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.	GEN/ADJ/COMM/409/2025-Adjn-O/o Pr Commr-Cus-mundra
B. Order-in-Original No.	**MUN-CUSTM-000-COM-13-2026-27**
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	15.06.2026 15.06.2026
E. SCN No. & Date	16/2025-26/COMM/NS/ADJ/MCH Dated 03.07.2025
F. Importer/Noticees	**1.** M/s. Abhinav Traders (IEC: BHVPG6622H) having registered office at Building No. 1041/43, Shop No. 8, Gandhi Gali, Fatehpuri, Delhi-110006 **2.** Shri Abhishek Garg Proprietor of M/s. Abhinav Traders (IEC: BHVPG6622H) residing at 1st Floor, H-46, Naveen Shahdara, Delhi-32.

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

   “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”
3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

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

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरिततिृब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

   Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

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

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

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

Brief Facts of the Case

Intelligence developed by Directorate of Revenue Intelligence, Indore Zonal Unit (hereinafter referred to as 'DRI') suggested evasion of Customs duty by certain importers by way of under-valuation of "Walnut Kernel" at Adani Port and Special Economic Zone (hereinafter referred to as 'Mundra SEZ'). Further, intelligence developed by DRI indicated that firm namely M/s. Abhinav Traders (IEC: BHVPG6622H) having registered office at Building No. 1041/43, Shop No. 8, Gandhi Gali, Fatehpuri, Delhi-110006 (hereinafter referred to as 'the importer') is indulged in duty evasion by way of under-valuation of "Walnut Kernel" at Mundra SEZ. The importer was importing "Walnut Kernel" from Chile under customs tariff item (CTI) 0802 32 00 at Mundra SEZ and clearing the imported goods by way of under-valuation at the Unit Price of 1.5 - 1.51 USD per Kgs in Domestic Tariff Area (DTA) to evade Customs duty under the category of Traded Goods. Further, Walnut Kernel under Customs Tariff Item (CTI) 0802 32 00 of the First Schedule to the Customs Tariff Act, 1975 attracts BCD at the rate of 100% and IGST at the rate of 5%.

2. On 29.05.2024, a search was conducted at the premises of GSM Shipping, Office No. 211, Patel Chamber, Plot No. 41, Sector-9/A, Gandhidham, Kachchh, Gujrat-370201. During the search proceedings, Shri Sumeet Goyal informed that they are forwarder and they are using license of Customs Broker Space Freight Logistics for the clearance of import goods from Mundra Port. He further submitted that in respect of Mundra SEZ import consignments of the their clients, all the clearance is handled by SEZ Unit, Fastrack CFS Private Limited. Shri Sumeet Goyal informed that M/s. Abhinav Traders is one of his clients importing shelled walnuts / walnut kernels at Mundra SEZ and the clearance of the same is handled by SEZ unit, Fastrack CFS Private Limited on the basis of documents shared by firm with the said SEZ Unit. The proceedings were recorded under Panchnama dated 29.05.2024 **(RUD-1)** drawn on the spot.

3. On 30.05.2024, a search was conducted at residential premises of Shri Abhishek Garg at 1st Floor, H-46, Naveen Shahdara, Delhi-32 who is proprietor of M/s. Abhinav Traders. No incriminating evidence / documents related to the case were found during the search. The proceedings were recorded under Panchnama dated 30.05.2024 **(RUD-2)** drawn on the spot.

4. Statements of Concerned Persons

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

4.1 Statement of Shri Abhishek Garg, proprietor of M/s. Abhinav Traders was recorded on 30/31.05.2024 at DRI, Delhi Zonal Unit under Section 108 of the Customs Act, 1962 (RUD-3), wherein he, inter-alia, stated as under: -

- his name is Abhishek Garg; he is 37 years old; he is residing at 1st Floor, H-46, Naveen Shahdara, Delhi; he is proprietor of M/s. Abhinav Traders; he completed his graduation in the year 2007 from Delhi University through correspondence; he started working as broker of dry fruits at the age of 17 years; he created IEC in the name of M/s. Abhinav Traders in the year 2017; the firm is a trading firm and mainly import Walnut In Shell, Walnut Kernel and Pistachio; he also purchase and sell these goods for brokerage; his mail ID is garg_abhishek86@yahoo.com; His Aadhar Card No. is 4516 1373 6447; registered address of M/s. Abhinav Traders is Building No. 1041/43, Shop No. 8, Gandhi Gali, Fatehpuri, Delhi-110006
- for import of Walnut Kernel, he used to contact Shri Kush Agrawal and Shri Harris of Al Arab Dates Factory FZCO, Dubai; he knew Kush Agrawal for last 8-9 years who lives in Dubai and he also visited to India; Shri Harris is employee in Al Arab Dates Factory FZCO; he has imported Walnut Kernel from Al Arab Dates Factory FZCO, Dubai only; the invoices and packing list were sent by Shri Kush Agrawal to Shri Sumeet Goel of GSM Shipping directly; the Customs Broker filed the Bills of Entry and also sent him copy of Invoice, packing list etc.; after filing the Bill of Entry and other process, Shri Sumeet Goel of GSM Shipping used to call him for payment of duty; he has visited Dubai 5 to 6 times.
- he imported Walnut Inshell at a unit price of approx. 1.2 USD per Kgs and Walnut Kernel at unit price of 1.5 USD per Kgs.
- on being asked to justify similar price of Walnut Inshell and Walnut Kernel, he admitted that import price of Walnut Kernel is always higher than Walnut Inshell; he also admitted that Walnut Kernel was imported at under-valued price by him through his firm namely, M/s. Abhinav Traders.

- Contact details of Shri Kuash Agrawal is 971585970860; he mainly resides in Dubai and visits to India from time to time. Contact details of Shri Sumeet Goel is 9879113980 who is owner of GSM Shipping.
- shri Kush Agrawal who is residing in Dubai had suggested him to import Walnut Kernel at lower price; he also suggested him to take help of Shri Sumeet Goel of GSM Shipping for freight forwarding and customs clearance; shri Kush Agrawal also suggested him to sell and purchase the imported goods to particular buyers in India sometimes; on being asked he stated that he had purchased 2 to 3 containers of Walnut Kernel from Shri Shishir Kumar Bansal of Janki Das Raghubar Dayal on direction of Shri Kush Agrawal.
- On being asked to state how the correspondence with Shri Kush Agrawal and Shri Sumeet Goel took place, he stated that the correspondence with Shri Kush Agrawal and Shri Sumeet Goel took place through mobile only.
- On being asked to submit chat or correspondence made with Shri Kush Agrawal and Shri Sumeet Goel, he stated that he had made correspondence with Shri Kush Agrawal and Shri Sumeet Goel with his I Phone 14 (gold colour); when he came to know that DRI is conducting search at his residential premises situated at 1st Floor, H-46, Naveen Shahdara, Delhi, he had instructed his employee, Shri Raj to destroy his I phone 14 and then he left for home to join the search; on being asked he stated that as the mobile phone contained chat and correspondence in respect of under-valuation of Walnut Kernel, he got his I phone destroyed by his employee, Shri Raj to save himself from the consequences of enquiry being conducted by DRI; as he had destroyed his mobile, he was not able to provide chat or correspondence made with Shri Kush Agrawal and Shri Sumeet Goel in respect of import of Walnut Kernel.
- On being asked to state whether he had any other mobile phone, he tendered his phone (Real Me C33/2023, Model No. RMX3627, IMEI Nos. 860042065281413, 860042065281405, Sr. No. 3401263110AA073H) using at that time.

