back Pack, Car Vacuum Cleaner, Earphone, Torch, Toys etc. were found instead to declared goods. Thus, I find that goods were found undeclared in respect of description, qty, IPR and other particulars.

19. Valuation of the imported goods:

19.1 I find that although bill of entry for third country export were filed, however, the goods were found totally different from the declared description in the import documents. Further, prohibited goods and other offending goods in the contravention of IPR Rules were also found during the examination. Thus, I have no doubt that the value cannot be accepted as the true transaction value of the goods imported under these 04 Containers. Hence, the value of the goods is required to be determined in accordance with provisions of Section 14 of Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter also referred to as "Rules 2007"). I find that Rule 3(1) of Rules

2007 provides that “*subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10*”. Rule 3(4) *ibid* states that “*if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 of Custom Valuation Rules, 2007*”. The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced hereunder:-

3. Determination of the method of valuation-

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

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

Provided that -

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

(i) are imposed or required by law or by the public authorities in India; or

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

i. do not substantially affect the value of the goods;

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

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

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

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

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

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods:

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

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

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

4. Transaction value of identical goods. -

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

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

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

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

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

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

Rule 5 (Transaction value of similar goods).-

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

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

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

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

Rule 7 of the CVR, 2007, stipulates 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 following deductions :-*

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

(ii) the usual costs of transport and insurance and associated costs incurred within India;

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

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

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

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

Rule 8 of the CVR, 2007, stipulates that:-

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

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Rule 9 of the CVR, 2007, stipulates 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 principles and general provisions of these rules and on the basis of data available in India;

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

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

-
- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

19.2 I state that "Value" has been defined under Section 2(41) of the Customs Act, 1962 as "Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14".

19.3 The Section 14 ibid provides, inter alia, that the value of the imported 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, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such their conditions as may be specified in the rules made in this behalf. Further, its proviso provides that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf. I find that as per the above provision value of any imported goods is the price actually paid or payable for the goods plus the components of other incidental charges to the extent mentioned in proviso to Section 14 ibid and in the manner specified in the Rules made under Section 14 ibid. In the instant as stated above, the whole consignments was found mis-declared with respect to description, qty, IPR and other material particulars. Further, prohibited goods were also found in the subject consignments. The price actually paid not provided by any Noticee. Therefore, to arrive at the correct value of the goods, services of Government approved Chartered Engineer were availed.

19.4 I find that Rule 4 (1) (a) of Rules 2007 stipulates determination of value of goods on the basis of value of identical goods. However, details of imports of identical goods were not available. Rule 5, providing for transaction value of similar goods, can also not be invoked as the goods have been found mis declared in terms of description, undeclared, prohibited, counterfeited etc. I also noticed that no exact sales values and data required for quantification of the deductions was available, hence, rule 7 cannot be invoked. Further, computed value, as provided under Rule 8, cannot be calculated in the absence of quantifiable data relating to cost of production, manufacture or processing of import goods. In such scenario, I find it appropriate to invoke the provisions of Rule 9 i.e. residual method for determining the value of the impugned import goods. Rule 9 provides for determination of value using reasonable means consistent with the principles and general provisions of these rules.

19.5 I find that in absence of credible data of import of similar goods and other constraints the value of these goods cannot be determined in terms of Rule 4, 5, 6, 7, 8 of Customs Valuation Rules 2007. Hence, the value is to

be determined in terms of Rule 9 of said rules. In view of the above, I find that the market price as provided by the Chartered Engineer has to be considered as the basis for arriving at assessable value of these goods. Therefore, the declared assessable value of the goods pertaining to these 04 Containers imported under 04 Bills of Lading, is required to be re-determined under Section 14 of the Customs Act, 1962 readwith Rule 9 of the CVR, 2007. Thus, I find it appropriate to consider the value suggested by the Chartered Engineer/valuer for these 04 container and the re-determined the same as **Rs. 26,13,26,618/- (Rupees Twenty Six Crore Thirteen Lakhs Twenty Six Thousand Six Hundred and Eighteen Only).**

20. CONFISCATION OF THE GOODS UNDER SECTION 111(d), 111(e), 111(f), 111(l) and 111(m) OF THE CUSTOMS ACT, 1962:

20.1 It is alleged in the SCN that the goods are liable for confiscation under Section 111(d), 111(e), 111(f), 111 (l) & 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111 of the Customs Act, 1962 are reproduced below: -

- - (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
 - (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
 - (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
 - (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
 - (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

20.2 I find that goods imported in the container No. PCIU8749320, PCIU9019244, CULU6057524 & IAAU1905575 were found mis-declared in respect of quantity, value, brand and also found prohibited alongwith other material particulars. Upon examination has been found that goods were found other than the declared under import documents and Manifest. Thus, there is no doubt that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. I find that upon examination these goods were bearing tags of reputed brands, thus the goods were taken up for further inspection by actual Brand owners as prescribed under the provision of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Accordingly, inspection/verification of goods under the said Rules, 2007 was carried out by actual Brand owners through their authorized verification agencies and submitted their reports holding the imported goods as counterfeited articles. Thus, I find that the goods were imported in violation of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

20.3 IMPORT OF E-CIGARETTES BY WAY OF MIS-DECLARATION AND CONCEALMENT:

(i) I find that from the Container No. **PCIU9019244** (BL No. HUUF20066600 dated 22.08.2022) e-cigarettes and their parts were found during the examination. Details of which are as follows:

| Sr. No. | Item Description | No of Cartons / Bags | Pcs / Carton | Total Pcs |
|----------------|---------------------------------|-----------------------------|---------------------|------------------|
| 1 | Yuoto E-cigarette (5000 Puffs) | 19 | 300 | 5700 |
| 2 | Yuoto E-cigarette (2500 Puffs) | 12 | 400 | 4800 |
| 3 | Mya E-Cigarette (300 Recharges) | 39 | 300 | 11700 |
| 4 | Mya E-Cigarette (300 Recharges) | 54 | 300 | 16200 |

(ii) Shri Bhanudas Eknath Borse in his statement dated 11.01.2023 had admitted that the said consignment was imported by them (he and Mr. Navid Rehmanwala), however, he had no idea that there were e-cigarettes in this consignment. He admitted that Mr. Navid Rehmanwala is his childhood friend and with the help of Mr. David (China based trader) they imported the said goods. Shri Bhanudas claimed that he was not aware about the presence of E-cigarette in their container. During the investigation he stated that Mr. David through whom they booked this consignment told them that some cartons of Mobile Accessories are there in container No. PCIU9019244 which belongs to his client and he will contact to him when goods will be cleared from Customs. Shri Bhanudas and Shri Navid failed to provide any satisfactory evidences during the investigation period or adjudication

proceedings regarding their claim that the e-cigarettes which found in their container doesn't belongs to them. I find that the burden is on the noticee/person from whose possession the goods have been seized, however, the same has not been discharged by them. I find that Shri Bhanudas Eknath Borse and Mr. Navid Rehmanwala just making a fabricated story to shed their responsibility in respect of mobile accessories and e-cigarettes which found in their container. I find no merits in their contention and thus hold no grounds.

(iii) I observed that in India, the ban on e-cigarettes was implemented in September 2019 through an ordinance issued by the central government, effectively prohibiting the production, import, distribution, sale, and advertisement of e-cigarettes. The primary motivation behind this legal action was to address growing concerns about the health risks associated with vaping, particularly the potential for addiction, respiratory issues, and the impact on young people. E-cigarettes were seen as a gateway product, potentially leading youth and non-smokers to nicotine addiction. The government's decision was also driven by fears that the unregulated market for e-cigarettes could exacerbate public health problems and undermine ongoing efforts to reduce smoking-related diseases.

(iv) The **Prohibition of E-Cigarettes Act, 2019**, which followed the ordinance, made it a punishable offense to manufacture, import, or sell e-cigarettes, with penalties including fines and imprisonment. This law reflects India's commitment to strengthening its tobacco control policies and aligning with international health guidelines, including the **World Health Organization Framework Convention on Tobacco Control (WHO FCTC)**, which calls for comprehensive measures to protect populations from the harmful effects of tobacco and nicotine products.

(v) I observed that the prohibition on the import of e-cigarettes is a regulatory measure aimed at safeguarding public health, particularly in light of the growing concerns about the potential risks associated with vaping. E-cigarettes, or electronic cigarettes, are devices designed to deliver nicotine through vapor, rather than smoke, and are often marketed as a safer alternative to traditional tobacco products. However, their long-term health effects are not fully understood, and emerging evidence suggests that they may contribute to respiratory issues, addiction, and serve as a gateway for young people to initiate nicotine use. Governments have taken action to curb the availability of e-cigarettes through import bans, citing concerns about the lack of adequate regulation and the potential for e-cigarettes to undermine tobacco control efforts. Such measures also address the possibility of unauthorized or counterfeit products entering the market, which could further jeopardize consumer safety. The prohibition serves to protect vulnerable populations, particularly youth, and is part of broader efforts to reduce nicotine addiction and tobacco-related harm.

