
	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b> <b>CUSTOM HOUSE: MUNDRA, KUTCH</b> <b>MUNDRA PORT&amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>	
		<b>A. File No.</b> : GEN/ADJ/COMM/599/2024-Adjn-O/o Pr. Commr-Cus-Mundra.
<b>B. Order-in-Original No.</b>	<b>:</b> MUN-CUSTM-000-COM-10-25-26	<b>C. Passed by</b> : <b>Nitin Saini</b>  <b>Commissioner of Customs,</b> <b>Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and</b> <b>Date of issue:</b>	<b>:</b> 13.06.2025  13.06.2025	<b>E. SCN No. &amp; Date</b> : SCN No. GEN/ADJ/COMM/599/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 01.01.2025.
<b>F. Noticee(s) / Party /</b> <b>Importer</b>	<b>:</b> 1. M/s. Prime Enterprises (IEC No. HJKPK6905E), located at Sector 3, Shop No D 2, Plot No J 207, Sector 3 Airoli Road, Airoli, Navi Mumbai, Thane, Navi Mumbai, Thane, Maharashtra, 400708. (e-mail- <a href="mailto:faiyajprime@gmail.com">faiyajprime@gmail.com</a> ).  2. M/s Freight Link Logistics, Customs Broker, Office No. 8, 2nd Floor, Ojas Complex, Plot No. 69, Sector-9, Gandhidham, Kutch, Gujarat-370201. (e-mail - <a href="mailto:freightlinkkandla@gmail.com">freightlinkkandla@gmail.com</a> ).  3. Shri Hemant Balkrishna Joshi, House No. 97, Survey No.391, Near Kandla Air Port Road, Bhageshree Township-2, Varsamedi, Kachchh, Gujarat-370110 (email- <a href="mailto:hbjoshi.20@gmail.com">hbjoshi.20@gmail.com</a> )  4. Shri Shubham Kumar Yadav, G-Card Holder, M/s Freight Link Logistics, Office No. 8, 2nd Floor, Ojas Complex, Plot No. 69, Sector-9, Gandhidham, Kutch, Gujarat-370201 (e-mail - <a href="mailto:freightlinkkandla@gmail.com">freightlinkkandla@gmail.com</a> ).  5. Shri Deepak Singh, Manager, M/s Freight Link Logistics, Customs Broker, Office No. 8, 2nd Floor, Ojas Complex, Plot No. 69, Sector-9, Gandhidham, Kutch, Gujarat-370201. (e-mail - <a href="mailto:freightlinkkandla@gmail.com">freightlinkkandla@gmail.com</a> ).  6. Shri Atul Kapoor, L-2/111, L-2 Block, New Mahavir Nagar, Delhi-110018 (email- <a href="mailto:kapooraaaa@gmail.com">kapooraaaa@gmail.com</a> ).	<b>G. DIN</b> : 20250671MO000000C8E2

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



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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

**“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”**

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 -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल 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/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं०-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

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

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

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

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

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष 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

M/s. Prime Enterprises (IEC No. HJKPK6905E), located at Sector 3, Shop No D 2, Plot No J 207, Sector 3 Airoli Road, Airoli, Navi Mumbai, Thane, Navi Mumbai, Thane, Maharashtra, 400708, filed Bill of Entry No. 4281954 dated 01.07.2024 at Mundra Port. Intelligence gathered by the Directorate of Revenue Intelligence (DRI) indicated that there might be misdeclaration /concealment in the consignment to evade customs duty/to smuggle restricted/prohibited goods.

Details of the said consignment is as under:

**Table-I**

<b>Bill of Entry No.</b>	4281954 dated 01.07.2024 (INMUN1)
<b>Bill of Lading No.</b>	A33EX34282 dated 06.06.2024
<b>Declared Goods</b>	a. Girls Baby Top (HSN 62092090) b. Girls Slip (HSN 61081120)
<b>Customs Broker</b>	Freight Link Logistics
<b>Assessable Value</b>	Rs. 9.63 lakhs (total)
<b>Country of Origin</b>	China
<b>Container No.</b>	IAAU1008124
<b>Supplier</b>	Hongkong Easy Goal Trade Limited, China

2. Accordingly, after approval of the competent authority, the consignment was put on hold on 03.07.2024 for 100% examination by the DRI. Search was carried out at the office premises of Customs Broker, M/s. Freight Link Logistics, under panchnama dated 03.07.2024. During which incriminating documents, were found and resumed. During the search, it was also informed by the persons available at the said office premises, that all the work related to the firm, was overseen by Shri Hemant Joshi and Shri Deepak Singh. However, both the said persons were not found present at the said office premises during the said search proceedings, by the DRI.

3. Consequently, the consignment was examined by the DRI officers at the warehouse of M/s Seabird CFS, APSEZ, Mundra under panchnama dated 03/04.10.2024, in presence of the G-card holder of Customs Broker M/s. Freight Link Logistics. During the examination by the DRI, the container was found containing undeclared goods i.e. accessories used for babies/toddlers, Socks and Ladies Undergarments (Brassieres and Panties), instead of declared goods, i.e. "Girls Baby Top" and "Girls Slip".

4. During the examination by the DRI, it appeared that goods of the subject consignment, had been mis-declared in respect of description, and attract high rate of Customs Duty. Therefore, to assess the amount of duty evaded by the importer by way of mis-declaration, to ascertain the appropriate value of the goods in the consignment, services of Govt. approved Chartered Engineer/Valuer, Shri Tushar Zankat, were taken. Representative of the Govt. approved Chartered Engineer/Valuer remained present during the examination, and examined the goods for valuation aspect, and also took photographs of the goods from the consignment. Further, since the goods appeared to have been mis-declared in respect of description & value, therefore, being of reasonable belief that the said goods were liable for confiscation under Section 111 of the Customs Act, 1962, the goods of the consignment were placed under seizure vide Seizure Memo dated 04.07.2024.

5. Summons were issued to the proprietor of M/s Prime Enterprises, and concerned persons of the Customs Broker, for tendering their statements. Search attempt was made at the address of M/s Prime Enterprises located at Sector 3,



Shop No D 2, Plot No J 207, Sector 3 Airoli Road, Airoli, Navi Mumbai, Thane, Navi Mumbai, Thane, Maharashtra, 400708, by DRI officers. However, no such firm was found running at the given address. Accordingly, a visit note dated 04.07.2024 was prepared.

6. The Chartered Engineer/Valuer, submitted his valuation report CE/MUN/DRI-005/2024-25 dated 13.07.2024, as per which value of the consignment was ascertained as Rs. 1,98,94,440/-, compared to Rs. 9,63,127.50/-, declared in the Bill of Entry No. 4281954 dated 01.07.2024. Further, total duty on the consignment was found to be approx. Rs. 85,74,150/-, while the total duty paid by M/s Prime Enterprises, in the said consignment was Rs. 2,80,682/-. Therefore, total evasion of duty in the subject consignment appeared to be approx. Rs. 82,93,468/-

**6. Statements recorded during the investigation:**

6.1 Statement of Shri Shubham Kumar Yadav, G-card holder of M/s. Freight Link Logistics, was recorded on 04.07.2024, during which he stated that had been working with M/s Freight Link Logistics and had known Shri Deepak Singh and Shri Hemant Joshi through professional connections. He confirmed that he assisted in clearing goods imported by M/s Prime Enterprises, a company operated by Shri Faiyaz Khan, related to garments and consumer goods. He acknowledged the importation of undergarments and other goods, confirming that all documentation related to the consignment was managed by Shri Hemant Joshi and Shri Deepak Singh. He stated that he had no knowledge of the exact contents of the consignment and denied involvement in any fraudulent activities. He confirmed that he only acted as a customs clearing agent, providing necessary documents for customs clearance. He was made aware of the goods found in the consignment and their valuation, and he accepted the customs duty discrepancies.