- **4.2 Statement of Shri Abhishek Garg, proprietor of M/s. Abhinav Traders, was recorded on 31.05.2024 at DRI, Delhi Zonal Unit under Section 108 of the Customs Act, 1962 (RUD-4), wherein he, inter-alia, stated as under: -**

- on being asked to state the details of variety of Walnut Kernel imported by him, he stated that he do trading of dry fruits including Walnut Kernel for brokerage and he had imported Walnut Kernel for brokerage only; he was not much aware with the variety of Walnut Kernel.
- on being asked to submit import documents for import of Walnut Kernel through Mundra SEZ, he stated that the documents for import of Walnut Kernel are kept at his office premises at Fatehpuri and he assured that he will submit all the import documents in respect of Walnut Kernel within one week.
- on beings asked to state relationship with Shri Harish Kumar Gupta of Harish Kirana Co., he stated that his real sister, Ms. Shikha Garg is married to Shri Harish Kumar Gupta, therefore, Shri Harish Kumar Gupta is his brother-in-law.
- On being asked to business relationship with Shri Harish Kumar Gupta, he stated that he also do sell and purchase with Shri Harish Kumar Gupta of Harish Kirana Co.

4.3 Statement of Shri Sumeet Goyal, proprietor of GSM Shipping was recorded on 02.07.2024 under Section 108 of the Customs Act, 1962 (RUD-5), wherein he, inter-alia, stated as under: -

- he is proprietor of GSM Shipping, a forwarding firm having address at Plot No. 41, Sector 9, Officer No. 211, Patel Chambers, Gandhidham, Kachchh; he completed his Senior Secondary from Gandhidham; he pursued Bachelor of Computer Application but could not complete; he started GSM Shipping in the year 2008; it is a proprietorship firm and he is the owner of the firm; being forwarding firm, he mainly does transportation of imported goods; the importers approache him for clearance and transportation of the imported goods; In the case of import from SEZ, he forwarded import documents to SEZ entity for filing Bills of Entry and in the case of import from port, he forwarded import documents to Space Freight Logistics for filing Bills of Entry; after customs clearance of the imported goods, they transported the goods to the destination given by the importers.
- GSM Shipping take work of customs clearance and transport of the imported goods, therefore, they send import documents received from the importer to SEZ entity and Customs Broker for clearance of

imported goods and do transportation of imported goods to the destinations given by the importers.

- On being asked to state the procedure of filing Bills of Entry for warehousing and DTA sale in Mundra SEZ, he stated that they received import documents i.e. Invoice, packing list, Bill of lading, country of origin certificate etc. from the importers; they send it to the SEZ Unit / Warehouse for filing Bill of Entry; the SEZ Unit / Warehouse file the Bill of Entry before the customs; customs assess the Bill of Entry and duty payment challan were generated; they receive information from the SEZ unit for payment of duty and accordingly, they inform the importers for payment of duty; after payment of duty, they transport the imported goods to the destination given by the importers; on being asked he stated that they filed the Bills of Entry for Warehouse and DTA sale on behalf of M/s. Abhinav Traders, Harish Kirana Co. Janakidas Raghubar Dayal, P. S. Packaging, A A Enterprises.
- on being asked to state how the Bill of Entry on behalf of M/s. Abhinav Traders for clearance of Walnut Kernel were filed at Mundra SEZ, he stated that Shri Abhishek Garg who is proprietor of the firm M/s. Abhinav Traders contacted him for clearance at Mundra SEZ for the firm.
- on being asked he stated that the importers had instructed suppliers for sending the import documents directly to him, therefore, import documents were received by him directly from the suppliers; on being asked, he stated that the importers had informed that they were sending documents directly so that the import clearance does not get delayed.
- they have also cleared Walnut In shell on behalf of M/s. Abhinav Traders, at Mundra SEZ.
- walnut Kernel is obtained from Walnut Inshell and Walnut Kernel always has higher price than Walnut Inshell; he agreed that the declared price of Walnut Kernel is at lower side.

4.4 Statement of Shri Abhishek Garg, proprietor of M/s. Abhinav Traders, was recorded on 04.07.2024 at DRI, Delhi Zonal Unit under Section 108 of the Customs Act, 1962 (RUD-6), wherein he, inter-alia, stated as under:-

- On being asked to state when did he purchase his I phone 14 (Gold colour) and what was the price and mode of purchase, he stated that he had purchased I phone 14 (gold colour) in January, 2023 for Rs. 1,00,000/- on cash payment.

- On being asked to state to explain in details what happened with his I phone 14, he stated that he was on vacation with his family at Rishikesh from 22.05.2024 to 28.05.2024; on 28.05.2024 in the morning at Rishikesh, the mobile phone fell down from pocket while walking and its screen got damaged and was not working properly; therefore, he shifted his SIM Card of mobile number 9212594277 from Apple I Phone to Real me phone in the nigh of 28.05.2024 after reaching in Delhi.

- on being asked to state What he did with his damaged mobile phone, he state that when he was going to his shop in Khari Baoli on 29.05.2024, he threw his I Phone mobile in Shahdara Main Road, Delhi.

- on being asked to state that during his statement recorded on 30/31.05.2024, he had stated that he had instructed his employee, Shri Raj to destroy his I phone 14 and then left for home to join search. Now he was stating that his I phone mobile got damaged in Rishikesh on 28.05.2024 and he threw it while going to his shop on 29.05.2024 in the morning, he admitted that his statement dated 30/31.05.2024 was not true and correct in this regard.

- On being asked to state why did he not visited Service Centre for repair of mobile phone which was very expensive and was purchased at the price of Rs. 1,00,000/-, he stated that as the mobile phone was completely damaged, he did not visit Customer Care Centre for repair.

- on being asked to log in into I cloud so that chat in respect of under valuation of walnut kernel can be obtained, he stated that as he had purchased his I phone 14 (Gold colour) in January, 2023 and he had created log in ID and password in January, 2023 itself, I forgot his I cloud log in ID and password and he was not able to remember the same.

5. RealMe C33/2023 mobile phone (Model No. RMX3627, IMEI Nos. 860042065281413, 860042065281405, Sr. No. 3401263110AA073H) owned by Shri Abhishek Garg was tendered by him during his statement dated 30/31.05.2024 and was seized vide Seizure Memorandum dated

05.06.2024 **(RUD-7)**. This unit vide letter dated 12.06.2024 **(RUD-8)** requested the Director, Central Forensic Science Laboratory, Bhopal for forensic analysis of mobile phone of Shir Abhishek Garg seized vide Seizure Memorandum dated 05.06.2024. Director, CFSL vide their letter dated 28.08.2024 **(RUD-9)** forwarded forensic examination report of the said seized mobile phone. No incriminating evidence in respect of under-valuation of imported walnut kernel was recovered during analysis of the forensic data of the said mobile phone.