(vi) I find that Electronic Cigarettes found in the above import consignment fall under HS code 85434000 and the import of E-Cigarettes is prohibited vide Notification 20/2015-2020 dated 26.09.2019. The relevant parts of the said Notification is reproduced below for better appreciation:

*"Import of electronic cigarettes (e-cigarettes) or any parts or components thereof such as refill pods, atomisers, cartridges etc, including all forms of Electronic Nicotine Delivery Systems, heat Not Burn Products, e-Hookah and the like devices by whatever name and shape, size or form it may have, but does not include any product licenced under the Drugs and Cosmetics Act, 1940, under HS Code: 8543 **is Prohibited** in accordance with the prohibition of Electronic Cigarettes (Production, Manufacture, Import, Exports, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019"*

Effect of the Notification: Import of electronic cigarettes and parts or components thereof is prohibited.

From the above, it may be seen that as per Notification No. 20/2015-2020 dated 26.09.2019, import of electronic cigarettes or any parts or components of e-cigarettes is completely banned or Prohibited under Import Policy. However, the goods were imported in guise of other freely importable goods.

Further, Section 2(39) of Customs Act, 1962 defines "smuggling" in relation to any goods, means any act or omission which will render such goods liable for absolute confiscation under Section 111 or Section 113 of the Customs Act, 1962. The impugned goods e-cigarettes are prohibited for import as per import policy and provisions discussed above and thus liable for confiscation under section Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962.

20.4 PROHIBITION OR IMPORT OF GOODS INFRINGING INTELLECTUAL PROPERTY RIGHTS:

(i) From the careful perusal of the Annexure-A to the Show Cause Notice, upon examination of goods imported in the impugned 04 containers, it had been found that goods mis-declared/mis-classified/concealed branded goods of a number of brands were found, which were grossly mis-declared as per the bill of lading. The said mis-declared branded goods imported vide these 04 Containers were placed under detention as per the provisions of Customs Act, 1962 as the said items were being smuggled. On

careful perusal of the Annexures to the Show Cause Notice, I noticed there are 02 Containers Nos. PCIU8749320 & PCIU9019244 wherein counterfeit goods were found in the contravention of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

(ii) Further, to ascertain the IPR angle and confirm the genuineness of the seized goods, the respective brand owners/ right holders / legal representatives of various brands were contacted and the examination of the samples of the seized goods were carried out by the representatives of brand owners. I find that the rights holders of brands submitted their verification report confirming the goods bearing the brand names of various brands to be **counterfeit**. Thus, these goods are liable for confiscation under the provisions of the Section 111 of the Customs Act, 1962.

(iii) Further, Rule 6 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 is also applicable in the subject goods which is reproduced as under:

"Prohibition or import of goods infringing intellectual property rights. - After the grant of the registration of the notice by the Principal Commissioner or Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.

In view of the report from the authorized persons of the Brand owners of various brands, whose products were found during the course of examination of the imported goods, it was established that these products are counterfeit and are not the original products from these brands. Hence the report from the brand owners signifies that the importer had violated the provisions of Rule 6 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as they had imported counterfeit products and has infringed the intellectual property rights of the brand owners. Accordingly, I hold that these mis-declared goods which were found in place of declared goods, imported in contravention of provisions as discussed above, thus, are liable for absolute confiscation under the provisions of Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962.

20.4 Requirement of BIS Certification for import of 'Toys'

(i) I find that upon examination toys were also found in the **Container No. CULU6057524** and **Container No. IAAU1905575** alongwith the other offending goods. As per policy condition 2 of Chapter 95 of the Customs Tariff there must be mandatory BIS compliance for import of the same into India.

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

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

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

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

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

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

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

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

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

As discussed above, I find that M/s. V D Biztrade LLP had imported toys under the Container No. CULU6057524 & IAAU1905575 by way of mis-declaring the same as "*Bag & Hand Bag*" without mandatory BIS compliance. Therefore, I find that the goods which are toys had been

imported in violation of the provisions of Condition 2 of Chapter 95, being the offending goods, are also liable for absolute confiscation alongwith other offending goods i.e. e-cigarettes and IPR violated goods are liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962.

20.5 There is no ambiguity regarding the fact that the goods were never intended for export to a third country or for transhipment. It is also admitted by the Noticees in their statements admitted that goods were imported for DTA clearance, however, due to DRI's involvement in other cases at that time, they were unable to file the Bill of Entry for DTA clearance. I find that the offenders waited for 04 months however never got chance to clear the goods through DTA due to admitted fact that investigation agency kept watch on the shipments. I also noticed that neither the supplier nor the dummy third country consignee came forward to claim the goods or the noticees failed to submit any documentary evidences explaining as to why the goods lying for long period. I have no doubt that the Importer alongwith other notices just made a fabricated story, since the goods imported into India in the contravention of the provisions as discussed above. However, for greater clarity, it is important to address the confiscation of the imported goods from the transhipment perspective and further clarify that these goods were intended for import and clearance for DTA clearance, had they not been intercepted by the DRI.

(i) I find that Section 54 of Customs Act deals with transhipment of goods without payment of duty. Sub-section (1) contemplates presentation of Bill of Transhipment to the proper officer in the prescribed form whenever any goods are imported into a Customs Station. Proviso to sub-section (1) makes an exception that where the goods are transhipped under an international treaty or bilateral agreement between the Government of India and the Government of a foreign country, a declaration for transhipment is sufficient. Sub-section (2) deals with imports for the purpose of transhipment to any place outside India. Sub-section (2) is the relevant Section in the present case. In terms of Section 54(2) of the Customs Act, 1962, subject to the provisions of Section 11 of the Customs Act, 962, the goods imported into a Customs station, are mentioned in the Arrival Manifest for the transhipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty. Thus, for clearance of goods for transhipment, without payment of duty, may be permitted in following conditions:

- (a) The goods do not fall under the provisions of Section 11 of the Customs Act, 1962
- (b) The goods are imported into a Customs station.
- (c) The goods are mentioned in the Arrival manifest for transhipment to any place outside India.

From the above, I noticed that the Noticees had not complied with the condition mandated for the transhipment as required under Section 54(2) of the Customs Act, 1962. I also noticed that the goods mentioned in the Arrival manifest were not found in the Container. Further, I find that imported goods are prohibited in nature and also founds violation of IPR Rules, 2007 as mentioned above. An attempt was made to clear the goods (cigarettes) by way of smuggling into India with an intent to bypassing such regulations. Thus, the goods are fall under the category of prohibited goods under the provisions of Section 11 of the Customs Act, 1962. Therefore, the goods are rightly liable for confiscation under the provisions of Section 111 of the Customs Act, 1962

(ii) I want to state here that just for the sake of discussion and for clarity regarding confiscability of the goods, I would like to refer a judgment by the Hon'ble CESTAT, MUMBAI in the case of **COMM. OF CUS., AIR CARGO COMPLEX, MUMBAI Versus WORLD WIDE TRAVELS- [2008 (230) E.L.T. 573 (Tri. - Mumbai)]** wherein the Hon'ble Tribunal held that “*Since goods were mis declared in the manifest and the covering Airway Bill, same liable to confiscation - Section 111 ibid*”.

(iii) In light of the above, the Noticee's argument that BIS regulations and prohibitions do not apply to the imported goods since they were intended for re-export to a third country, holds no merit.

21 REMPTION UNDER SECTION 125 OF CUSTOMS ACT 1962 OR OTHERWISE:

21.1 From the above, it is clear that the impugned goods had been improperly imported to the extent that they were mis-declared in respect of description, qty, brand and other material particulars. Further, prohibited goods i.e. e-cigarettes, branded goods etc. were also found concealed alongwith the other offending goods. The said act was done by hiding true nature of the goods by manipulating import documents with the help of foreign supplier. As the impugned goods are found to be liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

“Section 125. Option to pay fine in lieu of confiscation.—
(1) Whenever confiscation of any goods is authorised 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 1/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."

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. In the instant case goods were found totally different from the declared description in all 04 Containers. Accordingly, it is imperative to examine the issue container wise from redemption perspective.

(I) Container No. CULU6057524 and IAAU1905575:

I noticed that Shri Mayur C. Dedhia in his defence submissions shown his willingness to re-export the goods. In respect of these 02 consignments where Bills for re-export has already been filed, an option to redeem the goods on payment of redemption fine can be given to the Noticee for re-export of the impugned goods. This request is being considered besides the fact that bill of entry for home consumption (DTA Bills) have not been filed and there are significant quantities of goods where there is policy restriction for clearance of the goods for home consumption.

(II) Container No. PCIU8749320:

(i) In respect of goods imported under this Container, I noticed that there is 01 item mentioned at Sr No. 01 of Table-I i.e. "**Underwear small Bag (branded)**" which were found in contravention of IPR Rules, 2007. Thus, these goods are falls within the category of prohibited goods under the provisions of Section 111(d) of the Customs Act, 1962. A fundamental requirement in considering requests for re-export is whether the importer has made a truthful declaration at the time of import. In the instant case there has been gross mis-declaration of description, quantity etc. It cannot be the case that an importer indulges in serious fraudulent mis-declaration and on being caught can seek re-export as a matter of right. Thus, total 133000 pcs of "*Underwear small Bag (branded)*" mentioned at sr. no. 1 of Table-I above cannot be released for re-export purpose and liable for absolute confiscation.