6.2. Statement of Shri Deepak Singh, Manager of M/s Freight Link Logistics, was recorded on 04.07.2024, during which he stated that he was involved in the import/export clearance business and had known Shri Hemant Joshi and Shri Shubham Kumar Yadav for facilitating import consignments, including goods for M/s Prime Enterprises, run by Shri Faiyaz Khan. He admitted to coordinating the clearance of garments, undergarments, and other goods, handling documentation such as invoices and packing lists, with no direct knowledge of the contents. He acknowledged his role in helping import the consignment involving undergarments and accessories, which were later found in the shipment, but clarified that he did not have any knowledge of the fraudulent activities linked to the consignment. He confirmed the valuation of the goods and the applicable duty discrepancies, agreeing to pay the differential customs duty upon further discussions with Shri Joshi and Shri Faiyaz Khan.

6.3 Statement of Shri Hemant Balkrishna Joshi was recorded on 05.07.2024 , where he stated that M/s Prime Enterprises (IEC-HJKPK6905E), involved in importing garments from China, had been his client for the past year, importing goods through M/s Freight Link Logistics at Mundra Port. He was introduced to M/s Prime Enterprises by Shri Faiyaz Khan and coordinated with Shri Ajay Kumar for handling documentation. Documents, including Bill of Lading, Invoice, and Packing List, were sent via WhatsApp by Shri Ajay Kumar, which Shri Hemant forwarded for clearance. Duty payments for the consignments were made by Shri Faiyaz or Shri Ajay Kumar. Regarding the consignment under Bill of Entry No. 4281954 dated 01.07.2024, which declared goods as "Girls Baby Top" and "Girls Slip," Hemant stated that during examination, the declared goods were not found; instead, undergarments and baby accessories were discovered. He admitted



knowing about the mis-declaration, which was communicated by Shri Ajay Kumar. He acknowledged the discrepancy, confirmed his participation in the examination, and agreed to calculate the differential duty and contact Shri Faiyaz Khan for payment. A further statement was recorded on 23.07.2024, where Shri Hemant clarified that the goods belonged to Shri Atul Kapoor, a resident of Mahipalpur, Delhi. Atul Kapoor had contacted both Shri Hemant and Shri Deepak Singh for clearance. He confirmed that the required documents for the consignment were sent by Shri Ajay Kumar and that the goods were intended for delivery to Shri Atul Kapoor. He also admitted to arrange the IEC for M/s Prime Enterprises without verifying its legitimacy, and confirmed that he had never met Shri Faiyaz Khan. Shri Hemant agreed to the valuation report of the Chartered Engineer, which valued the goods at Rs. 1,98,94,440/-, and stated that he would calculate the applicable duty based on this valuation and inform Shri Atul Kapoor. He confirmed his presence during the DRI examination on 02.07.2024 and acknowledged that the consignment was not fully de-stuffed despite the recommendation for a 100% examination.

**6.5.** Statement of Shri Atul Kapoor was recorded on 07.08.2024, wherein he stated that he was the actual owner of the goods in the consignment under Bill of Entry No. 4281954 dated 01.07.2024. He stated that the goods, originally declared as "Girls Baby Top" and "Girls Slip," were in fact undergarments and baby accessories. Shri Atul Kapoor confirmed that he had contacted Shri Hemant Balkrishna Joshi and Shri Deepak Singh for the clearance of the consignment, which was to be delivered to him in Delhi. Shri Atul Kapoor admitted that the mis-declaration of goods was intentional and that he was aware of the discrepancy. He confirmed that the required documents, such as the invoice and packing list, were sent by Shri Ajay Kumar, who also handled the goods' loading from China. Atul Kapoor bore the costs for customs clearance and cargo handling, including the payment of the duty for the goods. Regarding the valuation of the goods, Shri Atul Kapoor agreed with the valuation report that estimated the consignment's value at Rs. 1,98,94,440/-. He stated that he would arrange for the payment of the applicable customs duty and any differential duty arising from the mis-declaration. He also confirmed that the mis-declared goods were meant for personal use and distribution within his network.

**6.6** Shri Faiyaz Khan, the proprietor of M/s Prime Enterprises, appeared before DRI and tendered his statement on 22.10.2024, wherein he shown the panchnama dated 03/04.07.2024 from M/s Seabird CFS, Mundra, and the statements of Shri Shubham Kumar Yadav, Shri Deepak Singh, and Shri Hemant Balkrishna Joshi. Shri Faiyaz Khan stated that he owned M/s Prime Enterprises, located in Navi Mumbai, which was involved in the import and trade of garments and consumer goods. He revealed that he was introduced to Shri Hemant Joshi and Shri Deepak Singh through a mutual acquaintance. They asked for his documents for importing garments, offering him a commission of Rs. 50,000 in exchange for providing them with his company's documents. He further disclosed that he provided them with a SIM card and helped open a bank account in the name of M/s Prime Enterprises, linking the SIM card with this bank account. When asked about the specifics of the goods being imported, he stated that he was unaware of the nature of the goods, as all business-related activities of M/s Prime Enterprises were handled by Shri Hemant Joshi and Shri Deepak Singh. Upon being shown the panchnama, he learned that the consignment under Bill of Entry No. 4281954, filed at Customs House Mundra, contained garments declared as "Girls Baby Top" and "Girls Slip," but upon examination, various undeclared goods were found, including ladies' undergarments (brassieres and panties) totaling approximately 2.4 lakh pieces. Additionally, baby accessories such as socks and blankets were found in the consignment. He was made aware that customs duty on the undeclared



undergarments was applicable at Rs. 30/piece or 20% ad valorem (whichever was higher), and Rs. 25/piece or 20% ad valorem for the baby items. He was also informed that a customs-empaneled Chartered Engineer was called to assess the value of the consignment, which amounted to Rs. 1,98,94,440/- as per the valuation report dated 13.07.2024. He accepted this valuation and acknowledged the duty evasion, as the customs duty paid initially was only around Rs. 2.70 Lakhs, while the differential duty due was approximately Rs. 85.74 Lakhs. He assured that he would consult with Shri Hemant Joshi and Shri Deepak Singh to ensure that the differential duty and applicable interest would be paid within 2-3 days.

7. M/s. Prime Enterprises, vide letter dated 21.11.2024 informed that they have made payment of differential duty amounting to Rs. 82,93,510/- vide challan dated 21.11.2024 and requested provisional release of the goods. Accordingly, after approval of the competent authority, the request of the importer was forwarded to the jurisdictional Customs Authority, i.e. the Pr. Commissioner, Customs Mundra for considering the request of the importer.

#### **8. Findings of the Investigation:**

8.1 M/s. Prime Enterprises (IEC No. HJKPK6905E), located at Sector 3, Shop No D 2, Plot No J 207, Sector 3 Airoli Road, Airoli, Navi Mumbai, Thane, Navi Mumbai, Thane, Maharashtra, 400708 has filed Bill of Entry No. 4281954 dated 01.07.2024 at Mundra Port. Intelligence gathered by the Directorate of Revenue Intelligence (DRI) indicated that there might be misdeclaration /concealment in the consignment to evade customs duty/to smuggle restricted/prohibited goods.

8.2. Acting upon the intelligence, the consignment was examined by the DRI officers at the warehouse of M/s Seabird CFS, APSEZ, Mundra under panchnama dated 03/04.10.2024, in presence of the G-card holder of Customs Broker M/s. Freight Link Logistics. It appeared that goods of the subject consignment, had been mis-declared in respect of description, and attract high rate of Customs Duty, therefore, to assess the amount of duty evaded by the importer by way of mis-declaration, to ascertain the appropriate value of the goods in the consignment, services of Govt. approved Chartered Engineer/Valuer, Shri Tushar Zankat, were taken. Representative of the Govt. approved Chartered Engineer/Valuer remained present during the examination, and examined the goods for valuation aspect, and also took photographs of the goods from the consignment. During the examination by the DRI, the container was found containing undeclared goods i.e. accessories used for babies/toddlers, Socks and Ladies Undergarments (Brassieres and Panties), instead of declared goods, i.e. "Girls Baby Top" and "Girls Slip". Since the goods appeared to have been mis-declared in respect of description & value, therefore, being of reasonable belief the said goods were liable for confiscation under Section 111 of the Customs Act, 1962, the goods of the consignment were placed under seizure vide Seizure Memo dated 04.07.2024.