6. Shri Abhishek Garg vide his letter dated 11.06.2024 alleged that statement recorded at DRI, Delhi Zonal Unit was prepared on the laptop by the SIO and without allowing him to read the contents of the said statement, he was asked / compelled to sign the same. Further, he requested that the enquiry may be transferred to DRI, Delhi Zonal Unit **(RUD-10)**. This unit vide letter dated 01.07.2024 informed Shri Abhishek Garg that the voluntarily statement was recorded as per his say and he had put his dated signature on each page after reading the statement and upon finding the same as per his say. Further, the statement tendered by him was voluntarily and without any threat or coercion and the behaviour of the officers was cordial during the recording of statement and the same facts was also endorsed by him while putting his signature on the statement. It was informed that as the Directorate of Revenue Intelligence, Indore Zonal Unit is investigating import of “Walnut Kernel” by way of under valuation at Mundra SEZ, therefore, presence for tendering voluntarily statement and submission of documents etc. is required at the office of DRI, Indore Zonal Unit situated at Indore **(RUD-11)**. Further, voluntarily statement of Shri Abhishek Garg was recorded on 04.07.2024 wherein he did not state that he was compelled to sign his earlier statements dated 30/31.05.2024 without allowing him to read the contents of the said statement and he also did not make any request for transfer of the case to DRI, Delhi Zonal Unit.

7. Walnut In shell and Walnut Kernel (Walnut Shelled) :

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

8. Import of Walnut In shell by M/s. Abhinav Traders.

Shri Abhishek Garg has also imported walnut In shell in his firm, M/s. Abhinav Traders. Further, there is no import of Walnut In Shell from port by the firm. The import data of walnut In shell imported by M/s. Abhinav Traders for the period October, 2022 to July, 2024 at Mundra SEZ are as follows:

I. M/s. Abhinav Traders.:-

S. No.	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	1013902	06-10-2022	Chile	USD	INSHELL WALNUTS	17500	KGS	1
2	1015507	31-10-2022	Chile	USD	WALNUTS INSHELL CHANDLER	18000	KGS	1
3	1018665	20-12-2022	Chile	USD	WALNUT INSHELL	18000	KGS	1
4	1013950	24-07-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
5	1014436	27-07-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
6	1016109	14-08-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
7	1019929	28-09-2023	Chile	USD	INSHELL WALNUTS, CHANDLER 30/34	18000	KGS	1.05
8	1019929	28-09-2023	Chile	USD	INSHELL WALNUTS, CHANDLER 30/34	18000	KGS	1.05
9	1019928	28-09-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
10	1020276	02-10-2023	Chile	USD	INSHELL WALNUTS	18000	KGS	1.01
11	1021559	14-10-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
12	1025518	30-11-2023	Chile	USD	WALNUT INSHELL	15000	KGS	1.01
13	1025520	30-11-2023	Chile	USD	WALNUTS INSHELL	15000	KGS	1.01
14	1025519	30-11-2023	Chile	USD	WALNUTS INSHELL	15000	KGS	1.01

15	1012157	19-07-2024	Chile	USD	INSHELL WALNUTS CHANDLER	18000	KGS	1.31

The import data of Mundra SEZ for the period October, 2022 to July, 2024 reveals that M/s. Abhinav Traders have imported "Walnut In shell" at the unit price of 1-1.31 USD per kgs from Chile. Further, the importer have also imported "Walnut kernel" at the similar price of "walnut In shell" at Mundra SEZ i.e. 1.5 - 1.51 USD per Kgs. When kernels are removed from the In shell Walnut, there is yield in the range of 50% to 60%. It shows that the minimum unit price of Walnut kernels is always more than double of the unit price of Walnut In shell. Therefore, the importer was importing and clearing "Walnut Kernel" by way of under-valuation at the Unit Price of 1.5 - 1.51 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

9. <u>Provisions of Law relevant to this case</u>:

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

(A) Provisions under Customs Act, 1962

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

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

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

9.4 Section 17 of the Customs Act, 1962:

(1) An importer entering any imported goods under section 46 or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
(4) Where it is found on verification, examination or testing of the goods ***or otherwise*** *that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

9.5 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

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

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

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

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

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

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

9.5.7 Rule 4 of the CVR, 2007, relates to transaction value of identical goods and specifies that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

9.5.8 Rule 5 relates to Transaction value of similar goods and specified that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

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

9.5.10 Rule 7 relates to the Deductive value method and specifies that (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the deductions of commission, or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind; the costs of transport and insurance; the customs duties and other taxes payable in India.

9.5.11 Rule 8 relates to the Computed value method and specifies that the Computed value shall consist of the sum of:- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods; (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India; (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

9.5.12 The Residual method under Rule 9 of the CVR, 2007 specifies that (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the 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.

9.6 SECTION 28 (4). Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded:-

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

(a) collusion; or
(b) any willful misstatement; or
(c) suppression of facts,

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

9.7 SECTION 46: Entry of goods on importation:-

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

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

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

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

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

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

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

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 216 [not

exceeding the value of the goods or five thousand rupees], whichever is the greater;
(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is the higher:

9.10 SECTION 114A of the Customs Act, 1962- Penalty for short-levy or non-levy of duty in certain cases-
"Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

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

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

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

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

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

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

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

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

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

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

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

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

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

(B) RELEVANT PROVISIONS OF SEZ ACT, 2005:

Definitions — In this Act, unless the context otherwise requires

………..

(o) "import" means—

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

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

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

1. *The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.*
3. *Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.*

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

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement*

officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

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

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

4 7 (4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under. 47 (5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

10. Valuation of the undervalued goods cleared by M/s. Abhinav Traders.

10.1 In the case of consignments imported by M/s. Abhinav Traders under DTA Thoka Numbers as mentioned in Table-I of Para 11.2, the value declared at the time of import did not specify the actual value of the goods as similar goods were imported at the significantly higher value at which at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

10.2 Therefore, it appears that the invoices submitted at the time of import of the said consignments imported under DTA Thoka Numbers were false document in terms of Rule 11 of CVR, 2007. Thus, it is evidently clear that the transaction value declared by the importers for the goods covered under said consignments is liable to be rejected under Rule 12 of the CVR,

2007. For the purpose of re-determination of assessable value of these goods, Rule 3 to Rule 9 of the said Valuation Rules have been applied. As the value of the subject goods cannot be determined under the provisions of sub-rule (1) of Rule 3 of the CVR, 2007, the same is required to be determined by sequentially proceeding in terms of Rule 4 to Rule 9 of the Customs Valuation Rules, 2007. Efforts were made to ascertain the value of the subject goods by perusing the NIDB data relating to contemporaneous import of identical goods of same in all respects, including physical characteristics, quality and reputation as the goods being valued, produced in the country in which the goods being valued were produced, produced by the same person who produced the goods in terms of Rule 4 of CVR, 2007. As no such data is available, the value of impugned goods could not be ascertained under Rule 4 of CVR, 2007. Therefore, the same is required to be determined by sequentially proceedings to Rule 5 of the CVR, 2007.