(ii) In respect of other offending goods imported under Container No. PCIU8749320, I find that an option to pay the redemption fine can be given to the Noticee for re-export of the goods. This request is being considered besides the fact that bill of entry for home consumption (DTA Bills) have not been filed and there are significant quantities of goods where there is policy restriction for clearance of the goods for home consumption.

(III) Container No. PCIU9019244:

I find that importer at Shri Bhanudas and Shri Navin Arif declared description of the goods as "Leggings", however, upon examination goods

such as e-cigarettes, Airpods, Leggings, Undergarments, Clothes, Wrist Watches of various brands, Slippers, Adaptors (branded), Chargers, Mobile Covers etc. were found in the above container. I find that the goods stuffed in the container found grossly mis-declared found counterfeit in violation of IPR, 2007. Further, prohibited goods i.e. e-cigarettes and toys were found in the said container. A fundamental requirement in considering requests for re-export is whether the importer has made a truthful declaration at the time of import. In the instant case there has been gross mis-declaration of quantity and value in respect of the consignments. It cannot be the case that an importer indulges in serious fraudulent mis-declaration and on being caught can seek re-export as a matter of right. I find that the goods in question are improperly imported and fall in the category of 'prohibited goods', the provisions contained in Chapter XIV of the Customs Act, 1962 come into operation and the subject goods are liable to confiscation apart from other consequences - A bare reading of the provision of Section 125(1) of the Customs Act, 1962 makes it evident that a clear distinction is made between 'prohibited goods' and 'other goods'. It has rightly been pointed out, the latter part of Section 125 obligates the release of confiscated goods (i.e., other than prohibited goods) against redemption fine but, the earlier part of this provision makes no such compulsion as regards the prohibited goods; and it is left to the discretion of the Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation. It is innate in this provision that if the Adjudicating Authority does not choose to give such an option, the result would be of absolute confiscation. As discussed above, the imported goods i.e. e-cigarettes, Toys and counterfeited goods would appropriately constitute to be "prohibited goods", there remains no issue for permitting the release of goods for re-export purpose. Further, in the facts and circumstances of the case, I don't find it appropriate to exercise discretion under section 125 of the Customs Act, 1962 to give the importer an option to redeem the goods i.e. e-cigarettes, Toys and counterfeited goods for re-export purpose on payment of redemption fine. Similarly the goods used for concealment are also liable for absolute confiscation being used for concealment of these prohibited goods.

Apart from the above, it is pertinent mention here that the import of the prohibited goods have taken place after a well hatched conspiracy generating forged/fake import documents by wherein description and other particulars were manipulated. If the consignment got cleared there would have been negative impact on the youth/children of the country who ultimately use the said prohibited goods. I cannot treat the present case like other cases. Hence, the imports made cannot be considered as bona fide and left no scope to take lenient view in the present case for clearance of goods for re-export. In view of the blatant violation of the Customs Act and outright attempted smuggling of prohibited goods along with other offending

goods, I do not consider this case to be appropriate where the goods can be allowed to be redeemed on payment of redemption fine.

22. With regards to Cross Examination sought by Shri Navid Arif Rahmanwala (Noticee No. 3) & Shri Bhanudas Eknath Borse (Noticee No 4).

I find that Shri Navid Arif Rahmanwala (Noticee No. 3) & Shri Bhanudas Eknath Borse (Noticee No 4) during their defence submissions dated 23.11.2024 and during their personal hearing 25.11.2024 demanded cross examination of the officers involved in the investigation by their advocate. Further, they stated that after the completion of cross-examination of above witnesses, Shri Navid Arif Rahmanwala & Shri Bhanudas Eknath Borse will decide the further course of action of calling other witness for examination such as panch witness, seizing officer, the person from suvika Associates etc.

After careful examination of the request for cross examination made by Noticee 3 & 4, I notice that no specific reason or valid grounds for seeking the cross-examination has been given. There is no merit in the Noticee's request for cross-examination of individuals whose statements were neither recorded nor relied upon in this case. I find it noting but a mere tactic to delay the adjudication proceedings. I also find that the allegations against the Noticee in the subject show cause notice are not based on the statement of officers who were merely performing their duties as government employees. I find that object of empowering officer of Customs Department to record evidence under impugned Section 108 ibid is to collect information of contravention of the provisions of Customs Act, 1962 so as to enable collection of evidence of proof of contravention of provisions of Act for initiating proceedings for further action of confiscation of contraband or imposition of penalty under Act etc. Impugned statements intended for setting law in motion for officers acting under Act to investigate and collect evidence for issuing show cause notice whether under Section 28 ibid or under Section 124 ibid or under other provisions of Customs Act, 1962. With regard to cross-examination of the officers, I decline to accord permission for the same since the officers have discharged their statutory duties only and their statements are not relied upon in the case. In this connection, the following judicial and quasi judicial rulings may be referred, *Visal Lubtech Corp v. Additional Commissioner of Customs, Coimbatore [2016 (342) E.L.T. 201 (Mad)]*; *N S Mahesh v. Commissioner of Customs Cochin [2016 (331) E.L.T. 402 (Ker)]* and *Jagdish Shankar Trivedi v. Commissioner of Customs Kanpur [2006 (194) E.L.T. 290 (T-Del)]*.

23. I find it appropriate to examine and discuss the statements recorded during the investigation under Section 108 of the Customs Act, 1962. I find that no one has retracted their statement and facts emerged from the statements are crucial to establish the charges levelled against the Noticees. Accordingly, I am going to discuss the same here as follows:

- i. I find that **Shri Mayur Chandrakant Dedhia (Shri Mayur)** and his son Shri Vihang Dedhia are the partner in M/s. V. D. Biztrade LLP, however, Shri Mayur looks after all the works related to the company. I find from the statement of him that Shri Mayur had handed over his IEC (of M/s. VD Biztrade LLP) to Shri Rajesh Tulsidas Nakhua (Shri Rajesh) and Shri Rajesh handled all the work related to import & export. Shri Rajesh Tulsidas Nakhua used to give him (Shri Mayur) Rs. 25,000/- per consignment in cash. I also noticed that Shri Mayur stated that E-cigarettes, Branded Watches, Airpods (Apple), Undergarments, Chargers and other trading goods which were found in container No. PCIU9019244 are actually belongs to Shri Bhanudas Eknath Borse (Shri Bhanudas) and Shri Navid Arif Rehmanwala (Shri Navid Arif). I also noticed from the statement of Shri Mayur that Bill of Entry No. 1000091 dated 03.01.2023 (for third country export) was filed against the said container by Shri Rajesh Tulsidas Nakhu and Shri Rajesh told about finding e-cigarettes in the said container on 06.01.2023. The fact which is undisputed that Shri Mayur and Shri Rajesh known since last 10 years; hence, Shri Mayur's claims regarding ignorance about import of e-cigarettes and other goods on his IEC, appear to be false. I also notice that Shri Mayur handed over his others firms work to Shri Rajesh in lieu of monetary benefit.
- ii. Shri **Rajesh Tulsidas Nakhua**, Authorised representative of M/s. Pushpanjali Logistics in his statement dated 11.01.2023 admitted that he handled all the work related to import & export as Shri Mayur C. Dedhia, however, he was not aware about import of e-cigarettes in the shipment. On the other hand, in the said statement Shri Rajesh admitted that he was aware that various trading items like watches, leggings, undergarments, slippers, mobile accessories etc. were imported in the said consignment and he was approached to file bill of entry for third country export. Further, I also noticed that Shri Rajesh T. Nakhua admitted in his statement that he was aware about the fact that trading item were available in the Container No. PCIU9019244 which had been imported by mis- declaring the quantity thereof to avoid the higher duty applicable thereon. Despite knowing this fact, he proceeded to file the bill of entry No. 1000091 dated 03.01.2023 for third country export.
- iii. Shri Bhanudas Eknath Borse accepted that Shri Rajesh Nakhua arranged the IEC of M/s. VD Biztrade LLP and they do not know the IEC Holder. The container No. PCIU9019244 under Bill of Lading No. HUUF20066600 dated 22.08.2022 belongs to them and they are the actual importers of this consignment. Shri Bhanudas revealed that Shri Navid Arif Rehmanwala placed order and made payment for this consignment and booked the cargo through Mr. David.

iv. 22. Shri Bhanudas Eknath Borse also admitted that goods imported under container No. PCIU8749320 (BL No. HUSG20992000 dated 22.08.2022) were also imported by them and on the direction of Shri Rajesh Nakhua they mis-declared the description of the goods as "*Mannequin Heads*" to avoid Customs duty and any other restrictions. Shri Bhanudas also admitted that they (he and Shri Rajesh Nakhua) planned to declare only one commodity import of which is permitted and to clear the rest items without declaring the same as duty on undergarment is per piece which is on higher side.