8.3. Summons were issued to the proprietor of M/s Prime Enterprises, concerned persons of the Customs Broker, and other related persons for tendering their statements. From the statements recorded during the investigation, it appeared that the consignment was imported in the name of M/s Prime Enterprises, whose proprietor, Shri Faiyaj Khan, admitted that he had no active role in the operations of the firm and had provided its documents, along with a SIM card and a bank account, to Shri Hemant Joshi and Shri Deepak Singh for a payment of Rs. 50,000.

8.4. Shri Faiyaj Khan stated that he was unaware of the nature of the imported goods and that all activities related to the firm were managed by Shri Hemant Joshi



and Shri Deepak Singh. He confirmed that the goods were mis-declared. After being shown the valuation report of Rs. 1,98,94,440/- by the Chartered Engineer, accepted the said valuation and admitted that the import goods were undervalued for evasion of Customs Duty.

**8.5.** From the statements of Shri Hemant Joshi, it was revealed that Shri Atul Kapoor, identified as the actual owner of the goods, was summoned and his statement recorded on 07.08.2024. Shri Kapoor admitted to being the person who arranged the consignment. He stated that he had coordinated with Hemant Joshi and Deepak Singh for the clearance of the goods and had sent the documentation, including invoices, packing lists, and Bills of Lading, from China. Shri Atul Kapoor acknowledged that he used the IEC of M/s Prime Enterprises, arranged by Hemant Joshi, to facilitate the import. He confirmed that he had never met Faiyaz Khan.

**8.6.** Shri Atul Kapoor was also shown the valuation report prepared by a Chartered Engineer, which assessed the total FOB value of the consignment at Rs. 1,98,94,440/-. He reviewed the valuation and accepted it. He agreed to calculate and pay the applicable customs duty based on this valuation. Similarly, Faiyaz Khan, after being shown the panchnama and valuation report, also acknowledged the valuation and assured to make the payment of the differential customs duty along with interest.

**8.7.** During the course of the investigation, it was found that the customs duty applicable on the misdeclared goods—brassieres and panties, classified under CTH 6212 and CTH 6108—was significantly higher than the duty assessed on the declared items. The actual customs duty on the consignment was determined to be Rs. 85,74,150/-, whereas the initial duty paid was merely Rs. 2.70 lakhs, resulting in a differential duty liability of Rs. 82,93,510/-. M/s Prime Enterprises, through a letter dated 21.11.2024, informed the DRI that they had made the payment of the differential duty amounting to Rs. 82,93,510/- via challan and requested the provisional release of the seized goods.

## **9. Valuation**

**9.1** Rule 12 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007, is reproduced below:

### ***“Rule 12. Rejection of declared value. -***

*(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.*

*(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*

*Explanation. -*

*(1) For the removal of doubts, it is hereby declared that: -*

*(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is*



rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) 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 misdeclaration 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.”

**9.2** Therefore, since the import goods imported by M/s. Prime Enterprises covered under the subject consignment, appeared to be hugely undervalued, which has been accepted by the importer in his statement and there was reason to believe that the importer has deliberately suppressed the actual value of the import goods, which resulted in short payment of Customs Duty on the same, the value such declared by the importer M/s. Prime Enterprises is liable to be rejected as per the provisions of Rule 12 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007.

**9.3.** Further, Section 14 of the Customs Act, 1962, which provides for the valuation of goods, is reproduced below:

**“Section 14. Valuation of goods. -**

*(1) For the purposes of the Customs Tariff Act, 1975 (51 of 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:*

*Provided 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 licence 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:*

*Provided further that the rules made in this behalf may provide for,-*

*(i) the circumstances in which the buyer and the seller shall be deemed to be related;*

*(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*



(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

2[(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

*Explanation.* - For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

9.4. Further, Rule 3 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 provides that,

(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

(iii) 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.*

**9.5.** Therefore, Rule 4 to Rule 8 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007, are being reproduced below:

***“Rule 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.

**Rule 6. Determination of value where value can not be determined under rules 3, 4 and 5. -**

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.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

**Rule 7. Deductive value. -**

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

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

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

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

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

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

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

**Rule 8. Computed value. -**

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

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

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

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

9.6. From the above it appears that, since exact comparative data in respect of the import goods covered under the subject consignments is not available in absence of clear descriptions and mis-declaration on the part of the importer, the value of the subject 6 import consignments cannot be determined as per the provisions of Rule 4 to Rule 8 to the Customs Valuation (Determination of value of



Imported goods) Rules, 2007. Further, Rule 9 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 provides that,

***“Rule 9. Residual method: -***

*(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.”*

Since, as per Rule 9 above, 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, therefore, the value of the subject import consignments was determined on the basis of the valuation of the subject consignments submitted by the Chartered Engineer & Govt. Approved Valuer as per the provisions of Section 14 of the Customs Act, 1962 read with the Rule 3 and Rule 9 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007.

**9.7.** As per the valuation report CE/MUN/DRI-005/2024-25 dated 13.07.2024 submitted by the Chartered Engineer & Govt. Approved Valuer, value of the subject import consignment is Rs. 1,98,94,440/-, compared to Rs. 9,63,127.50/-, declared in the Bill of Entry No. 4281954 dated 01.07.2024, by M/s Prime Enterprises. Further, total duty on the consignment, was found to be approx. Rs. 85,74,150/-, while the total duty paid by M/s Prime Enterprises, in the said consignment was Rs. 2,80,682/-. Therefore, total evasion of duty in the subject consignment appeared to be approx. Rs. 82,93,468/-.

**10. Confiscation of the goods:**

**10.1** During the examination, the container was found containing undeclared goods i.e. accessories used for babies/toddlers, Socks and Ladies Undergarments (Brassieres and Panties), instead of declared goods, i.e. “Girls Baby Top” and “Girls Slip”, therefore it appeared that those goods of the subject consignment, had been



mis-declared in respect of description. Therefore, the said goods were liable to be confiscated under the Section 111(f) and 111(l) of the Customs Act, 1962.

**10.1** As per the valuation report CE/MUN/DRI-005/2024-25 dated 13.07.2024 submitted by the Chartered Engineer & Govt. Approved Valuer, value of the subject import consignment is Rs. 1,98,94,440/-, compared to Rs. 9,63,127.50/-, declared in the Bill of Entry No. 4281954 dated 01.07.2024, by M/s Prime Enterprises. Therefore, the goods of the subject consignment were mis-declared by the importer, in terms of value also, thus the said goods were liable to be confiscated under Section 111(m) of the Customs Act, also.

## **11. Demand of Duty:**

**11.1** Section 28 (4) of the Customs Act, 1962, which is being reproduced below, states that:

***“Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -***

*.....*

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

*(a) collusion; or*

*(b) any wilful mis-statement; or*

*(c) suppression of facts,*

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

*..... ”*

**11.2** As per the valuation report CE/MUN/DRI-005/2024-25 dated 13.07.2024 submitted by the Chartered Engineer & Govt. Approved Valuer, value of the subject import consignment is Rs. 1,98,94,440/-, compared to Rs. 9,63,127.50/-, declared in the Bill of Entry No. 4281954 dated 01.07.2024, by M/s Prime Enterprises. Further, total duty on the consignment, was found to be approx. Rs. 85,74,150/-, while the total duty paid by M/s Prime Enterprises, in the said consignment was Rs. 2,80,682/-. Therefore, total evasion of duty in the subject consignment appeared to be approx. Rs. 82,93,468/-.

**11.3** On investigation it was found that M/s Prime Enterprises played a pivotal role in the investigation under the provisions of the Customs Act, 1962, primarily due to its involvement in the misdeclaration and fraudulent activities surrounding the importation of goods under Bill of Entry No. 4281954 dated 01.07.2024. While the firm was registered as the importer, the actual control and operations were found to be managed by Shri Atul Kapoor, with the assistance of Shri Hemant Joshi and Shri Deepak Singh. M/s Prime Enterprises, through the actions of its proprietor Shri Faiyaz Khan, by virtue of its involvement in the misrepresentation of the imported goods, is responsible for the wilful misdeclaration/mis-statement of the consignments, which resulted in the evasion of customs duty, and liability.