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

I. Country of Origin Chile:-

S.No.	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INMUN1	3384921	19-11-2022	Shelled Walnuts Broken And Pieces	USD	3.25
2	INMUN1	3385041	19-11-2022	Shelled Walnuts Broken And Pieces	USD	3.25
3	INMUN1	3730999	14-12-2022	Shelled Walnuts Broken And Pieces	USD	3.25
4	INMUN1	4345991	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
5	INMUN1	4346816	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
6	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
7	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
8	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
9	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
10	INNSA1	4722158	20-02-2023	Walnut Kernels	USD	3.02
11	INMUN	47769	24-02-	Shelled Walnuts Broken And Pieces	USD	3.25

	1	03	2023			
12	INMUN 1	4776905	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
13	INMUN 1	4889665	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
14	INMUN 1	4888495	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
15	INMUN 1	4889081	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
16	INMUN 1	4889662	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
17	INNSA1	5063823	15-03-2023	Walnut Kernels	USD	3.09
18	INNSA1	5570651	18-04-2023	Walnut Kernels (Grade 2)	USD	2.1
19	INNSA1	6574611	24-06-2023	Walnut Shelled (Grade 2)	USD	2.25
20	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
21	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
22	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
23	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
24	INBDM 6	7337838	13-08-2023	Shelled Walnut (1800 Ctn/10kg)	USD	2.1

10.4 On perusal of NIDB import data the value of the contemporaneous import of the similar goods at other ports is detailed at Para 10.3 above. Accordingly, it appears that the value declared by the importer appears to be under-valued in comparison with contemporary values available in NIDB data, which resulted in short levy of Customs duty. Hence, the value declared is not found to be the transaction value and is liable for rejection under Rule 12 of the Customs Valuation (Determination of value of imported Goods) Rules, 2007. Walnut Kernel have been imported in the name of **M/s. Abhinav Traders** during the period October, 2022 to April, 2023 from Chile, therefore, the contemporaneous imports about the same time of similar goods having comparable quantity have been taken which is available in NIDB data, hence the value is re-determined under the provisions of Rule 5 of the said Rules ibid. Further, as per sub rule 2 of Rule 5 if the more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods, therefore, the value has been re-determined as USD 2.1 per Kgs for imports made from Chile.

10.5 Accordingly, actual value of the goods covered under DTA Thoka Numbers has been re-determined under Section 14 read with Rule 5 of the CVR, 2007 which provides for valuation on the basis of Transaction value of similar goods and specified that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. After doing the same, the assessable value has been arrived at and differential duties have been calculated. **(Annexure- I)**

11. DUTY LIABILITY

11.1 The differential duty liable to be demanded under Section 28 (4) of the Customs Act, 1962 in relation to the imports of goods vide DTA Thoka Numbers in respect of past consignments in the name of M/s. Abhinav Traders is computed in Annexure I.

11.2 The gist of the relevant details appearing in the said 'Annexure-I is produced in the Table-I is as under:

TABLE-I

S.No.	Thoka Number	Thoka date	Declared/Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2016408	21-10-2022	2413780.43	3368551.43	2655158.47	3705406.58	1050248.11
2	2018410	23-11-2022	4836343.58	6749359.58	5319977.94	7424295.53	2104317.59
3	2018883	30-11-2022	4360226.85	6084914.85	4796249.54	6693406.34	1897156.80
4	2020299	20-12-2022	7782030.18	10860212.70	8560233.2	11946233.97	3386000.77
5	2000331	06-01-2023	2509351.14	3501925.14	2760286.25	3852117.66	1091831.41
6	2003691	22-02-2023	5024709.11	7012233.11	5527180.02	7713456.42	2186276.40
7	2004439	09-03-2023	2751034.84	3839206.84	3026138.32	4223127.52	1196989.20
8	2007345	29-04-2023	7541959.23	10456034.13	8296155.15	11501637.54	3205482.39
9	2007346	29-04-2023	5586636.47	7745210.47	6145300.12	8519731.51	2374431.39
		Total	**42806072**	**59617648**	**47086679**	**65579413**	**18492734**

12. Summary of Investigation by DRI

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

12.1 Shri Abhishek Garg obtained proprietorship firm namely **M/s. Abhinav Traders** in his name for the purpose of evasion of Customs Duty by way of under valuation. He imported Walnut Kernel from Al Arab Dates Factory FZCO by way of gross undervaluation at Mundra SEZ. Statement of Abhishek Garg was recorded on 30/31.05.2024 under Section 108 of the Customs Act, 1962 wherein he stated that he had ordered it on suggestions of Shri Kush Agrawal who resides in Dubai. Shri Kush Agarwal is Exporter and owner of Al Arab Dates Factory FZCO, Dubai. Further, analysis of trading pattern of M/s. Abhinav Traders has indicated that he has been engaged in trading of different dry fruits for many years. He has also imported other goods from other suppliers such as Africa Global Trading LLC, Valbifrut S.A., Central Golden State INC etc besides Al Arab Dates Factory FZCO, Dubai. It is hard to believe that he is novice in business and acted upon instructions of third person. It appears that he was trying to name other person to mislead the investigation. Based on the under-valued invoices for the purpose of evasion of customs duty, the Thoka Numbers were filed in the name of **M/s. Abhinav Traders** for clearance of the imported goods. He admitted under-valuation in import of Walnut Kernel by his firm during his statement recorded on 30/31.05.2024 under Section 108 of the Customs Act, 1962.

12.2 The import data of Mundra SEZ for the period October, 2022 to July, 2024 reveals that M/s. Abhinav Traders imported "Walnut In shell" at the unit price of 1-1.31 USD per kgs from Chile. Further, they also imported "Walnut kernel" at the similar price of "walnut In shell" at Mundra SEZ i.e. 1.50 - 1.51 USD per Kgs. When kernels are removed from the In shell Walnut, there is production in the range of 50% to 60%. It shows that the minimum unit price of Walnut kernels is always more than double of the unit price of Walnut In shell. Therefore, M/s. Abhinav Traders was importing and clearing "Walnut Kernel" by way of under-valuation at the Unit Price of 1.50 - 1.51 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

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

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

12.5 From the facts given above it appears that **M/s. Abhinav Traders** had wilfully mis-declared the value of the goods. The importer had submitted under-valued invoices to evade Customs duty by wilful mis-statement of value of the goods. Hence, it appears that the Customs duty short paid is recoverable in terms of clause (b) of Section 28(4) of the Customs Act, 1962 due to wilful mis-statement of value of the goods by the importer before the Customs Authorities.

12.6 It further appears that **M/s. Abhinav Traders** had suppressed the actual value of the value of the goods and not declared the correct value. Hence, suppressing facts from Assessing Officer about the actual value of the goods, Customs duty was evaded. The same is recoverable in terms of clause (c) of Section 28(4) of the Customs Act, 1962 due to suppression of actual value of the goods.