v. I notice that Shri Bhanudas contacted to Shri Rajesh and provided packing list and invoice for filing bill of entry for third country export for **Container No. PCIU9019244**. Shri Rajesh during the investigation confirmed the claim of Shri Mayur regarding ownership of the container No. PCIU9019244 that the cargo pertains to Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala. Shri Rajesh confirmed that Shri Navid Arif is a close friend of Shri Bhanudas and he met him with Shri Bhanudas.

vi. I also find from the statement of Shri Rajesh Nakhua wherein he admitted that **the cargo was imported for clearance in DTA**, however, at that time many investigation agencies were holding the consignments in the APSEZ and examining the goods, therefore, Shri Bhanudas Eknath Borse did not approach anyone for filing of bill of entry. He also admitted that as it was not possible for importer to clear the consignment with applicable duty therefore he (Shri Bhanudas) approached him for filing of bill of entry for third country export.

vii. Shri Bhanudas in his statement dated 11.01.2023 admitted that said consignment of container No. PCIU9019244 was imported by him, however, he had no idea that there were e-cigarettes in this consignment. He admitted that Mr. Navid Rehmanwala is his childhood friend and with the help of Mr. David (China based trader) they imported the said goods. Shri Rajesh Nakhua advised them to clear the cargo through Mundra SEZ with the proposal that that he will handle all works related to clearance of the same. He admitted that Shri Rajesh was aware about the fact regarding mis-declaration of the goods and Shri Rajesh suggested them to arrange BL declaring the goods as Leggings. I noticed that Shri Rajesh Nakhua quoted 1 Lakh Rupees per container and in return he assured Shri Bhanudas to take care of the clearance work.

viii. Shri Bhanudas requested Shri Rajesh Nakhua to clear their cargo imported under container No. PCIU9019244 and Shri Rajesh Nakhua arranged IEC of M/s. VD Biztrade. **Thus, I find that Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala are the actual**

benefical owner of the goods imported under container No. PCIU9019244.

- ix. Shri Bhanudas in his statement claimed that they met the IEC Holder for the first time when they got summoned, however, forensic examination of Shri Mayur's mobile number revealed that he was in contact with Shri Mayur (IEC holder). Thus, I have no doubt they are in contact well before the case made in the instant case.
- x. Shri Bhanudas admitted that they have placed orders for two containers declaring the commodity as Leggings and Mannequin Heads; that Mannequin Heads are in container No. PCIU8749320 under Bill of lading No. HUSG20992000 dated 22.08.2022. He admitted that they were planned to import the said cargo by mis-declaring the same to avoid duty and any other restrictions. I find that description and other particulars were declared on the direction of Shri Rajesh in the same manner as declared under Container wherein e-cigarettes were found.
- xi. I also noticed that Shri Bhanudas and **Shri Navid Arif with the help of Shri Rajesh had imported the goods with clear intent for clearance of home consumption, however, they got information that** from the month of August many Agencies are active at Mundra Port therefore at that time bills of entry were not filed. Ultimately, they decided to file bill of entry for third country re-export to avoid involvement any investigation matter.
- xii. Shri Navid Arif Rehmanwala in his statement dated 11.01.2023 admitted that Mr. David (China based trader) offered them to provide goods at 30% advance payment and rest of the amount was to be given to him in 3 months' time so in June 2022 they decided to import different items and contacted David. The advance payment was made in cash to a known person of Mr. David, however, Shri Navid had not provided any contact details of said person or whereabouts.
- xiii. I also noticed from the statements of Shri Bhanudas and Shri Navid Arif recorded on 03/04.08.2023 wherein they admitted that they had instructed Mr David to communicate the overseas supplier to declare the goods as mannenquin heads in order to escape from the burden of Customs duties and restrictions on imports. They also admitted that they are the actual owner of the goods imported vide two containers viz. PCIU 8749320 and PCIU 9019244 by way of mis-declaration which were seized vide panchnama dated 08.02.2023. He also admitted that they requested Shri Mayur Dedhia to allow them to use his IEC against payment of Rs. 25,000/- per container. However, in his previous statement recorded in Jan, 2023, he stated that he was not aware who was the owner of the IEC and he only met Shri Mayur during recording

of statements. In this statement is accepted that amount of Rs. 2.5 was fixed for clearance of the said container, however, the same was not paid due to interception of the containers by DRI.

- xiv. Shri Navid Arif in his statements dated 03/04.08.2023 admitted that he received the documents viz. invoice, bill of lading from Mr. David in China via whats-app and he deleted all the whats-app chat as it consisted of mention of prohibited items in the import consignment and the transcripts of chats were incriminating towards him. I notice that Shri Navid Arif was aware about prohibition on the import of counterfeit goods for import or export.
- xv. Shri Navid Arif clearly admitted that he and his friend Shri Bhanudas Eknath Borse are partners of 50%-50%.
- xvi. Shri Mayur in his statement dated 07/08.08.2023 admitted that goods imported under Container No. PCIU 8749320 & PCIU 9019244 were imported by Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala. He also accepted that he lent his IEC to Shri Bhanudas and Shri Navid Arif on the request of Shri Kishor Bhanushali. Shri Kishor Bhanushali also offered that these persons will pay Rs. 25,000/- per container for using his IEC. He accepted his offer for financial benefits and allowed to use his IEC.
- xvii. I observed that Shri Kishor Bhanushali assured Shri Mayur and taken responsibility that only permissible goods will be imported. However, I observe that in his previous statements Shri Mayur stated that he lent his IEC on the request of Shri Rajesh T. Nakhua. With respect to this fact, he stated during the investigation that :
“Shri Kishor Bhanushali gave him the offer to allow the IEC of his firm to be used by Shri Bhanudas Borse and Navid Rehmanwala; that he know Shri Kishor Bhanushali since last 8 to 10 years and that he is engaged in the Customs clearance work; that he know Shri Rajesh Nakhua since last few months only, when he met him in their office i.e. M/s. Om Logistics in Ghatkopar, when the present consignment of VD Biztrade LLP was put on hold. He clarified that in his earlier statement he had stated that he knows Shri Rajesh Nakhua since last 10 years, but the fact is that he knows Shri Kishor Bhanushali since last 10 years and as per best of his knowledge Shri Kishor Bhanushali and Rajesh Nakhua are partners. Further, he had also stated that the work related to import and export in his another firm i.e. M/s. 24/7 Media India was being looked after by Shri Rajesh Nakhua, but, in fact he was looking after the import & export work of the said firm.”
- xviii. Shri Mayur admitted that the following 02 Containers imported by them:

| Sr. No. | Bill of Lading No.. | Container No. | Date of panchnama | Goods declared | Goods found |
|---------|---------------------------------|---------------|-------------------|----------------|--|
| 1 | A33CX49553 dated 30.08.2022 | IAAU 1905575 | 08/09.01.2023 | Bag & Hand Bag | Undergarments, Toys, Artificial Jewellery, Electronics goods |
| 2 | CULVSHK2240188 dated 23.08.2022 | CULU 6057524 | 08.01.2023 | Bag & Hand Bag | Toys, Massagers, LED Projectors, Helmets |

xix. Shri Mayur admitted that consignments had arrived in the month of September, 2022, but, as many agencies were active in Mundra and various import consignments were being examined, **Kishor Bhanushali** told him to wait till the situation becomes favorable. Therefore, in order to avoid payment of heavy Customs duty and to escape from various restrictions, he had not filed Bill of Entry for the 02 containers imported by him. However, on realization that they are not able to clear the goods, they decided to file Bill of Entry for re-export. Accordingly, on the advice of Shri Kishor Bhanushali, he had instructed Kishor Bhanushali to file documents to re-export the goods

xx. Shri Kishore Bhanushali (proprietor of M/s. OM Logistics Pvt) in his statement dated 07.12.2023 admitted that he has known Shri Rajesh Nakhua for last 25 years and also accepted that he know Shri Mayur Dedhia for last 7-8 years. I observed from his statement that he introduced Shri Mayur Dedhia to Shri Rajesh Nakhua for work at Mundra after Covid Lockdown.

xxi. I find that Shri Rajesh, Shri Navid Arif, Shri Bhanudas, Shri Mayur (IEC Holder), Shri Rajesh Nakhua and Shri Kishor Bhanushali in connivance with each other attempted to smuggle prohibited goods such as e-cigarettes and other consumer goods, which are counterfeit and prohibited to be imported into the country.

24. I find that core issues of the case have been discussed in the foregoing paras in detail. Now, I proceed to examine the **roles** of the various noticees and **liability** in this elaborate scheme of mis-declaration and smuggling of the imported goods with intent to defraud the government exchequer. Accordingly, I proceed with the discussion on the remaining issues.