M/s. Prime Enterprises are liable to pay total duty (including IGST) amounting to Rs. Rs. 82,93,468/-, under Section 28(4) of the Customs Act, 1962 along with



interest as applicable. M/s. Prime Enterprises, vide letter dated 21.11.2024 informed that they have made payment of differential duty amounting to Rs. 82,93,510/- vide challan dated 21.11.2024.

### **Role played by various firms/persons:**

#### **12. M/s Prime Enterprises:**

**12.1** M/s. Prime Enterprises (IEC No. HJKPK6905E), located at Sector 3, Shop No D 2, Plot No J 207, Sector 3 Airoli Road, Airoli, Navi Mumbai, Thane, Navi Mumbai, Thane, Maharashtra, 400708 has filed Bill of Entry No. 4281954 dated 01.07.2024 at Mundra Port. During the examination by the DRI, the container covered under the said bill of entry was found containing undeclared goods i.e. accessories used for babies/toddlers, Socks and Ladies Undergarments (Brassieres and Panties), instead of declared goods, i.e. "Girls Baby Top" and "Girls Slip. Further, as per the valuation report CE/MUN/DRI-005/2024-25 dated 13.07.2024 submitted by the Chartered Engineer & Govt. Approved Valuer, value of the subject import consignment is Rs. 1,98,94,440/-, compared to Rs. 9,63,127.50/-, declared in the Bill of Entry No. 4281954 dated 01.07.2024, by M/s Prime Enterprises to evade Customs Duty amounting to approx. Rs. 82,93,468/-. Therefore, the said goods were liable to be confiscated under the Section 111(f), 111(l) and 111(m) of the Customs Act, 1962.

**12.2** During the investigation, it was noticed that M/s Prime Enterprises played a pivotal role in the investigation under the provisions of the Customs Act, 1962, primarily due to its involvement in the misdeclaration and fraudulent activities surrounding the importation of goods under Bill of Entry No. 4281954 dated 01.07.2024. While the firm was registered as the importer, the actual control and operations were found to be managed by Shri Atul Kapoor, with the assistance of Shri Hemant Joshi and Shri Deepak Singh. The proprietor of M/s Prime Enterprises, Shri Faiyaz Khan, was merely a figurehead, providing his firm's documents and bank account to facilitate the illicit activities. However, M/s Prime Enterprises, through the actions of its proprietor Shri Faiyaz Khan, by virtue of its involvement in the wilful misdeclaration /misrepresentation of the imported goods, is responsible for the incorrect declaration of the consignments, which resulted in the evasion of customs duty, and liability.

**12.3** M/s. Prime Enterprises, by filing incorrect declarations and failing to ensure proper classification of the goods, violated several provisions concerning the importation of goods, classification, and assessment of customs duties, thus rendering the said goods liable for confiscation under the provisions of the Section 111 of the Customs Act, 1962. Therefore, M/s Prime Enterprises have made themselves liable for penalty under Section 112(a), and 112(b) of the Customs Act, 1962.

**12.4** Further, wilful mis-declaration/mis-statement by M/s Prime Enterprises in respect of the value, and description of the subject import goods have resulted in short payment of duty on the subject consignment. Therefore, M/s Prime Enterprises are liable for penalty under Section 114A of the Customs Act, 1962. Furthermore, M/s Prime Enterprises have deliberately filed false and incorrect documents with the Customs Authorities, suppressing the actual nature and value of the goods, to evade payment of applicable customs Duty, M/s Prime Enterprises are also liable for penalty under Section 114AA of the Customs Act, 1962.

#### **13. M/s Freight Link Logistics, Customs Broker:**

**13.1** During the investigation by the DRI, it was found that M/s Freight Link Logistics, along with its G-card holder Shri Shubham Kumar Yadav, and Manager Shri Deepak Singh, played a significant role in the clearance of the fraudulent



consignment that was misdeclared and undervalued. M/s Freight Link acted as a facilitator for the customs clearance process, assisting the importation of goods under false pretences, in collaboration with Shri Atul Kapoor.

**13.2** Shri Deepak Singh, as the Manager of M/s Freight Link, was involved in the operational aspects of clearing the goods through customs. His role became evident when it was revealed that he, alongside Shri Hemant Balkrishna Joshi, had coordinated with Shri Faiyaz Khan of M/s Prime Enterprises to facilitate the clearance of the consignment. According to the statements, Shri Deepak Singh was actively involved in arranging the necessary documentation for the clearance process. His involvement in the operational and logistical aspects of the importation scheme meant that he played a pivotal role in ensuring the misdeclaration went undetected by customs officers.

**13.3** Shri Deepak Singh's responsibility, under the provisions of the Customs Act, 1962, included verifying the authenticity of the goods being imported and ensuring the proper classification, valuation, and duty payment. However, in this case, the goods, which were actually ladies' undergarments, were falsely declared as baby clothing and accessories, and the undervaluation of the consignment went unnoticed. It was through the assistance of M/s Freight Link, under the direction of both Shri Shubham Kumar Yadav and Shri Deepak Singh, that the goods were attempted to pass through customs, with significant discrepancies in the duty payments. The actual value of the goods was much higher than what was declared, and as a result, customs duties were evaded.

In his capacity as the Manager of M/s Freight Link, Shri Deepak Singh's involvement extended beyond just managing the documentation. He coordinated with Shri Hemant Joshi and assisted in clearing the consignment by ensuring that necessary arrangements for customs clearance were in place. His failure to verify the authenticity of the declared goods, check the value, or ensure compliance with customs regulations contributed to the overall negligence in the clearance process.

**13.4** The Customs Act, 1962, through CBLR, 2018, places significant responsibility on Customs Brokers, including their managers and staff, to ensure that all goods being imported are declared accurately and that the correct customs duties are paid. Shri Deepak Singh's failure to diligently carry out these duties, or to identify the fraudulent nature of the consignment, makes him and M/s Freight Link liable for scrutiny under the Act. His actions, along with those of the other individuals involved, have led to the underpayment of customs duties and resulted in a breach of legal obligations. This makes M/s Freight Link, under the management of Shri Deepak Singh, responsible for facilitating the clearance of the misdeclared consignment, thus playing a crucial role in the evasion of customs duties.

**13.5** In conclusion, while M/s Freight Link, under Shri Shubham Kumar Yadav and Shri Deepak Singh's authority, did not directly engage in the fraudulent misdeclaration of goods, the company played a key role in facilitating the clearance process. The lack of thorough scrutiny of the consignment, failure to verify the goods properly, and the negligence in ensuring correct duty payments contributed to the illegal importation. As a result, M/s Freight Link through its staff, particularly Shri Deepak Singh, are liable for penal action in customs duty evasion under the provisions of the Customs Act, 1962.

**13.6** M/s. Freight Link Logistics, by filing incorrect declarations and failing to ensure filing of documents containing proper classification of the goods, which have resulted in evasion of huge amount of Customs Duty on the subject import goods, thus rendering the said goods liable for confiscation under the provisions of the Section 111 of the Customs Act, 1962. Therefore, M/s Freight Link Logistics



have made themselves liable for penalty under Section 112(a), and 112(b) of the Customs Act, 1962.

Further, M/s Freight Link Logistics, through its manager; and G card holder, have failed to produce correct documentation and deliberately suppressed the facts in respect of the actual nature of the import goods, therefore, M/s Freight Link Logistics are also liable for penalty under Section 114AA of the Customs Act, 1962.

#### **14. Shri Hemant Balkrishna Joshi:**

**14.1** Shri Hemant Balkrishna Joshi played a central role in the fraudulent customs clearance scheme under investigation, primarily acting as a key facilitator in the importation of goods through misdeclaration and undervaluation. As a customs broker and the representative of M/s Global Exim, he was responsible for overseeing the clearance of consignments at the Customs House, Mundra. His involvement extended beyond merely managing the customs paperwork and logistics; he was deeply entangled in orchestrating the illicit activities that led to the evasion of substantial customs duties.