13. Demand of differential duty, liability to confiscation and penalty.

13.1 The declared value of **Rs. 4,28,06,072/-** (Rupees Four Crore Twenty Eight Lakhs Six Thousand and Seventy Two only) of the goods imported and cleared by M/s. Abhinav Traders in respect of 09 Thoka Numbers mentioned in Table –I of Para 11.2, and as detailed in Annexure-I to this Show cause notice, is liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as **Rs. 5,96,17,648 /-** (Rupees Five Crore Ninety Six Lakhs Seventeen Thousand Six Hundred and Forty Eight Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

13.2 It appears that M/s. Abhinav Traders have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods cleared in the past under Thoka Numbers mentioned in Table I of Para 11.2, having total **re-determined assessable value of Rs. 5,96,17,648 /-** (Rupees Five Crore Ninety Six Lakhs Seventeen Thousand Six Hundred and Forty Eight Only) by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

13.3 Further, in respect of the past consignments covered by DTA Thoka Numbers, **differential duty** amounting to **Rs. 1,84,92,734/-** (Rupees One Crore Eighty Four Lakhs Ninety Two Thousand Seven Hundred and Thirty Four Only), as worked out in the Annexure I and mentioned in Table I of Para 11.2, appears liable to be recovered from **M/s. Abhinav Traders** under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA ibid.

13.4 Further, as the duty was short paid by wilful mis-statement and suppression of facts by the importer, as discussed in paras 12.5 and 12.6 above, M/s. Abhinav Traders appears liable for penalty under the provisions of section 114A of the Customs Act, 1962.

14. Role played by Shri Abhishek Garg, Proprietor of M/s. Abhinav Traders.

Shri Abhishek Garg created proprietorship firm namely **M/s. Abhinav Traders** in his name in the year 2017 for the purpose of evasion of Customs Duty by way of under valuation. He imported Walnut Kernel from Dubai by way of gross under valuation at Mundra SEZ. Statement of Abhishek Garg was recorded on 30/31.05.2024 under Section 108 of the Customs Act, 1962 wherein he stated that he had ordered it on suggestions of Shri Kush Agrawal who resides in Dubai. Shri Kush Agarwal is Exporter and owner of Al Arab Dates Factory FZCO, Dubai. Further, analysis of trading pattern of M/s. Abhinav Traders has indicated that he has been engaged in trading of different dry fruits for many years. He has also imported other goods from other suppliers such as Africa Global Trading LLC, Valbifrut S.A., Central Golden State INC etc besides Al Arab Dates Factory FZCO, Dubai. It is hard to believe that he is novice in business and acted upon instructions of third person. It appears that he was trying to name other person to mislead the investigation. Based on the under-valued invoices for the purpose of evasion of customs duty, the Thoka Numbers were filed in the name of **M/s. Abhinav Traders** for clearance of the imported goods. He admitted under-valuation in import of Walnut Kernel by his firm during his statement recorded on 30/31.05.2024 under Section 108 of the Customs Act, 1962. Further, for all the Thoka Numbers filed in the name of **M/s. Abhinav Traders**, Shir Abhishek Garg, knowingly and intentionally submitted invoices, declarations under the provisions of CVR, 2007, which did not divulge the actual value of the imported goods. It therefore appears that the documents and declarations used/ made at the time of the import of the consignments were knowingly and intentionally false / incorrect. Accordingly, Shri Abhishek Garg appears liable for penalty under the provisions of Section 114AA of the Customs Act, 1962.

15. The investigation in the matter has revealed that M/s. Abhinav Traders have imported “Walnut Kernel” by way of under-valuation at Mundra SEZ. During this period, M/s. Abhinav Traders had filed DTA Thoka Numbers for import of “Walnut Kernel”, at Mundra SEZ having total re-determined Assessable Value of **Rs. 5,96,17,648 /-** (as detailed in **Annexure- I)** by way of gross under-valuation. In view of the above stated under-valuation, wilful mis-statement and suppression of facts, **M/s. Abhinav Traders** has evaded payment of Customs duty aggregating to **Rs.1,84,92,734/-** as detailed in **Annexures- I** attached with this SCN.

16. Now, Therefore, Shri Abhishek Garg, Proprietor of Abhinav Traders (IEC: BHVPG6622H) and M/s Abhinav Traders with regard to the imports made vide Thoka Numbers specified in Table I of Para 11.2 above, are hereby called upon to show cause, in writing, to the Commissioner of Customs, Custom House, Mundra, having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 days of receipt of this notice as to why:

(i) The value of the goods imported vide 9 Thoka Numbers specified in Table I of Para 11.2 above should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as **Rs. 5,96,17,648 /-** *(Rupees Five Crore Ninety Six Lakh Seventeen Thousand Six Hundred and Forty Eight Only)* in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;

(ii) The goods, imported vide 9 Thoka Numbers specified Table I of Para 11.2 above, having re-determined value of **Rs. 5,96,17,648 /-** *(Rupees Five Crore Ninety Six Lakh Seventeen Thousand Six Hundred and Forty Eight Only),* should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

(iii) The differential duty payable i.e. **Rs. 1,84,92,734/- (***Rupees One Crore Eighty Four Lakh Ninety Two Thousand Seven Hundred and Thirty four only)* should not be demanded and recovered under the provision of section 28(4) of the Customs Act, 1962;

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

(v) Penalty should not be imposed upon M/s Abhinav Traders under Section 114A of the Customs Act, 1962;

(vi) Penalty should not be imposed upon Shri Abhishek Garg, Proprietor of Abhinav Traders (IEC: BHVPG6622H) under Section 114AA of the Customs Act, 1962;

WRITTEN SUBMISSION AND PERSONAL HEARING

17. I observe that 'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the notice on various occasions. Accordingly, Shri Ajay Kumar, authorized representative for both the noticees i.e Abhinav Traders and Shri Abhishek Garg appeared for personal hearing through virtual mode. During the personal hearing, he reiterated the submissions as made in the reply dated 02.08.2025 wherein he interalia stated as below:

i. Pre-Notice Consultation:
The noticee has contended that no pre-notice consultation was issued prior to the issuance of the Show Cause Notice, as mandated under the Pre-Notice Consultation Regulations, 2018, and that the SCN is therefore vitiated on this ground. In support of this contention, the noticee has placed reliance on the judgments of the Hon'ble Delhi High Court in *Gulati Enterprises vs. CBIC & Ors.* and *Amadeus India Pvt. Ltd. vs. Pr. Commissioner, C.Ex., ST & CT (2019)* and has urged that non-compliance with the mandatory requirement of pre-notice consultation renders the SCN legally unsustainable.

ii. Absence of documentary evidence of illegal foreign remittance:
The noticee has contended that the investigating agency has failed to produce any documentary evidence of illegal under-the-table foreign remittance to the foreign supplier so as to corroborate the charge of under-valuation. It has been urged that in the absence of such evidence of a parallel payment, the foundational basis for rejection of the declared transaction value and re-determination of assessable value is not made out, and the entire case of the department rests on surmise and conjecture.