24.1 ROLE AND LIABILITY OF PENALTY OF SHRI RAJESH TULSIDAS NAKHUA UNDER 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

- i. I find that Shri Rajesh T. Nakhua and Shri Kishor Bhanushali were acquainted with each other, and both had helped each other at time to time. This fact also admitted by Shri Kishore in his statement also. From facts emerged from investigation, I have no doubt that Shri Rajesh Tulsidas Nakhua in connivance with Shri Kishore Bhanushali managed to convince Shri Mayur Dedhia (IEC holder of M/s. VD Biztrade LLP) to lend his IEC to Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse for consideration of Rs.25,000/.
- i. I find that Shri Rajesh and Shri Kishore taken responsibility to clear the consignments of prohibited goods and other offending goods from Mundra Port. Shri Rajesh also guided Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse to mis-declare the goods in import documents so that the Customs duty and policy restrictions may be avoided. This fact already established from the various statements as discussed in previous paras. This act of Shri Rajesh T. Nakhua directly involve him in the mis-declaration and import of prohibited goods which made him liable for penal action under the provisions of the Customs Act, 1962.
- ii. It is now undisputed fact that on the direction/assurance of Shri Rajesh, the consignments were imported at the Mundra port and bill of entry for re-export were filed with Shri Rajesh's help to prevent any investigation problems. I believe that if the consignment had not been intercepted by the DRI, the offenders would have succeeded to clear the goods for local use.
- iii. I find that Shri Rajesh was actively involved in helping clear the imported goods in exchange for money from Shri Mayur, Shri Bhanudas, and Shri Navid Arif. It is clear that Shri Rajesh played a key role in planning, monitoring, organizing and managing of all the aspects of operations with the mala fide intention of clearing e-cigarettes & other branded goods which were prohibited to be imported.
- iv. I also find that Shri Rajesh was aware about the fact that prohibited goods i.e. E-Cigarettes and Toys were being imported in the subject consignments and branded goods were also imported in the contravention of the IPR Rules were also imported through these container. Despite knowing the fact that goods are prohibited in nature, he dealt with the shipments and taken responsibility to clear it from Mundra Port. This directly concerned himself dealing with the shipments of offending goods.
- v. Shri Mayur (IEC holder) in his statement accepted that he had handed over his IEC (of M/s. VD Biztrade LLP) to Shri Rajesh Tulsidas Nakhua

who handled all the work related to import & export in the name of this firm. Shri Rajesh Tulsidas Nakhua used to give him (Shri Mayur) Rs. 25,000/- per consignment in cash. Shri Rajesh himself in his statement dated 11.01.2023 admitted that he handled all the work related to import & export of Shri Mayur's firm. He also admitted that he was aware that various trading items like watches, leggings, undergarments, slippers, mobile accessories etc. were imported in the said consignment and he was approached to file bill of entry for third country export.

- vi. I find Shri Rajesh knew that item were mis-declared in the Container No. PCIU9019244 to avoid duty and policy restrictions. Yet he connived with the offenders and submitted incorrect declaration under import documents and proceeded to file the bill of entry No. 1000091 dated 03.01.2023 for third country export.
- vii. Shri Bhanudas Eknath Borse admitted that Shri Rajesh Nakhua arranged the IEC of M/s. VD Biztrade LLP. Further, I also find from the statement of Shri Bhanudas that goods under container No. PCIU8749320 were also imported on the direction of Shri Rajesh Nakhua and on the direction of Shri Rajesh goods were mis-declared in description as "*Mannequin Heads*" to avoid Customs duty and any other restrictions.
- viii. I find that Shri Rajesh Nakhua alongwith other offenders planned to declared only one commodity in the import documents and were going to clear the prohibited items without declaring in the Bills of Entry.
- ix. From Shri Rajesh's statement, it is clear that the goods were originally intended for DTA clearance. However, due to DRI's involvement in other cases at that time, they were unable to file the Bill of Entry for DTA clearance. As a result, they decided to file the Bill of Entry for third-country re-export to avoid any investigation issues. Thus, there is no scope left to admit that Shri Rajesh was part of a conspiracy hatched by other associates to import mis-declared/prohibited/undervalued goods.
- x. In view of above, I find that various persons in their respective statements recorded under Section 108 of the Act, have confessed that Shri Rajesh T Nakhua was well aware about mis-declaration in the import consignment pertaining to these impugned 04 containers imported by Shri Mayur, Shri Bhanudas, and Shri Navid Arif.
- xi. I find that Shri Rajesh T Nakhua had willfully and deliberately indulged into conspiracy of clearance prohibited goods and other offending goods by way of mis-declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs

Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Rajesh T Nakhua has rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Rajesh T Nakhua is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. With regard to the penalty under Section 112(a)(ii) for the dutiable items found in these containers, I have observed that while various items were found, the Investigation Report/Show Cause Notice does not specify the basis for calculating the amount of duty sought to be evaded. In the absence of such details, I am compelled to impose the minimum penalty as prescribed under Section 112(a)(ii) of the Customs Act, 1962. As I find that duty sought to be evaded cannot be quantified in the absence of such details, hence, I will keep this fact in my observation while imposing penalty under this provisions.

- xii. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.
- xiii. I find that Shri Rajesh T Nakhua filed Bills of Entry for third country export with the incorrect declaration and forged documents in name of M/s. VD Biztrade LLP, despite knowing the fact the goods were never meant to re-export and were actually imported for DTA Clearance. He has also filed incorrect declarations in Bills of Entry for these consignments in return of monetary consideration. He has knowingly and intentionally made/signed/used and/or caused to be made/signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it establishes that Shri Rajesh T Nakhua is also liable to penalty under **Section 114AA** of the Customs Act, 1962.
- xiv. As regards the penalty under Section 117 proposed on Shri Rajesh T Nakhua, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against the firm already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against Shri Rajesh T Nakhua.

24.2 ROLE AND LIABILITY OF PENALTY ON SHRI NAVID ARIF REHMANWALA/ SHRI BHANUDAS EKNATH BORSE UNDER 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

i. First of all, I find/hold based on the discussion made in foregoing paras and admitted during recording of statements of various persons involved in the present case that **Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse are the actual owner/beneficial owner of the goods imported vide two containers viz. PCIU8749320 and PCIU 9019244.** Shri Mayur in his statement dated 07/08.08.2023 admitted that goods imported under Container No. PCIU 8749320 & PCIU 9019244 were imported by Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala. Thus, there is no doubt on the fact that the above said container were imported by them.

ii. I observed that Shri **Bhanudas and Shri Navid Arif** in their defence submissions questions the investigation done by DRI officers stating that DRI is not proper officers.

In this regard, without going into any detailed discussion, I find that issue of proper officer has already been decided by the Hon'ble Apex Court vide order dated 7 November 2024 in Review Petition No.400 of 2021 in the case of 'Commissioner of Customs Vs. Canon India Private T.imited' (Civil Appeal No.1827 of 2018). Thus, I do not find any merit in the Importer's contention.

iii. The Noticees contended that goods warehoused in the SEZ, hence, cannot be considered as having been imported into India, even if mis-declaration allegedly justified. Therefore, no case for violation of any of the provisions of the Customs Act, 1962 can be said to be made out against the noticees.

I completely disagree with the noticee's claim because if someone uses the law for their own benefit according to their wishes, the law would lose its meaning. In such cases, if the culprits' claims are accepted, then anyone could illegally import goods and, if caught, simply say that the goods were never meant to be imported into India. Such types of imports cannot be considered as imports made with good intentions. This kind of import cannot be logically or lawfully allowed. Further, I would like to say that during the investigation, it became clearly established, and the noticees also admitted that the goods were indeed imported for DTA clearance. However, due to the fear of DRI seizing the consignments, the goods were not cleared for 3-4 months.

iv. I also notice that noticees have raised questions about the investigation through their defense submissions, but they have not provided any justification regarding the presence of prohibited goods in the

containers they imported, which are banned from being imported into India. During their statements, they also admitted that although many undeclared goods were imported, only one item was declared at the time of filing the bill of entry to avoid customs duty and to bypass the policy conditions.

- v. The noticees have also stated that the seizure of E-cigarettes is outside the purview of the Customs Act, 1962. However, the importer's contention for such goods, which are banned from being imported into India, is not logical. If such arguments were accepted, any culprit could import banned goods through an SEZ and, when the opportunity arises, clear them for local use. If, through the hard work of investigative agencies and based on their information, such illegal imports are caught, the culprits cannot simply argue that the goods were imported through an SEZ and, therefore, cannot be seized. Such arguments are detrimental to the country's economic, social, and security interests and should not be allowed.
- vi. I find that Shri Navid Arif with the association of Shri Bhanudas Eknath Borse had imported the consignment of e-cigarettes and counterfeit goods of various brands viz apple, G shock, Armani, Rolex, Casio, Fossil, Invicta, Gucci, Edifice, Nike, Puma, Adidas, etc. under Container No. PCIU8749320.
- vii. Shri Navid Arif and Shri Bhanudas with the help of Shri Rajesh Nakhua decided to import prohibited goods from Mundra Port and for this task they arranged IEC of M/s. VD Biztrade with the help of Shri Rajesh.
- viii. I find that they had imported/placed orders for various branded counterfeit goods such as Undergarments, Mobile Accessories, Sleepers and other mobile accessories; they declared only one item Mannequin Heads and Leggings. Thus, I have no doubt that the act was done by Shri Navid Arif and Shri Bhanudas with the clear intention to avoid Customs Duty and other policy restrictions on these imported goods.
- ix. Shri Bhanudas was in touch with supplier in China Mr. David and the IEC holder Shri Mayur Chandrakant Dedhia. I noticed that during first statement, Shri Bhanudas stated that he don't know the IEC Holder, however, from the mobile chats, it is evident that they both were in contact. In fact, all the members involved in the said racket were known to each other and imported prohibited goods with the clear intention to clear it for DTA Clearance in contravention of IPR Rules, Prohibition in forced on import of e-cigarettes by virtue of Electronic Cigarettes Act, 2019 and duty applicable on the other offending goods.