His role in the clearance of the subject consignment is evident from multiple statements and documents. He was instrumental in coordinating the clearance of goods, specifically ladies' undergarments and baby accessories, under false declarations. The goods, which were in reality garments such as bras, panties, and baby socks, were misdeclared as "Girls Baby Top" and "Girls Slip." These discrepancies were aimed at reducing the value of the consignment to evade the applicable customs duties.

**14.2** According to the statement recorded on 23.07.2024, Shri Hemant Joshi was in direct communication with Shri Atul Kapoor, the actual owner of the goods, for the clearance of the consignment. Shri Atul Kapoor, had engaged Shri Hemant Joshi for the clearance of these goods. It was revealed that Shri Hemant Joshi was actively involved in ensuring that the consignment would pass through customs despite the significant misdeclaration. This was accomplished by submitting fraudulent documents such as invoices, packing lists, and bills of lading that did not accurately reflect the nature and value of the goods.

**14.3** Furthermore, Shri Hemant Joshi played a key role in facilitating the creation of fake importation records. He arranged for the IEC (Import Export Code) under M/s Prime Enterprises, a fictitious entity that was used for the clearance process. The IEC was obtained through Shri Faiyaj Khan, the proprietor of M/s Prime Enterprises, who himself had no knowledge of the actual goods being imported under the firm's name. This was done at the instigation of Shri Hemant Joshi and his associates, including Shri Deepak Singh. Through these false documents, Shri Hemant Joshi misrepresented the true nature of the goods, which contributed to the undervaluation and evasion of customs duties.

**14.4** Shri Hemant Joshi's actions violated several provisions of the Customs Act, 1962, particularly those related to the correct declaration of goods, accurate classification, and payment of the appropriate duties. As per the Customs Act, customs brokers are required to ensure that all goods declared for import are described accurately and that the corresponding duties are paid. However, in this case, Shri Joshi's facilitation of fraudulent declarations resulted in a significant shortfall in customs duty payment.

**14.5** In conclusion, Shri Hemant Balkrishna Joshi's actions were pivotal in facilitating the clearance of goods under false declarations, leading to the evasion of substantial customs duties. His role as a customs broker was abused to facilitate the misdeclaration of goods, ensuring the undervaluation of the consignment and the avoidance of appropriate duty payments. His negligence in verifying the accuracy of the imported goods and the fraudulent practices surrounding the



clearance process makes him a key player in the customs duty evasion under the provisions of the Customs Act, 1962.

**14.6** Shri Hemant Joshi, by indulging himself into the act of mis-declaration, fraud and suppression, as discussed in foregoing paras, which rendered the subject import goods liable for confiscation under the section 111 of the Customs Act, 1962, therefore, he appears to have made himself liable for penalty under the Section 112(a), and 112(b) of the Customs Act, 1962.

Further, Shri Hemant Joshi has involved himself into suppression related to the nature, description and value of the import goods, and also caused to file incorrect information and false documents in respect of the subject consignment, therefore, he appears to have made himself liable for penalty under Section 114AA of the Customs Act, 1962, also.

**15. Shri Shubham Kumar Yadav, G-Card Holder, M/s Freight Link Logistics, Customs Broker:**

Shri Shubham Kumar Yadav is a G-Card Holder and serves as the Field Operation Manager of M/s Freight Link Logistics at Mundra Port. His responsibilities include overseeing the assessment, examination, and delivery of imported cargo. Shri Yadav was present during the examination of the container in question, conducted by the DRI at M/s Seabird CFS, and provided details regarding the events surrounding the Bill of Entry No. 4281954 dated 01.07.2024.

Shri Yadav managed field operations at Mundra port and supervised customs-related activities such as assessment and examination of cargo. He confirmed that the Bill of Entry was filed by M/s Freight Link Logistics for importer M/s Prime Enterprises, but he denied having knowledge about the importer or its proprietor. He also stated that he was unaware of who paid the customs duty for the Bill of Entry.

Shri Yadav participated in the examination proceedings conducted by DRI officers and confirmed discrepancies in the declared and found goods. He acknowledged that while the goods were declared as "Baby Tops" and "Slips," the examination revealed items such as "Slip Bra" and other undergarments, which he recognized under general parlance but could not explain their misclassification under customs tariff headings. While he admitted to knowing that undergarments were usually included in shipments, he claimed ignorance of the specific quantities and the duty evasion involved.

While he admitted to knowing that undergarments were usually included in shipments, he claimed ignorance of the specific quantities and the duty evasion involved. Therefore, by the said acts of omissions and commissions as discussed above, Shri Shubham Kumar Yadav, appears to have rendered himself liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

**16. Shri Deepak Singh, Manager, M/s. Freight Link Logistics, Customs Broker:**

Shri Deepak Singh, the Manager of M/s Freight Link Logistics, played a critical role in facilitating fraudulent activities connected to the illegal import of goods. During the investigation, it was revealed that Shri Deepak Singh was aware of the fraudulent transactions carried out by Shri Hemant Joshi, who handled the clearance of goods on behalf of M/s Prime Enterprises.

It was established that Shri Deepak Singh had knowledge of the misdeclaration of imported goods. The shipments imported under the name of M/s Prime Enterprises were grossly undervalued, and the nature of the goods was misrepresented to evade customs duties. The false declarations were supported by documentation



submitted through M/s Freight Link Logistics, which Shri Deepak Singh supervised. Despite being aware of these discrepancies, he did not take any steps to ensure compliance or prevent the misuse of his firm's license.

Furthermore, Shri Deepak Singh played a key role in facilitating the creation of fake importation records. He arranged for the IEC (Import Export Code) under M/s Prime Enterprises, a fictitious entity that was used for the clearance process. The IEC was obtained through Shri Faiyaj Khan, the proprietor of M/s Prime Enterprises, who himself had no knowledge of the actual goods being imported under the firm's name. This was done at the instigation of Shri Deepak Singh and his associates, including Shri Hemant Joshi. Through these false documents, Shri Deepak Singh misrepresented the true nature of the goods, which contributed to the undervaluation and evasion of customs duties.

As the manager, Shri Singh was directly responsible for overseeing the submission of documents to the customs authorities. This includes ensuring their accuracy and adherence to statutory requirements under the Customs Act, 1962. By allowing the clearance process to proceed based on false documentation, Shri Deepak Singh facilitated the evasion of customs duties and rendered the imported goods liable for confiscation. His role was not merely passive; he knowingly authorized and endorsed actions that directly violated the provisions of the Customs Act.

The investigation also highlighted the financial incentives involved. M/s Freight Link Logistics, under Shri Deepak Singh's management, charged premium fees for facilitating the clearance of such misdeclared consignments. This indicates that Shri Deepak Singh's participation was not incidental but part of a deliberate scheme to profit from fraudulent activities. Therefore, the said acts of Shri Deepak Singh have made him liable for penal action under Customs Act, 1962.

Shri Deepak Singh, by indulging himself into the act of mis-declaration, fraud and suppression, as discussed in foregoing paras, which rendered the subject import goods liable for confiscation under the section 111 of the Customs Act, 1962, therefore, he appears to have made himself liable for penalty under the Section 112(a), and 112(b) of the Customs Act, 1962.

Further, Shri Deepak Singh has involved himself into suppression related to the nature, description and value of the import goods, and also caused to file incorrect information and false documents in respect of the subject consignment, therefore, he appears to have made himself liable for penalty under Section 114AA of the Customs Act, 1962, also.

#### **17. Shri Atul Kapoor:**

Shri Atul Kapoor played a significant role in the fraudulent customs clearance scheme under investigation. His primary role was that of a key facilitator in the importation of goods under false declarations. He coordinated the shipment and clearance of goods, knowing fully well that the goods were being misrepresented in the customs documentation. This included the importation of ladies' undergarments and baby accessories, which were fraudulently declared as "Girls Baby Top" and "Girls Slip" on the customs paperwork. The objective of this misdeclaration was to reduce the apparent value of the goods, thus evading the payment of due customs duties.