DISCUSSION AND FINDING

18. I have carefully gone through the Show Cause Notice, the statements of the concerned persons recorded under Section 108 of the Customs Act, 1962, all the Relied Upon Documents, the written submissions filed by Noticees and all other material available on record. I have also duly considered the oral submissions advanced by the noticee's authorized representative during the personal hearing granted in the matter. I find that the following issues arise for my determination in the present proceedings:

(i) Whether the declared transaction value of 'Walnut Kernel' imported by M/s Abhinav Traders is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as 'CVR, 2007') and whether the assessable value is required to be re-determined as Rs. 5,96,17,648/- under Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962;

(ii) Whether the goods imported under the DTA Thoka Numbers mentioned in Table I of Para 11.2 of the SCN are liable to confiscation under Section 111(m) of the Customs Act, 1962;

(iii) Whether the differential duty of **Rs. 1,84,92,734/-** is recoverable from M/s Abhinav Traders under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA ibid;

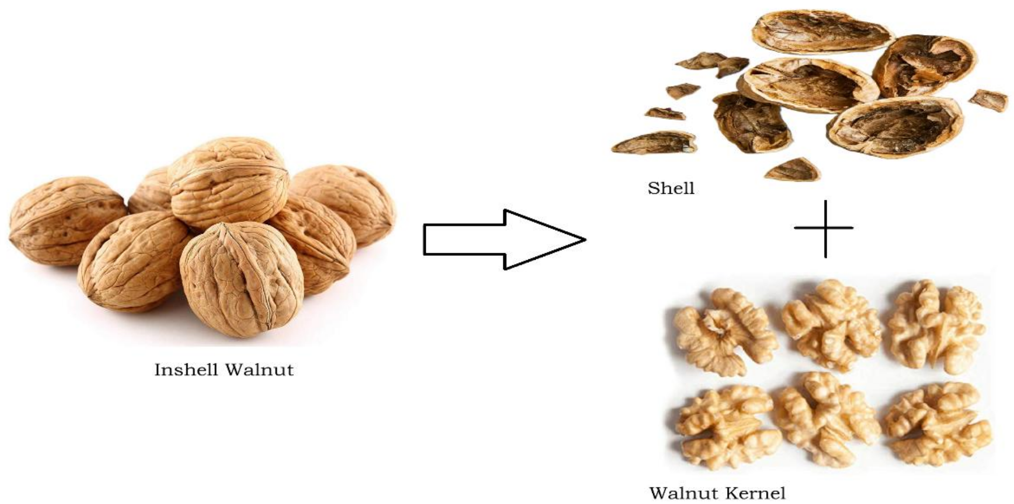
(iv) Whether penalties are imposable on them under Section 114A and Section 114AA of the Customs Act, 1962.

19. I find that intelligence was developed by the DRI, Indore Zonal Unit indicating evasion of Customs duty by way of under-valuation of 'Walnut Kernel' imported at Mundra SEZ. The intelligence specifically pointed to M/s Abhinav Traders as being engaged in such evasion. The firm was importing 'Walnut Kernel' under Customs Tariff Item (CTI) 0802 32 00 and clearing the same into the Domestic Tariff Area (DTA) at a declared unit price of USD 1.50 to USD 1.51 per Kg, a price range that is almost identical to the price at which the same firm was importing 'Walnut Inshell' from Chile, and which is commercially and logically untenable given that Walnut Kernel is a processed product obtained from Walnut Inshell and must always command a significantly higher price.

19.1 Acting upon the intelligence, search operations were conducted and statements of the concerned persons were recorded under Section 108 of the Customs Act, 1962. Investigation revealed that Shri Abhishek Garg himself admitted under-valuation of Walnut Kernel by his firm M/s Abhinav Traders to save Customs duty. He also deliberately got his iPhone 14 mobile phone destroyed, through his employee Shri Raj, upon learning of the search being conducted by DRI at his residential premises, an act which is itself the clearest possible indicator of a guilty mind and a conscious and deliberate attempt to conceal evidence of under-valuation from the investigating agency.

20. Nature of the Goods — Walnut Kernel:

20.1 Before proceeding to the question of valuation, it is necessary to first understand the true nature of the impugned goods i.e 'Walnut Kernel'. Being a processed product derived from 'Walnut Inshell', the value of Walnut Kernel is inherently and directly linked to the price of its raw material i.e Walnut Inshell. A proper understanding of this relationship is therefore a necessary starting point for determining the correct value of the impugned goods. The pictorial representation of the same is produced below:



20.2 Walnut Inshell is the whole walnut fruit enclosed within its hard outer shell. To obtain the edible inner portion i.e the Walnut Kernel, the Inshell walnut undergoes drying, and shelling. These operations involve mechanical processing, labour, costs, and result in significant by-products and wastage in the form of shells, broken pieces, and debris. The Walnut Kernel is the commercially valuable edible product and is sold as a ready-to-consume commodity.

20.3 A critical commercial reality that governs the price relationship between these two products is the 'yield factor'. When Walnut Kernels are extracted from Walnut Inshell, the yield obtained is in the range of 50% to 60% by weight, depending upon the variety and quality of the Walnut Inshell. This means that to produce 1 Kg of Walnut Kernel, one requires approximately 1.67 Kg to 2 Kg of Walnut Inshell as raw material, in addition to incurring the costs of processing, shelling, labour etc. The commercial implication of this is straightforward: the price at which an importer procures Walnut Kernel must necessarily be higher than the price at which he procures Walnut Inshell, as the former involves additional processing costs, shelling charges over and above the raw material cost, further compounded by the yield loss in the range of 50% to 60% which means that a significantly larger quantity of Walnut Inshell is required to produce every kilogram of Walnut Kernel. This is a basic and well-accepted commercial reality of the dry fruit trade, and admits of no dispute.

21. Analysis of Declared Values and Rejection under Rule 12 of CVR, 2007:

21.1 The first and foundational question to be addressed is whether the declared transaction value of 'Walnut Kernel' imported by M/s Abhinav Traders deserves acceptance under Section 14(1) of the Customs Act, 1962, or whether it is liable to be rejected under Rule 12 of CVR, 2007. For this purpose, it is necessary to examine the declared prices in the context of the import data on record.

21.2 The import data of M/s Abhinav Traders reveals that the firm imported 'Walnut Inshell' at Mundra SEZ from Chile during the period October 2022 to July 2024 in 15 consignments, at unit prices consistently ranging from USD 1.00 to USD 1.31 per Kg.

21.3 Against this background, the DTA Thoka Numbers filed for clearance of 'Walnut Kernel' by M/s Abhinav Traders reflect unit prices in the range of USD 1.50 to USD 1.51 per Kg, a price range that is almost identical to the price at which the same firm was importing 'Walnut Inshell' from Chile. As established in Para 20.3 above, this is commercially and physically impossible. To reiterate the economic logic: if Walnut Inshell costs USD 1.00 to USD 1.31 per Kg, and if one requires at minimum 1.67 Kg to 2 Kg of Walnut Inshell to produce 1 Kg of Walnut Kernel, then the raw material cost alone for 1 Kg of Walnut Kernel works out to USD 1.67 to USD 2.62 per Kg, without even adding processing costs, labour etc. A declaration of USD 1.50 to USD 1.51 per Kg for Walnut Kernel is therefore not merely questionable — it is demonstrably and mathematically impossible to represent the true transaction value.