- x. From the statement dt. 03/04.08.2023 of Shri Bhanudas it is evident that they (Shri Navid Arif and Shri Bhanudas) requested Shri Mayur Dedhia to allow them to use his IEC against payment of Rs. 25,000/- per container. However, in his previous statement recorded in Jan, 2023, he stated that he was not aware who was the owner of the IEC and he only met Shri Mayur during recording of statements. Further, he contended that he is not aware about the e-cigarettes in their container. Thus, I don't believe their claim that they were unaware of the prohibited goods in their container which was under their ownership.
- xi. Shri Navid Arif in his statements dated 03/04.08.2023 admitted that he received the documents viz. invoice, bill of lading from Mr. David in China via whats-app and he deleted all the whats-app chat as it consisted of mention of prohibited items in the import consignment and the transcripts of chats were incriminating towards him. Based on this, I am certain they knew about the ban on importing counterfeit goods and e-cigarettes. They intentionally withheld important evidence for the investigation and deleted it, thinking that by doing so, they could shift the responsibility to the foreign supplier. Such type of acts cannot be considered as bonafide and should not be overlooked.
- xii. I find that Shri Navid Arif and his friend Shri Bhanudas Eknath Borse were partners of 50%-50%.
- xiii. I find that Shri Navid Arif Rehmanwala and Shri Bhanudas Eknath Borse with the active guidance and involvement of Shri Rajesh Nakhua mis-declared the goods in import documents so that the Customs duty and policy restrictions may be avoided. They give responsibility to clear the consignments of prohibited goods and other offending goods from Mundra Port and offered monetary benefit. Thus, I have no doubt that Shri Navid Arif and Shri Bhanudas with the help of Shri Rajesh Nakhua decided to import prohibited goods from Mundra Port and for this task they arranged IEC of M/s. VD Biztrade with the help of Shri Rajesh and Shri Mayur (IEC holder).
- xiv. From Shri Rajesh's statement, it is clear that the goods were originally intended for DTA clearance. However, due to DRI's involvement in other cases at that time, they were unable to file the Bill of Entry for DTA clearance. As a result, they decided to file the Bill of Entry for third-country re-export to avoid any investigation issues. Thus, there is no scope left to admit that Shri Rajesh was part of a conspiracy hatched by other associates to import mis-declared/prohibited/undervalued goods.

xv. Shri Bhanudas Eknath Borse also admitted that goods imported under container No. PCIU8749320 (BL No. HUSG20992000 dated 22.08.2022) imported by them on the direction of Shri Rajesh Nakhua by mis-declaring the description of the goods as "*Mannequin Heads*" to avoid Customs duty and any other restrictions. Shri Bhanudas also admitted that they (he and Shri Rajesh Nakhua) planned to declare only one commodity import of which is permitted and to clear the rest items without declaring the same as duty on undergarment is per piece which is on higher side.

xvi. From the above, I have no doubt that Shri Bhanudas and Shri Navid Arif imported goods under these two containers with the intent for DTA clearance. However, fearing the shipment would be held by DRI, they withheld the clearance. When it became impossible to clear the goods for DTA, they filed bills of entry for re-export using forged documents.

xvii. Shri Bhanudas in his statement dated 11.01.2023 admitted that said consignment of container No. PCIU9019244 was imported by him, however, he had no idea that there were e-cigarettes in this consignment. He admitted that Mr. Navid Rehmanwala is his childhood friend and with the help of Mr. David (China based trader) they imported the said goods. Shri Rajesh Nakhua advised them to clear the cargo through Mundra SEZ with the proposal that he will handle all works related to clearance of the same. He admitted that Shri Rajesh was aware about the fact regarding mis-declaration of the goods and Shri Rajesh suggested them to arrange BL declaring the goods as Leggings. I noticed that Shri Rajesh Nakhua quoted 1 Lakh Rupees per container and in return he assured Shri Bhanudas to take care of the clearance work.

xviii. From the above, it is evident that Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala had had willfully and deliberately imported prohibited goods i.e. e-cigarettes, toys and other offending goods in guise of freely importable goods by way of mis-declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, they have made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala have rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Rajesh T Nakhua is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. With regard to the penalty under Section 112(a) (ii) for the dutiable items found in these containers, I have observed that while various items were found, the Investigation Report/Show

Cause Notice does not specify the basis for calculating the amount of duty sought to be evaded. In the absence of such details, I am compelled to impose the minimum penalty as prescribed under Section 112(a)(ii) of the Customs Act, 1962. As I find that duty sought to be evaded cannot be quantified in the absence of such details, hence, I will keep this fact in my observation while imposing penalty under this provisions. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

xix. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. I find that in the present case, Bills of Entry have been filed on the direction of them (Shri Bhanudas and Shri Navid Arif) by manipulating documents which were false and incorrect. They had also used incorrect documents for filing of Bill of Entry for the present shipment with false declarations. They presented documents falsifying the true identity of the goods, before the Customs authorities for import of the goods with intent to escape from the stringent import conditions and from the payment of appropriate Customs duties. Thus, they had knowingly and intentionally made a declaration under the Bill of Entry filed under Section 46 of the Customs Act 1962, which is false and incorrect. Hence, they have committed offences of the nature as described under the Section 114AA of the Customs Act 1962. The said documents were used for import of impugned prohibited goods by way of mis-declaration/ concealment etc. Investigation has revealed that Shri Bhanudas and Shri Navid Arif had knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, it is beyond doubt that Shri Bhanudas and Shri Navid Arif are liable to penalty under Section 114AA of the Customs Act, 1962.

xx. As regards the penalty under Section 117 proposed on Shri Bhanudas and Shri Navid Arif, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against the firm already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against Shri Bhanudas and Shri Navid Arif.

24.3 ROLE AND LIABILITY OF PENALTY ON SHRI MAYUR CHANDRAKANT DEDHIA and M/s. VD Biztrade LLP UNDER 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

- i. I find that Shri Mayur Chandrakant Dedhia is the Partner cum IEC owner of M/s. VD Biztrade LLP. He also known to Shri Rajesh Nakhua and handed over his IEC to Shri Rajesh Tulsidas Nakhua and Shri Kishor Bhanushali, for personal gain. It is beyond doubt and even admitted by Shri Mayur himself in his statements that he lent his IEC to be used for importing prohibited and counterfeit goods for a consideration of Rs. 25,000 per container.
- ii. During forensic examination of the mobile phone of Shri Mayur Dedhia, it is revealed that he was in direct contact of Chinese Supplier identified as Mr. Can (9779823XXXX). Further, from the said forensic examination, it was also revealed that Shri Mayur was also in contact Shri Bhanudas Eknath Borse (+9197692XXXX) via WhatsApp, with Shri Rajesh Tulsidas Nakhua (+9198700XXXX), Shri Kishor Bhanushali (+9198674XXXX).
- iii. I have already discussed the fact that the M/s. VD Biztrade LLP imported goods under two Container Nos. CULU6057524 and IAAU1905575 with the clear intention for DTA clearance. I have no doubt that in search of an opportunity; the containers remained at Mundra Port for three/four months. When they realized that clearing the containers was becoming difficult, bills for third-country export were filed by them. This fact is also confirmed from Shri Rajesh's statement wherein he admitted that that the goods were originally intended for DTA clearance, however, due to DRI's involvement in other cases at that time, they were unable to file the Bill of Entry for DTA clearance.
- iv. I noticed that Shri Mayur confirmed receiving 15 plus 10 in his bank to Shri Kishor Bhanushali via whatsapp chat dated "05-04-2023 / 05:21:21" which in verbatim is as:- "*Bhai rcevd in Bank 15 and 10 in afternoon*".
- v. From the statement dt. 07/08.08.2023 of Shri Mayur it is clear that Shri Mayur lent his IEC to Shri Bhanudas and Shri Navid Arif on the request of Shri Kishor Bhanushali and Shri Kishor Bhanushali fixed the deal on payment of Rs. 25,000/- per container for using his IEC to Shri Mayur. Shri Mayur admitted that he knew Kishor Bhanushali since last 8 to 10 years.