Shri Atul Kapoor was also closely involved in the creation of fraudulent importation records. He worked directly with Shri Hemant Balkrishna Joshi, to facilitate the clearance process. It was through his direct communication with Shri Hemant Joshi that the misdeclaration of goods and undervaluation was ensured. He



arranged for the importation of the goods from China, working in tandem with other associates to ensure that the documentation was falsified, which included the submission of inaccurate invoices, packing lists, and bills of lading to Customs.

He was involved in obtaining the IEC (Import Export Code) under the name of M/s Prime Enterprises, which was used for the fraudulent clearance of the goods, and Shri Atul Kapoor arranged for it to be processed through his contacts, including Shri Hemant Joshi and Shri Faiyaz Khan, who was the proprietor of M/s Prime Enterprises.

Additionally, Shri Kapoor's role extended to ensuring the shipment of goods, despite the fraudulent nature of the documents involved. By coordinating with Shri Hemant Joshi and others, he helped ensure that the goods were imported under false pretences, circumventing the customs process and ensuring that the consignment was cleared with undervalued duties. He was aware of the actual nature of the goods, which were misrepresented to Customs as low-value items, thus allowing them to pass through the clearance process without the correct duties being paid.

Thus, it appears that Shri Atul Kapoor played a central role in facilitating the misdeclaration and undervaluation of goods, directly contributing to the evasion of customs duties. His coordination with Shri Hemant Joshi and other individuals involved in the scheme, along with his active participation in obtaining the fraudulent IEC and managing the clearance process, underscores his key role in orchestrating the illegal importation and clearance of goods under false pretences, evidencing his personal involvement crucial in evading customs duties, thus violating provisions of the Customs Act, 1962.

Therefore, by the said acts of omission and commission, which rendered the said import goods liable for confiscation under Section 111 of the Customs Act, 1962. Shri Atul Kapoor appears to have rendered himself liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

**18.** Now therefore, M/s. Prime Enterprises (IEC No. HJKPK6905E), located at Sector 3, Shop No D 2, Plot No J 207, Sector 3 Airoli Road, Airoli, Navi Mumbai, Thane, Navi Mumbai, Thane, Maharashtra, 400708, are called upon to show cause to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

(i) The goods covered under Bill of Entry No. No. 4281954 dated 01.07.2024, declared to contain "Girls Baby Top" and "Girls Slip", and found to actually contain, undeclared goods i.e. accessories used for babies/toddlers, Socks and Ladies Undergarments (Brassieres and Panties), instead of declared goods, should not be confiscated under Section 111(f) and 111(l) of the Customs Act, 1962.

(ii) The value of the goods covered under the Bill of Entry No. 4281954 dated 01.07.2024, declared as Rs. 9,63,127.50/-, should not be rejected and the value of the said goods not be determined as Rs. 1,98,94,440/-, and the said goods should not be confiscated under the Section 111(m) of the Customs Act, 1962. Further if the said goods have been provisionally released to the importer, redemption fine in lieu of the same should not be imposed upon them under Section 125 of the Customs Act, 1962.

(iii) Differential Duty (including IGST) amounting to Rs. 82,93,468/-, chargeable on the said consignment, should not be demanded and recovered under Section 28(4) of the Customs Act, 1962. Further, Duty deposited by the importer, amounting to Rs. 82,93,510/- should not be appropriated against the said demand.



(iv) Interest at appropriate rate should not be demanded and recovered on the duty demanded at (iii) above under Section 28AA of the Customs Act, 1962.

(v) Penalty should not be imposed upon them under Sections 112(a), 112(b), 114A and 114AA of the Customs Act, 1962, separately.

**19.** Now therefore, M/s Freight Link Logistics, Customs Broker, Office No. 8, 2nd Floor, Ojas Complex, Plot No. 69, Sector-9, Gandhidham, Kutch, Gujarat-370201, are hereby called to show cause to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

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

**20.** Now therefore, Shri Hemant Balkrishna Joshi, House No. 97, Survey No.391, Near Kandla Air Port Road, Bhageshree Township-2, Varsamedi, Kachchh, Gujarat-370110, is hereby called to show cause to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

(i) penalty should not be imposed upon him under **Section 112(a), 112(b) and 114AA** of the Customs Act, 1962, separately.

**21.** Now therefore, Shri Shubham Kumar Yadav, G-Card Holder, M/s Freight Link Logistics, Office No. 8, 2nd Floor, Ojas Complex, Plot No. 69, Sector-9, Gandhidham, Kutch, Gujarat-370201, is hereby called to show cause to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

(i) Penalty should not be imposed upon him under **Section 112(a), and 112(b)** of the Customs Act, 1962, separately.

**22.** Now therefore, Shri Deepak Singh, Manager, M/s Freight Link Logistics, Customs Broker, Office No. 8, 2nd Floor, Ojas Complex, Plot No. 69, Sector-9, Gandhidham, Kutch, Gujarat-370201, is hereby called to show cause to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

(i) Penalty should not be imposed upon him under **Section 112(a), 112(b) and 114AA** of the Customs Act, 1962, separately.

**23.** Now therefore, Shri Atul Kapoor, L-2/111, L-2 Block, New Mahavir Nagar, Delhi-110018, is hereby called to show cause as to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

(i) Penalty should not be imposed upon him under **Section 112(a), and 112(b)** of the Customs Act, 1962, separately.

#### **DEFENCE SUBMISSION AND PERSONAL HEARING**

**24. I observe that** '*Audi alteram partem*', is an important principal of natural justice that dictates to hear the other side before passing any order. However, all the noticees sent their submissions on 18.01.2025 and Advocate firm Suvikaa Associates representing all the Noticees, requested vide email dated 06.06.2025



that they do not want any personal hearing and requested to take decision on submissions dated 18.01.2025

**24.1** M/s. Prime Enterprise, Noticee No. 1, vide submission dated 18.01.2025 interalia stated that:

- i. The differential amount of duty to the tune of Rs. 82,93,510.00 has been paid vide manual Challan No. 1594 on dated 21.11.2024 before the issuance of show cause notice.
- ii. The amount of Interest and penalty @ 15% i.e an amount of Rs. 4,95,000/- and Rs. 12,45,000/- has been paid vide Challan No. 1969274379 and 8915578871 both dated 18.01.2025 dated.
- iii. As per provision of sub-section (5) of section 28 of the customs Act, 1962, where any duty or the interest has not been charged or has been part paid by reason of collusion or any willful mis-statement or suppression of facts by the importer or the agent or the employee of the importer to whom a notice has been served under sub-section (4) of section 28 by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to 15% of the duty specified in the notice or the duty so accepted by that person, within 30 days of the receipt of the notice and inform the proper officer of such payments in writing, we have paid an amount of duty to the tune of Rs. 82,93,468.00, an interest of Rs. 4,95,000/- and penalty of Rs. 12,45,000/- (@ 15%) vide challan Nos mentioned above within 30 days from the issuance of show cause notice.
- iv. As per provision of sub-section (6) of Section 28, the proceedings initiated under section 28(4) of the Customs Act, 1962 shall be concluded after verification of the amounts paid for duty, interest and penalty.
- v. In the case of **M/s Balkrishna Industries Ltd Vs C.C. (CESTAT Ahmedabad)** in the Customs Appeal No. 11044 of 2017 (Date of Judgement/Order : 18/10/2022), conclusion of the proceedings under Section 28(4) have been allowed and set aside the Order of Adjudicating Authority.
- vi. Further, in the case of **Krishna Capital v/s Commissioner of Customs, Delhi**, Hon'ble tribunal has said that C.B.E. & C. Circular No. 11/2016-Cus., dated 15.3.2016 clarifying deemed conclusion of proceedings against co-noticees neither applicable to them nor to main noticee as it has tried to widen the scope of Sections 28(5) and 28(6) of Customs Act, 1962 which is not legally permissible. [para 11 of the CESTAT Order] Customs Act, 1962 - Provisions of erstwhile Sections 28(1A), 28(5) and 28(6) of Customs Act, 1962 are pari materia. [para 12 of CESTAT Order]
- vii. In light of the above provisions, it is requested to conclude the proceedings initiated against us under section 28(4) of the Customs Act, 1962.