21.4 Furthermore, the NIDB data of contemporaneous imports of similar goods, Walnut Kernel / Shelled Walnut of Chilean origin during the overlapping period, clearly establishes that such goods were being imported by other importers at significantly higher prices. The NIDB data at Para 10.3 of the SCN presents 24 entries of such contemporaneous imports from Chile with higher values. A careful analysis of the NIDB data reveals that not a single contemporaneous import of Walnut Kernel / Shelled Walnut from Chile at any Indian port during the period under reference was assessed at a unit price anywhere near USD 1.50 to USD 1.51 per Kg. The range of contemporaneous import prices spans USD 2.10 to USD 3.25 per Kg. Therefore, the declared prices of USD 1.50 to USD 1.51 per Kg are not only below the average but are even below the lowest contemporaneous value. This disparity is not minor or explainable by commercial variation and it is a significant, systematic, and substantial under-valuation.

21.5 In view of the above analysis, both from the logical standpoint of the yield factor establishing the impossibility of the declared price, and from the NIDB data establishing the significantly higher prices at which similar goods were being imported at or about the same time, I find that there is more than adequate reason to doubt the truth and accuracy of the transaction value declared in the Thoka Numbers by M/s Abhinav Traders, in terms of Rule 12(1) of CVR, 2007. Furthermore, this is not a case where the doubt is based merely on statistical comparison alone. The doubt is firmly corroborated by the categorical admission made by Shri Abhishek Garg himself in his statement dated 30/31.05.2024 that Walnut Kernel was imported at under-valued prices to save duty, and that he had deliberately arranged, through his employee Shri Raj, for the destruction of his iPhone 14 which contained chat evidence of under-valuation. The invoices submitted at the time of import were, therefore, false documents in terms of Rule 11 of CVR, 2007. Accordingly, the declared transaction value is hereby rejected under Rule 12 of CVR, 2007.

22. Re-determination of Assessable Value under Rule 5 of CVR, 2007:

22.1 Having rejected the declared transaction value under Rule 12 of CVR, 2007, the assessable value is required to be re-determined by proceeding sequentially through Rules 4 to 9 of CVR, 2007, as mandated by Rule 12(2) thereof read with Section 14 of the Customs Act, 1962.

22.2 Rule 4 of CVR, 2007 provides for determination of value on the basis of the transaction value of identical goods i.e. goods which are same in all respects including physical characteristics, quality, reputation and produced by the same person in the same country. As noted in the SCN, no NIDB data was available for identical goods (i.e. goods produced by the exact same producer in Chile). Accordingly, the value cannot be determined under Rule 4, and the exercise proceeds sequentially to Rule 5.

22.3 Rule 5 of CVR, 2007 provides for determination of value on the basis of the transaction value of similar goods. 'Similar goods' are defined under Rule 2(1)(f) of CVR, 2007 as goods which, although not alike in all respects, have like characteristics and like component materials enabling them to perform the same functions and to be commercially interchangeable with the goods being valued, having regard to quality, reputation and the existence of trade mark, and are produced in the same country. The NIDB data at Para 10.3 of the SCN contains 24 entries of contemporaneous imports of Walnut Kernel, Shelled Walnuts, all of Chilean origin, and all imported at Indian ports at or about the same time as the subject imports. These constitute 'similar goods' for the purpose of Rule 5 of CVR, 2007 i.e. they are shelled walnut products from Chile, commercially interchangeable with the goods being valued, capable of performing the same function as a ready-to-eat dry fruit product.

22.4 Sub-rule (2) of Rule 5 of CVR, 2007 specifically provides that where more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. The NIDB data shows contemporaneous import values ranging from USD 2.10 to USD 3.25 per Kg for similar goods of Chilean origin. In strict compliance with sub-rule (2) of Rule 5, the lowest available contemporaneous transaction value of USD 2.10 per Kg has been adopted for re-determination of the assessable value. Accordingly, the assessable value has been re-determined at **USD 2.10 per Kg** under Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

22.5 In view of the above, the declared assessable value of Rs. 4,28,06,072/- in respect of 09 Thoka Numbers detailed in Table I of Para 11.2 of the SCN is hereby rejected under Rule 12 of CVR, 2007 and the assessable value is re-determined as **Rs. 5,96,17,648/-** under Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

23. Discussion on Submissions of the Noticee

23.1 <u>On the objection regarding non-issuance of Pre-Notice Consultation</u>**:**

The noticee has contended that no pre-notice consultation was issued before the SCN as required under the Pre-Notice Consultation Regulations, 2018, and has relied upon the judgments of the Delhi High Court in *Gulati Enterprises vs. CBIC & Ors.* and *Amadeus India Pvt. Ltd. vs. Pr. Commissioner, C.Ex., ST & CT (2019)* to urge that the SCN is vitiated on this ground.

I have carefully gone through the submission and find that the reliance placed by the noticee on *Gulati Enterprises v. CBIC* and *Amadeus India Pvt. Ltd. v. Pr. Commissioner* is wholly misconceived and misplaced, as both the said decisions were rendered in the context of Rule 142(1A) of the CGST Rules, 2017 and Central Excise/Service Tax proceedings respectively, and have absolutely no application to proceedings under the Customs Act, 1962. Similarly, the CBIC Instruction prescribing mandatory pre-notice consultation was also issued in the context of Central Excise and Service Tax matters and is not a Customs-specific instrument. All references cited by the noticee thus pertain to an entirely different statutory regime and are therefore not binding, relevant, or applicable to the present Customs proceedings.

I further find that the present Show Cause Notice has been issued under Section 28(4) of the Customs Act, which applies specifically to cases of collusion, wilful misstatement and suppression of facts, and the said sub-section contains no such proviso mandating pre-notice consultation. Accordingly, the submission that the SCN is vitiated on account of non-issuance of pre-notice consultation is devoid of any legal merit and is liable to be rejected.

23.2 On the contention that no documentary evidence of illegal foreign remittance was produced**:**

The noticee has contended that nowhere has the investigating agency placed any documentary evidence of illegal under-the-table foreign remittance to the foreign supplier to corroborate the charge of under-valuation.

I find this submission to be misconceived. The burden of establishing under-valuation under Rule 12 of CVR, 2007 does not require the department to produce documentary evidence of a parallel remittance or a second set of books. The Rule requires only that the proper officer has reasonable grounds to doubt the truth or accuracy of the declared value. Such doubt, as has been amply demonstrated in the preceding paragraphs, arises here from the mathematical impossibility of the declared price, the overwhelming NIDB data, and the proprietor's own admission. The absence of a parallel payment trail does not negate the established grounds for rejection and re-determination. This submission is accordingly rejected.

Confirmation of Confiscation, Demand and Penalties.

24. Confiscation of goods:

24.1 In the present case, M/s Abhinav Traders filed Thoka Numbers declaring the value of 'Walnut Kernel' at USD 1.50 to USD 1.51 per Kg, which has been found to be grossly under-valued as against the re-determined assessable value of USD 2.10 per Kg. The goods imported under the said Thoka Numbers thus clearly do not correspond in respect of value with the entries made at the time of importation, thereby contravening the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 and attracting confiscation under Section 111 of the Customs Act, 1962. I accordingly hold that the goods imported under the 09 Thoka Numbers of M/s Abhinav Traders are liable to confiscation under **Section 111(m)** of the Customs Act, 1962.