vi. I observed that Shri Mayur in his previous statements dated 10/11.01.2023 stated that he lent his IEC to Shri Rajesh T. Nakhua for import of goods, however, in his statements dated 07/08.08.2023 Shri Mayur admitted that Shri Kishore Bhanushali offered him to allow the IEC to be used by Shri Bhanudas and Shri Navid. He knew Shri Rajesh Nakhua since few months only, and he met him in their office i.e. M/s. OM Logistics in Ghatkopar.

vii. I find that Shri Mayur with the association of Shri Kishore Bhanushali had imported the consignment of counterfeit goods of various brands which were prohibited for import. Shri Mayur with the help of Kishore Bhanushali decided to import prohibited goods from Mundra Port.

viii. I find that they had imported/placed orders for various branded counterfeit goods such as Undergarments, Mobile Accessories, toys, and other mobile accessories; they declared only one item "*Bags and Hand Bags*". Thus, I have no doubt that the act was done by Shri Mayur with the clear intention to avoid Customs Duty and other policy restrictions on these imported goods.

ix. Shri Mayur was in touch with Chinese Supplier identified as Mr. Can (9779823XXXX) and the other concerned persons Shri Bhanudas, Shri Navid, Shri Kishore Bhanushali and Shri Rajesh Nakhua. I noticed that during first statement, Shri Bhanudas stated that he don't know the IEC Holder, however, from the mobile chats, it is evident that they both were in contact. In fact, all the members involved in the said racket were known to each other and imported prohibited goods with the clear intention to clear it for DTA Clearance in contravention of IPR Rules, Prohibition in forced on import of e-cigarettes by virtue of Electronic Cigarettes Act, 2019, prohibition on toys and duty applicable on the other offending goods.

x. From the above, I have no doubt that Shri Mayur imported goods under these two containers Nos. CULU6057524 & IAAU1905575 with the intent for DTA clearance. However, fearing the shipment would be held by DRI, they withheld the clearance. When it became impossible to clear the goods for DTA, they filed bills of entry for re-export using forged documents.

xi. From the above, it is evident that the Importer Shri Mayur Chandrakant Dedhia through his firm M/s. VD Biztrade LLP had willfully and deliberately imported prohibited goods i.e. toys and other offending goods in guise of freely importable goods by way of mis-declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and

rules made there under and thus, they have made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Mayur Chandrakant Dedhia have rendered himself and his partnership firm liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Rajesh T Nakhua is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. With regard to the penalty under Section 112(a)(ii) for the dutiable items found in these containers, I have observed that while various items were found, the Investigation Report/Show Cause Notice does not specify the basis for calculating the amount of duty sought to be evaded. In the absence of such details, I am compelled to impose the minimum penalty as prescribed under Section 112(a)(ii) of the Customs Act, 1962. As I find that duty sought to be evaded cannot be quantified in the absence of such details, hence, I will keep this fact in my observation while imposing penalty under this provisions.

- xii. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.
- xiii. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. I find that in the present case, Bills of Entry have been filed by manipulating documents which were false and incorrect. They had also used incorrect documents for filing of Bill of Entry for the present shipment with false declarations. They presented documents falsifying the true identity of the goods, before the Customs authorities for import of the goods with intent to escape from the stringent import conditions and from the payment of appropriate Customs duties. Thus, they had knowingly and intentionally made a declaration under the Bill of Entry filed under Section 46 of the Customs Act 1962, which is false and incorrect. Hence, they have committed offences of the nature as described under the Section 114AA of the Customs Act 1962. The said documents were used for import of impugned prohibited goods by way of mis-declaration/ concealment etc. Investigation has revealed that Shri Mayur Chandrakant Dedhia had knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, it is beyond doubt that Shri Mayur Chandrakant Dedhia and his partnership firm are liable to penalty under Section 114AA of the Customs Act, 1962.

xiv. As regards the penalty under Section 117 proposed, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against the firm already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appear to be warranted in the subject case against Shri Mayur Chandrakant Dedhia and his partnership firm.

24.4 ROLE AND LIABILITY OF PENALTY ON SHRI KISHOR BHANUSHALI, OWNER OF M/S. OM LOGISTICS UNDER 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

ii. I noticed that Shri Kishor Bhanushali did not turn up for statements in response of Summons dated 30.10.2023; 08.11.2023 and 24.11.2023 which were issued to him. I find that Summons were issued to him by the investigating agency, however, he had given no heed to the summons and opted for not responding to the same and deliberately avoided his appearance. This act of his is in the contravention of the provisions of Section 108(3) of the Customs Act, 1962. I noticed that Shri Kishor Bhanushali appeared for statement before the investigation agency at the last stage of investigation on 07.12.2023.

iii. I find that Shri Kishor Bhanushali and Shri Rajesh T. Nakhua were acquainted with each other, and both had helped each other at time to time. This fact also admitted by Shri Kishore in his statement also. From facts emerged from investigation, I have no doubt that Shri Kishore Bhanushali in connivance with Shri Rajesh Tulsidas Nakhua managed to convince Shri Mayur Dedhia (IEC holder of M/s. VD Biztrade LLP) to lend his IEC to Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse for consideration of Rs.25,000/. Therefore, I have no doubt that both were aware of the complete information regarding the imported shipments in the name of M/s. VD Biatrade LLP under these 04 Containers.

iv. I find that Shri Kihosre Bhanushali used to receive money in cash or in account of M/s. Om Logistics from Shri Rajesh T. Nakhua and subsequently had made payments towards the container handling charges and warehousing charges in respect of various consignments cleared by various clients of Shri Rajesh T Nakhua previously. It is admitted by Shri Kihosre Bhanushali that he was facilitator of Shri Rajesh T. Nakhua

- v. Shri Kishore Bhanushali admitted that he introduced Shri Mayur Dedhia with Shri Rajesh T. Nakhua. Shri Kishore convinced Shri Mayur to lend his IEC to be used by Shri Bhanudas.
- vi. I find that Shri Kishore Bhanushali Taken responsibility to clear the consignments of prohibited goods and other offending goods from Mundra Port. I have no doubt that Shri Kishore guided the importers to mis-declare the goods in import documents so that the Customs duty and policy restrictions may be avoided. It is now undisputed that on the direction/assurance of Shri Kishore Bhanushali, the consignments were imported at the Mundra port and bill of entry for re-export were filed with the help of Shri Kishore Bhanushali to prevent any investigation problems. I believe that if the consignment had not been intercepted by the DRI, the offenders would have succeeded to clear the goods through DTA. This act of Shri Kishore Bhanushali directly involve him in the mis-declaration and import of prohibited goods which made him liable for penal action under the provisions of the Customs Act, 1962.
- vii. I observed that Shri Kishore Bhanushali and Shri Rajesh Nakhua were well aware about the fact that prohibited goods i.e. E-Cigarettes and Toys were being imported in the subject consignments and branded goods in the contravention of the IPR Rules were also imported through these 04 containers. Despite knowing the fact that goods are prohibited in nature, Shri Kishore Bhanushali dealt with the shipments and taken responsibility to clear it from Mundra Port. This directly concerned himself dealing with the shipments of offending goods.
- viii. I find that Shri Kishore Bhanushali alongwith other offenders planned to declared only one commodity in the import documents and were going to clear the prohibited items without declaring in the Bills of Entry.
- ix. It is clear that the goods were originally intended for DTA clearance. However, due to DRI's involvement in other cases at that time, they were unable to file the Bill of Entry for DTA clearance. As a result, Shri Kishore Bhanushali decided to file the Bill of Entry for third-country re-export to avoid any investigation issues. Thus, there is no scope left to admit that Shri Kishore Bhanushali was part of a conspiracy hatched by other associates to import mis-declared/prohibited/undervalued goods.
- x. In view of above, I find that various persons in their respective statements recorded under Section 108 of the Act, have confessed that Shri Kishore Bhanushali was well aware about mis-declaration in the import consignment pertaining to these impugned 04 containers imported by Shri Mayur, Shri Bhanudas, and Shri Navid Arif.

xi. I find that Shri Kishore Bhanushali had willfully and deliberately indulged into conspiracy of clearance prohibited goods and other offending goods by way of mis-declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Kishore Bhanushali has rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Kishore Bhanushali is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. With regard to the penalty under Section 112(a)(ii) for the dutiable items found in these containers, I have observed that while various items were found, the Investigation Report/Show Cause Notice does not specify the basis for calculating the amount of duty sought to be evaded. In the absence of such details, I am compelled to impose the minimum penalty as prescribed under Section 112(a)(ii) of the Customs Act, 1962. As I find that duty sought to be evaded cannot be quantified in the absence of such details, hence, I will keep this fact in my observation while imposing penalty under this provisions. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

xii. I find that Shri Kishore Bhanushali filed Bills of Entry for third country export with the incorrect declaration and forged documents in name of M/s. VD Biztrade LLP, despite knowing the fact the goods were never meant to re-export and were actually imported for DTA Clearance. He has also filed incorrect declarations in Bills of Entry for these consignments in return of monetary consideration. He has knowingly and intentionally made/signed/used and/or caused to be made/signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it establishes that Shri Kishore Bhanushali is also liable to penalty under **Section 114AA** of the Customs Act, 1962.

xiii. As regards the penalty under Section 117 proposed on Shri Kishore Bhanushali, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against the firm already confirmed under the provisions of Section 112 and 114AA of the

Customs Act, 1962, hence, penal action under section 117 does not appear to be warranted in the subject case against Shri Kishore Bhanushali.