**24.2** M/s. Freight Link Logistics (Noticee No. 2), Shri Hemant Balkrishma Joshi, (Noticee No. 3), Shri Shubham Kumar Yadav, G-Card Holder, M/s Freight Link Logistics (Noticee No. 4), Shri Deepak Singh, Manager, M/s Freight Link Logistics (Noticee No 5) and Shri Atul Kapoor (Noticee No. 6) vide their letters, all dated 18.01.2025, interalia stated common submissions that:

- i. The differential amount of duty to the tune of Rs. 82,93,510/- has been paid vide manual Challan No. 1594 on dated 21.11.2024 before the issuance of show cause notice.
- ii. The amount of Interest and penalty @ 15% i.e an amount of Rs. 4,95,000/- and Rs. 12,45,000/- has been paid vide Challan No. 1969274379 and 8915578871 both dated 18.01.2025.



- iii. As per provision of sub-section (5) of section 28 of the customs Act, 1962, where any duty or the interest has not been charged or has been part paid by reason of collusion or any willful mis-statement or suppression of facts by the importer or the agent or the employee of the importer to whom a notice has been served under sub-section (4) of section 28 by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to 15% of the duty specified in the notice or the duty so accepted by that person, within 30 days of the receipt of the notice and inform the proper officer of such payments in writing, they have paid an amount of duty to the tune of Rs. 82,93,510.00, an interest of Rs. 4,95,000/- and penalty of Rs. 12,45,000/ (@ 15%) vide challan Nos mentioned above within 30 days from the issuance of show cause notice.
- iv. As per provision of sub-section (6) of Section 28, the proceedings initiated under section 28(4) of the Customs Act, 1962 shall be concluded after verification of the amounts paid for duty, interest and penalty.
- v. In the case of **Rohit Sakhuja vs New Delhi (Icd Tkd) (Import) on 23 August, 2018, Hon'ble CESTAT** allowed the conclusion of proceedings against the other parties under Section 28(4) of the Customs Act, 1962. The relevant extract of the judgment is reproduced as under:

*"8. No doubt Sections 28(5) and 28(6) are applicable without prejudice to the provisions of Sections 135, 135A and 140 of the Customs Act but perusal of Show Cause Notice makes it clear that none of these provisions have been invoked at the time of issuing Show Cause Notice. It has already been observed that in fact the Show Cause Notice, in the present case, was not required to be issued. Though the Department has impressed upon about the present case to be a case of confiscation on account of mis-declaration punishable under Section 135 of the Act and has also impressed upon Circular No. 11/2016 excluding the case in one to be out the ambit thereof. But I am of the opinion that Section 28(5) and 28(6) are applicable for all those cases as are mentioned in sub-section 4 of Section 28. Perusal thereof makes it clear that collusion, wilful mis-statement or suppression of facts are mentioned to be the reason for evasion of duty. The alleged Act of appellant is squarely covered under the said sub-section. Hence, I opine that case of appellant is very much covered under the deemed conclusion scheme of legislature under Section 28 of the Customs Act. To accept the Revenue's stand would therefore amount to curtailing the sweep of a beneficial provision to the appellants. I opine that Adjudicating Authorities below had adopted artificial interpretation of these provisions to defeat the statutory intent. It is well settled law that the legislative intent, extending certain beneficial provision to the assessee, should not be made frivolous by interpreting the provision in a particular manner other than the one which reflects upon such intent.*

*9. Further, the Circular as relied upon by the Department though expressly excludes the cases covered under Sections 111, 113, 115, 118, 119, 120 & 128 to be out of the purview of this Circular but this emphasis of Department is also not opined to be of any benefit to the Department for the reasons that the Circular is merely a clarification regarding the co-noticees. Hence, the Circular is not applicable at least on the main importer. As far as the co-noticee, Mr. Rohit Sakhuja is concerned, I am of the opinion that Circular is not applicable upon him as well for the simple reason that the Circular has tried to widen the scope of Section 28(5) and 28(6) of the Act. It is the settled provision that Circulars being mere*



clarificatory in nature cannot supersede the legislature. It is also settled principle of law as was held by Hon'ble Apex Court in Babu Vs. Bar Council Kerala AIR 1999 (S.C.) 128 that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. In another case of Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra 1989 (44) E.L.T. 613, the Hon'ble Apex Court has observed that a taxing statute must be interpreted in the light of what is clearly expressed therein and nothing can be implied nor can the provisions be imported into them so as to supply an assumed deficiency."

- vi. Further, in the case of **M/s Damani Shipping Pvt. Ltd. Vs Commissioner of Customs (Import-I), Hon'ble CESTAT, Mumbai in Customs Appeal No. 87434 of 2019** (Date of Judgment 28.09.2022), set aside the Order of Adjudicating Authority and allowed the appeal of Customs House Agent. The relevant text of the case is reproduced below:

"5. I have gone through the case record, the relevant provision of law and decided case laws on the issue as well as written note submitted by both the side. Before going into the grounds stated in the appeal memo it is imperative to have a look at the text of the provision contained in Section 28(6)(i) it reads:- "Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under subsection (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion – (i) That the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of Sections 135, 135A and 140 be deemed to be conclusive as to matters stated therein" (emphasis supplied by the appellant)

6. While applying this provision against the Appellant, the Commissioner had observed that the goods were seized under Section 110 and liable for confiscation under Section 111(m) of the Customs Act, 1962 and hence the co-noticee M/s. Damani Shipping Pvt. Ltd. (present Appellant) is out of the purview of the clarification of the Board Circular No. 11/2016-Cus. dated 15.03.2016. Further, Section 28(6)(i) of the Customs Act, 1962 clearly reveals that the proceedings in respect of 'such persons or other persons' to whom the notice is served under sub-Section (1) or sub-Section (4) of the Section 28 of the Customs Act, shall, without prejudice to the provisions of Section 135, 135A and 140 be deemed to be conclusive as to the matters stated therein. But then he opined that since goods were liable for confiscation the proposed penal action cannot be concluded in terms Section 28(6)(i) of the Customs Act, 1962 against the Appellant.

7. Now, let us have a look at the relevant portion of the Board Circular No. 11/2016-Cus. dated 15.03.2016 it reads under para 5 & 6 as follows: "5. The provision of deemed conclusion is contingent upon the person to whom a show-cause notice has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a circumstance of compliance, shall closure of proceedings against other persons come into effect. Therefore, as a corollary, other persons implies person(s) to whom no demand of duty is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be. Other persons who happen to be co-noticees in the show-cause notice for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (I) of subsection (6), as the case may



be, by the main noticee to whom inter alia a demand of duty has been issued has been fulfilled. Further, all such case where proceedings reach closure stage under the provisions of Section 28, an order to the effect must be invariably issued by the concerned adjudicating authority. (underlined to emphasise) 6. Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and/or penalty. Therefore, all such SCNs or cases which involve duty, interest and/or payment of penalty shall be covered by the above clarification. Further, it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular." Without a threadbare analysis of the relevant portion of the clarificatory Circular as noted above it can be said that the Circular in unambiguous terms clarified that other person implies that other person to which no demand of duty is raised with notice served under Section 1 or sub-Section 4 of Section 28, as the case may be. Hence the Appellant's case squarely covered under provision. Since it was a co-notice to whom no demand notice was made but notice under Section 28 was served. Ambiguity arises because of the fact that at the end of para 6 it was noted that case involving seizure of goods under Section 110 of the Customs Act or cases where confiscation proceedings are involved, would be out of the purview of this Circular. Apart from the fact that the said Circular was held in Rohit Sakhuja case (supra) as clarificatory and cannot supersede and legislative intent of the Act, the addition of provision concerning seizure and confiscation could only be held to be applicable in cases where Section 135(A) and 140 of the Customs Act were invoked and it has no bearing on simple duty demand and penalty upon adjudication of a proceeding on mis-declaration. Be that as it may, the said Circular has not personified any violator individually since it had categorically stated that cases involving seizure and confiscation would be out of the purview of the Circular and therefore the order passed by the Commissioner in allowing the benefit contained in Section 28(6)(i) to the importer company and its Managing Director and denying the same to the Appellant who is charged under same penal provisions under Section 112, 114(A), 114(A)(A) in the same case is unsustainable in law and equity. Hence the order.