24.2 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that 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. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of the Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

> *"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of*

goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

24.3 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements, I find that goods are liable for confiscation and redemption fine can be imposed.

25. Differential Duty.

25.1 The rejection of the declared transaction value and re-determination of the assessable value at USD 2.10 per Kg under Rule 5 of CVR, 2007 having been established in preceding paras, the next question that arises is the recovery of the differential duty short paid. M/s Abhinav Traders had wilfully mis-declared the value of the impugned goods by submitting under-valued invoices at the time of filing the Thoka Numbers, in clear contravention of Section 46(4) of the Customs Act, 1962. The short payment of duty was not on account of any inadvertent error or bona fide difference of opinion on valuation, but was a direct and calculated consequence of deliberate under-valuation with the intent to evade Customs duty. In his statement dated 30/31.05.2024 recorded under Section 108 of the Customs Act, 1962, Shri Abhishek Garg, Proprietor of M/s Abhinav Traders categorically admitted that Walnut Kernel was imported at under-valued prices to save Customs duty. Most significantly, upon learning of the search being conducted by DRI, he arranged for the deliberate destruction of his iPhone 14 mobile phone containing chat evidence of under-valuation and it is an act which is in itself the clearest possible indicator of a guilty mind and a conscious and deliberate attempt to conceal the truth from the investigating agency. These facts, taken together, conclusively establish that the short payment of duty was the result of wilful mis-statement and suppression of the actual value of the goods. Accordingly, I hold that the differential duty is liable to be demanded and recovered under **Section 28(4)** of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

25.2 The differential duty calculation is as follows:

S. No	Thoka Number	Thoka date	Declared/Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2016408	21-10-2022	2413780.43	3368551.43	2655158.47	3705406.58	1050248.11
2	2018410	23-11-2022	4836343.58	6749359.58	5319977.94	7424295.53	2104317.59
3	2018883	30-11-2022	4360226.85	6084914.85	4796249.54	6693406.34	1897156.80
4	2020299	20-12-2022	7782030.18	10860212.70	8560233.2	11946233.97	3386000.77
5	2000331	06-01-2023	2509351.14	3501925.14	2760286.25	3852117.66	1091831.41
6	2003691	22-02-2023	5024709.11	7012233.11	5527180.02	7713456.42	2186276.40
7	2004439	09-03-2023	2751034.84	3839206.84	3026138.32	4223127.52	1196989.20
8	2007345	29-04-2023	7541959.23	10456034.13	8296155.15	11501637.54	3205482.39
9	2007346	29-04-2023	5586636.47	7745210.47	6145300.12	8519731.51	2374431.39
		Total	**42806072**	**59617648**	47086679	65579413	**18492734**

In view of the above table, the differential duty of **Rs. 1,84,92,734/-** (Rupees One Crore Eighty Four Lakhs Ninety Two Thousand Seven Hundred and Thirty Four only) is hereby determined and confirmed under Section 28(8) of the Customs Act, 1962 and is recoverable from M/s Abhinav Traders under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

26. Penalty.

26.1 Penalty under Section 114A of the Customs Act, 1962:

As established in the preceding paras, the short payment of Customs duty by M/s Abhinav Traders was neither accidental nor a result of any bona fide difference of opinion on valuation but was a direct, deliberate, and calculated consequence of submitting under-valued invoices before the Customs authorities with the sole intent of evading payment of duty lawfully leviable on the impugned goods. Accordingly, duty is to be recovered under Section 28(4) of the Customs Act, 1962 from M/s Abhinav Traders as discussed in the foregoing paras. Therefore, I hold that M/s Abhinav Traders, in respect of the 09 Thoka Numbers, is liable for penalty under the provisions of **Section 114A** of the Customs Act, 1962.

26.2 Penalty under Section 114AA of the Customs Act, 1962:

Shri Abhishek Garg, as the proprietor of M/s Abhinav Traders, knowingly and intentionally caused to be submitted invoices and declarations before the Customs authorities at the time of filing the Thoka Numbers which did not reflect the actual and correct value of the imported goods. His own categorical admission in his statement dated 30/31.05.2024 that Walnut Kernel was imported at under-valued prices to save Customs duty leaves no room for any plea of inadvertence or ignorance. Further, upon learning of the search, the act of arranging for the destruction of his iPhone 14, containing direct chat evidence of the under-valuation, conclusively establishes not merely knowledge but deliberate and premeditated intent to conceal false documentation. Accordingly, Shri Abhishek Garg, Proprietor of M/s Abhinav Traders is held liable for penalty under **Section 114AA** of the Customs Act, 1962.

27. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

i. I reject the value of the goods imported vide 9 Thoka Numbers specified in Table I of Para 11.2 above, under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine as **Rs. 5,96,17,648 /-** (Rupees Five Crore Ninety Six Lakh Seventeen Thousand Six Hundred and Forty Eight Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;

ii. I hold the goods, imported vide 9 Thoka Numbers specified Table I of Para 11.2 above, having re-determined value of **Rs. 5,96,17,648 /-** *(Rupees Five Crore Ninety Six Lakh Seventeen Thousand Six Hundred and Forty Eight Only),* liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs.90,00,000/-** (Rupees Ninety Lakh only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

iii. I determine and confirm the differential duty amounting to **Rs. 1,84,92,734/-** (Rupees One Crore Eighty Four Lakh Ninety Two Thousand Seven Hundred and Thirty four only) under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s Abhinav Traders under the provision of section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962;

iv. I impose a penalty of **Rs. 1,84,92,734/-** (Rupees One Crore Eighty Four Lakh Ninety Two Thousand Seven Hundred and Thirty four only) upon M/s Abhinav Traders under Section 114A of the Customs Act, 1962;

v. I impose a penalty of **Rs. 30,00,000/-** (Rupees Thirty Lakh only) on Shri Abhishek Garg, Proprietor of M/s Abhinav Traders under Section 114AA of the Customs Act, 1962.

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

Digitally signed by
Nitin Saini
Date: 15-06-2026
15:57:30

(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra.

F.No. GEN/ADJ/COMM/409/2025-Adjn-O/o Pr Commr-Cus-Mundra.

By Speed Post/Email/Notice Board:-

To, (The Noticee),

1. M/s. Abhinav Traders (IEC: BHVPG6622H) having registered office at Building No. 1041/43, Shop No. 8, Gandhi Gali, Fatehpuri, Delhi-110006

2. Shri Abhishek Garg Proprietor of M/s. Abhinav Traders (IEC: BHVPG6622H) residing at 1st Floor, H-46, Naveen Shahdara, Delhi-32.

Copy to:

(i) The Additional Director, Directorate of Revenue Intelligence (DRI), Indore, First Floor, BSNL Telephone Exchange Building, Transport Nagar, Indore (M. P.)-452014.

(ii) The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.

(iii) Notice Board.

(iv) Guard File.