25. In view of discussion and findings supra, I pass the following order:

ORDER

26.1. In respect of Container No. CULU6057524 AND IAAU1905575 imported BY M/S. V.D. BIZTRADE LLP under the ownership of M/S. V.D. BIZTRADE LLP:

- i. I order to confiscate goods mentioned at Table-III & Table-IV above imported vide Container No. CULU6057524 and IAAU1905575 having total value of Rs. 6,31,75,218/- (Rupees Six Crore Thirty One Lakhs Seventy Five Thousand Two Hundred and Eighteen only) under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962. However, I give an option to the Importer to redeem the goods on payment of redemption fine of **Rs. 60,00,000/- (Rupees Sixty Lakhs only)** under Section 125 of Customs Act, 1962 for re-export purpose only.

26.2 In respect of goods imported under Container No. PCIU8749320 imported by Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala (Actual beneficial owner/Importers):

- i. I order to confiscate goods mentioned at Table-I above imported vide Container No. **PCIU8749320** having total value of Rs. 4,79,45,500/- (Rupees Four Crore Seventy Nine Lakhs Forty Five Thousand Five Hundred only) under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962. However, I give an option to the Importer to redeem the goods on payment of redemption fine of **Rs. 40,00,000/- (Rupees Forty Lakhs only)** under Section 125 of Customs Act, 1962 for re-export purpose only except goods mentioned at sr. no. 1 of Table-I i.e. total 133000 pcs of Underwear Small Bag (branded) which were found counterfeit in contravention of IPR, 2007. Furthermore, I hold that the quantum of the redemption fine will be equally shared between the beneficial owners, at a 50:50 ratio.
- ii. I order to **absolute confiscate** these counterfeited goods i.e. total 133000 pcs of Underwear Small Bag (branded) mentioned at sr. no. 1 of Table-I for reasons stated above.

26.3 In respect of Container No. PCIU9019244 imported by Shri Bhanudas Eknath Borse and Shri Navid Arif Rehmanwala (Actual beneficial owner/Importers):

- i. I order to absolute confiscate goods mentioned at Table-II above imported vide Container No. PCIU9019244 having total value of Rs. 15,02,05,900/- (Rupees Fifteen Crore Two Lakhs Five Thousand Nine Hundred only) under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962. Unless an appeal against such order is pending, the said impugned goods would be liable for Disposal as per instructions and guidelines in CBIC disposal manual, 2019.

26.4 Penalty under Section 112(a)/112(b) OF The Customs Act, 1962:

- i. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon **M/s. V D Biztrade LLP** under Section 112(a)(i) of the Customs Act, 1962.
- ii. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Mayur Chandrakant Dedhia** (Partner, M/s. V D Biztrade LLP) under Section 112(a)(i) of the Customs Act, 1962.
- iii. I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** upon **Shri Navid Arif Rehmanwala** under Section 112(a)(i) of the Customs Act, 1962.
- iv. I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** upon **Shri Bhanudas Eknath Borse** under Section 112(a)(i) of the Customs Act, 1962.
- v. I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Rajesh Tulsidas Nakhua**, Authorised Representative of M/s. Pushpanjali Logistics under Section 112(a)(i) of the Customs Act, 1962.
- vi. I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Kishor Bhanushali**, Proprietor of M/s. Om Logistics under Section 112(a)(i) of the Customs Act, 1962.
- vii. I impose a penalty of **Rs. 5,000/- (Rupees Five Thousands only)** upon **M/s. V D Biztrade LLP** under Section 112(a)(ii) of the Customs Act, 1962.
- viii. I impose a penalty of **Rs. 5,000/- (Rupees Five Thousands only)** upon **Shri Mayur Chandrakant Dedhia** (Partner, M/s. V D Biztrade LLP) under Section 112(a)(ii) of the Customs Act, 1962.
- ix. I impose a penalty of **Rs. 5,000/- (Rupees Five Thousands only)** upon **Shri Navid Arif Rehmanwala** under Section 112(a)(ii) of the Customs Act, 1962.

- x. I impose a penalty of **Rs. 5,000/- (Rupees Five Thousands only)** upon **Shri Bhanudas Eknath Borse** under Section 112(a)(ii) of the Customs Act, 1962.
- xi. I impose a penalty of **Rs. 5,000/- (Rupees Five Thousands only)** upon **Shri Rajesh Tulsidas Nakhuwa**, Authorised Representative of M/s. Pushpanjali Logistics under Section 112(a)(ii) of the Customs Act, 1962.
- xii. I impose a penalty of **Rs. 5,000/- (Rupees Five Thousands only)** upon **Shri Kishor Bhanushali**, Proprietor of M/s. Om Logistics under Section 112(a)(ii) of the Customs Act, 1962.
- xiii. I do not impose penalty on M/s. V D Biztrade LLP, Shri Mayur Chandrakant Dedhia, Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath Borse, Shri Rajesh Tulsidas Nakhuwa and Shri Kishor Bhanushali under section 112(b) of the Customs Act, 1962.

26.4 Penalty under Section 114AA OF the Customs Act, 1962:

- i. I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** upon **M/s. V D Biztrade LLP** under Section 114AA of the Customs Act, 1962.
- ii. I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** upon **Shri Mayur Chandrakant Dedhia** (Partner, M/s. V D Biztrade LLP) under Section 114AA of the Customs Act, 1962.
- iii. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Navid Arif Rehmanwala** under Section 114AA of the Customs Act, 1962.
- iv. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Bhanudas Eknath Borse** under Section 114AA of the Customs Act, 1962.
- v. I impose a penalty of **Rs. 7,00,000/- (Rupees Seven Lakhs only)** upon **Shri Rajesh Tulsidas Nakhuwa**, Authorised Representative of M/s. Pushpanjali Logistics under Section 114AA of the Customs Act, 1962.
- vi. I impose a penalty of **Rs. 7,00,000/- (Rupees Seven Lakhs only)** upon **Shri Kishor Bhanushali**, Proprietor of M/s. Om Logistics under Section 114AA of the Customs Act, 1962.

26.5 I do not impose penalty on M/s. V D Biztrade LLP, Shri Mayur Chandrakant Dedhia, Shri Navid Arif Rehmanwala, Shri Bhanudas Eknath

Borse, Shri Rajesh Tulsidas Nakhua and Shri Kishor Bhanushali under section 117 of the Customs Act, 1962.

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

28. The Show Cause Notice bearing No. GEN/ADJ/ADC/1297/2024-Adjn dated 01.01.2024 stands disposed off in above terms.

अपर आयुक्त सीमा शुल्क,
(अधिनिर्णयन अनुभाग)
कस्टम हाउस, मुंद्रा।

फाइल संख्या: File No: GEN/ADJ/ADC/1297/2023-Adjn

DIN/दस्तावेज़ पहचान संख्या: 20250171MO0000222D8E

To

1. M/s. V D Biztrade LLP, 14th Floor, B wing, Flat No. 1403, Sunmist, Hubtown Solaris, Opp. Telly Gully, Andheri, Mumbai- 400069.
2. Shri Mayur Chandrakant Dedhia, Partner, M/s. V D Biztrade LLP, 14th Floor, B Wing, Flat No. 1403, Sunmist, Hubtown Solaris, Opp. Telly Gully, Andheri, Mumbai-400069
3. Shri Navid Arif Rehmanwala, 11th floor, Flat No. 1101, Mahadev Rao Gaggan Street, Opp. B.I.T Chawl No. 3, Agripada, Mumbai 400011
4. Shri Bhanudas Eknath Borse, Flat No 405, Ahmed Tower, MG Road, Opp. BIT Chawl No. 3, Agripada, Mumbai 400011.
5. Shri Rajesh Tulsidas Nakhua, Authorised Representative of M/s. Pushpanjali Logistics, 205, Second Floor, Golden Arcade, Zero Point, Mundra, Kutch, Gujarat -370421

6. Shri Kishor Bhanushali, Proprietor of M/s. Om Logistics, 323, Platinum Technopark, Bhagwan Mahavir Road, Opp. Karnataka Bhawan, Vashi, Navi Mumbai - 407701

Copy to:

1. The Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (driazu@nic.in)
2. The Deputy/Assistant Commissioner (Legal/Prosecution), CH, Mundra.
3. The Dy./Asstt. Commissioner (Review Cell), Customs House, Mundra
4. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
5. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately in terms of Section 153 of the Customs Act, 1962)*
6. The Dy./Asstt. Commissioner, Disposal Section, CH, Mundra.
7. Guard File.