#### ORDER

8. The appeal is allowed and order passed by the Commissioner of Customs (Import-I), New Custom House, Mumbai vide Order-in-Original CAO No. 19/2019-20 dated 21.05.2019 imposing penalty of Rs.50,000/- on the Appellant is hereby set aside."

- vii. Further, in the case of **Krishna Capital v/s Commissioner of Customs, Delhi**, Hon'ble tribunal has said that C.B.E. & C. Circular No. 11/2016-Cus., dated 15.3.2016 clarifying deemed conclusion of proceedings against co-noticees neither applicable to them nor to main noticee as it has tried to widen the scope of Sections 28(5) and 28(6) of Customs Act, 1962 which is not legally permissible. [para 11 of the CESTAT Order] and Provisions of erstwhile Sections 28(1A), 28(5) and 28(6) of Customs Act, 1962 are pari materia. [para 12 of CESTAT Order]
- viii. In light of the above provisions and pronouncements, it is requested to conclude the proceedings initiated against us under section 28(4) of the Customs Act, 1962



1962 categorically mentioned that the provision of section 125 shall not apply where the proceedings are deemed to be concluded under section 28(6) of the customs act. Further, we do not want any personal hearing and it is requested to take decision on the basis of earlier submissions and emails.

### DISCUSSION AND FINDINGS

**25.** I have gone through the facts of the case, records and documents placed before me. Personal Hearing was not given as per request of all the Noticees through common authorized representative vide email dated 06.06.2025 and written submissions dated 18.01.2025 were made for all the noticees.

**26.** After carefully considering the facts of the case and written submissions made by the Noticees, I find that the Importer M/s Prime Enterprise paid Rs. 82,93,510/- as differential duty vide challan dated 21.11.2024 during course of investigation and after issuance of Show Cause Notice on 01.01.2025, paid interest amounting to Rs. 4,95,000/- on 18.01.2025 and penalty amounting to Rs. 12,45,000/- on 18.01.2025. Accordingly, M/s Prime Enterprise along with all Noticees requested to conclude the proceedings under Section 28(6) of the Customs Act, 1962.

**27.** Sections 28(5) and 28(6) of the Customs Act, 1962 deal with the conclusion of the proceedings initiated under Section 28(4) of the Customs Act, 1962 and the same are reproduced below:

*"28(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.*

*28(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-*

*(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or*

*(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5)."*



**28.** I find that the facility of conclusion of the proceedings under Section 28(6) of the Customs Act, 1962, is available subject to two conditions stipulated in Section 28(5) *ibid*, i.e. **(i)** payment of duty, interest & 15% penalty within 30 days of the receipt of the notice, and **(ii)** informing the proper officer of such payment in writing. Show Cause Notice was issued to M/s Prime Enterprise along with other noticees on 01.01.2025. I find that the importer had paid Rs. 82,93,510/- as differential duty vide challan dated 21.11.2024 during course of investigation and paid interest amounting to Rs. 4,95,000/- and penalty (15% of duty demanded in SCN) amounting to Rs. 12,45,000/-, on 18.01.2025 (within 17 days of SCN) and informed the said payments to Adjudicating Authority on 18.01.2025 itself. Thus the importer has made the payment of differential Custom duty, applicable interest and penalty equivalent to 15% of differential duty amount within the prescribed period of 30 days from the date of receipt of the SCN and has also intimated about the aforesaid payments. Thus, I find that the importer has fulfilled the conditions of Section 28(5) of the Customs Act, 1962. Hence, I find that the instant proceedings against main noticee i.e M/s Prime Enterprise are fit for conclusion in terms of Section 28(6)(i) *ibid*. Further, the proceedings against other noticees are also deemed concluded as per Section 28(6)(i) of the Customs Act, 1962. The relevant portion is produced below:

*(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion —*

*(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of **such person or other persons** to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein;*

**29.** There is one issue which I would like to address here. The present SCN invokes demand under Section 28 as well confiscation of seized goods under Section 111 and imposition of redemption fine under Section 125. Earlier, there was a clarification by way of Circular No. 11/2016 dated 15.03.2016 which stated that while deemed conclusion was allowed under Section 28 for both main noticee and other co-noticees, cases involving seizure of goods under Section 110 of the Customs Act or cases where confiscation provisions were invoked would be out of purview of deemed conclusion. The Circular was however held to be non-binding and Hon'ble Tribunal in a number of cases, cited in defence - 1. Krishna Capital v/s Commissioner of Customs, Hon'ble CESTAT Delhi, 2. Rohit Sakhuja vs New Delhi (Icd Tkd), Hon'ble CESTAT Delhi and 3. M/s Damani Shipping Pvt. Ltd. Vs Commissioner of Customs (Import-I), Hon'ble CESTAT, Mumbai, have allowed deemed conclusion for cases where both Section 28 and confiscation and imposition of fine under Section 125 had been invoked.

**30.** The provisions related to confiscation as existed at that time of issue of the aforesaid Circular of 2016 including provisions under Section 125 have since been amended in vide Finance Act, 2018 and Finance Act (No. 2) Act, 2019 effective from 01.08.2019 to make it clear that if the proceedings have been deemed to be concluded under the proviso to section 28[2] or section 28[6][i], then no fine shall be imposed in lieu of confiscation provided the goods are not prohibited or restricted. In other words, full deemed conclusion under Section 28 is allowed for



both main notice and co-noticees even if confiscation provisions have been invoked in a SCN. The proviso inserted in Section 125 is below:-

*"Section 125*

*(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:*

*[ Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]."*

**30.1** Now the imported goods in the present case - socks, accessories used for babies/toddlers and ladies undergarments - are neither restricted nor prohibited and hence under the newly inserted proviso, no fine is to be imposed and therefore deemed conclusion under Section 28 is allowed for both main noticee M/s Prime Enterprise and all co-noticees. I order accordingly.

#### **ORDER**

The proceedings under SCN No. GEN/ADJ/COMM/599/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 01.01.2025 are hereby deemed concluded in terms of Section 28(6)(i) of the Customs Act, 1962.

**31.** The O-i-O 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 any other law for the time being in force.



(Nitin Saini)

**Commissioner of Customs,  
Custom House, Mundra**

Date:-13.06.2025

**F.No.** GEN/ADJ/COMM/599/2024-Adjn-O/o Pr. Commr-Cus-Mundra

#### **TO THE NOTICEES BY REGISTERED/SPEED POST**

1. M/s. Prime Enterprises (IEC No. HJKPK6905E), located at Sector 3, Shop No D 2, Plot No J 207, Sector 3 Airoli Road, Airoli, Navi Mumbai, Thane, Navi Mumbai, Thane, Maharashtra, 400708. (e-mail- [faiyajprime@gmail.com](mailto:faiyajprime@gmail.com)).

2. M/s Freight Link Logistics, Customs Broker, Office No. 8, 2nd Floor, Ojas Complex, Plot No. 69, Sector-9, Gandhidham, Kutch, Gujarat-370201. (e-mail - [freightlinkkandla@gmail.com](mailto:freightlinkkandla@gmail.com)).



3. Shri Hemant Balkrishna Joshi, House No. 97, Survey No.391, Near Kandla Air Port Road, Bhageshree Township-2, Varsamedi, Kachchh, Gujarat-370110 (email- [hbjoshi.20@gmail.com](mailto:hbjoshi.20@gmail.com))
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