

	<p>प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा, अहमदाबाद 380009</p> <p>दुरभाष (079) 2754 46 30 फ़ैक्स (079) 2754 23 43</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD</p> <p>CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009</p> <p>PHONE : (079) 2754 46 30 FAX (079) 2754 23 43 E-mail: cus-ahmd-adj@gov.in</p>	 <p>आज़ादी का अमृत महोत्सव</p>
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DIN-20240471MN000000B91E

SHOW CAUSE NOTICE

M/s Reliance Industries Limited (IEC-0388066415) having manufacturing unit at Village-Mora, Post – Bhatha, Surat-Hazira Road, Dist-Surat, Gujarat-394510& P.O- Dahej, Taluka – Vagra, District-Bharuch, Gujarat-392130 and registered office at 3rd Floor, Maker Chambers IV, 222, Nariman Point, Mumbai-400021 (hereinafter referred to as “The Importer” for the sake of brevity) are engaged in manufacturing of various goods and in import of various goods through Hazira Port & Dahej Port. They have GST Registration No. 24AAACR5055K1ZD.

2. Specific intelligence was received that M/s Reliance Industries Limited had chartered vessels from foreign vessels owners/agents for import of goods for which they entered into Chartered Agreement. As per the Chartered Agreement, M/s Reliance Industries Limited has agreed upon for payment of Port Disbursement charges at discharge port on behalf of the vessel owner/agent which will be deducted from freight amount. M/s Reliance Industries Limited is declaring the freight amount in Bill of Entry after deducting above discussed components of said disbursement charges at discharge port paid by them on behalf of the vessel owner. M/s Reliance Industries Limited is not declaring the true facts in Bill of Entry regarding the actual freight amount in violation of Section 46 of the Customs Act, 1962 read with Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007.

2.1 Acting upon the intelligence, an inquiry by way of summons/letter had been initiated by SIIB Surat. Accordingly, vide letter dated 17.12.2020, 12.01.2021 & 16.02.2024 (**RUD-1**) details/documents of imports made through Chartered Vessels at Adani Hazira Port, Magdalla Port, Hazira Port Pvt. Ltd (Shell) and Dahej Port were called for from the importer. In response the importer vide following letters (**RUD-2**) submitted the details/documents of imports of coal through Adani Hazira Port & Adani Dahej Port:

- i. RIL/HAZ/SIIB/COAL/2020-21/002 dated 03.02.2021& RIL/DAHEJ/SIIB/COAL/2020-21/001 dated 15.02.2021 (Contract between M/s Reliance Industries Limited and vessel owners)
- ii. RIL/HAZ/SIIB/COAL/2020-21dated 03.03.2021 (Details/ documents for F.Y 2020-21 at Adani Hazira Port)
- iii. RIL/DMD/SIIB/COAL/2020-21 dated 04.03.2021 (Details/ documents for F.Y 2020-21 at Adani Dahej Port)
- iv. RIL/HMD/SIIB/COAL/2020-21 dated 05.03.2021 (Details/ documents for F.Y 2018-19 at Adani Hazira Port)
- v. RIL/HMD/SIIB/COAL/2020-21 dated 05.03.2021 (Details/ documents for F.Y 2019-20 at Adani Hazira Port)
- vi. RIL/DMD/SIIB/COAL/2020-21 dated 08.03.2021(Details/ documents for F.Y 2018-19 at Adani Dahej Port)

- vii. RIL/DMD/SIIB/COAL/2020-21 dated 08.03.2021 (Details/ documents for F.Y 2019-20 at Adani Dahej Port)
- viii. RIL/HMD/SIIB/COAL/2020-21 dated 08.03.2021 (Details/ documents for F.Y 2017-18 at Adani Hazira Port)
- ix. RIL/DMD/SIIB/COAL/2020-21 dated 08.03.2021 (Details/ documents for F.Y 2017-18 at Adani Dahej Port)
- x. RIL/HMD/SIIB/COAL/2023-24 dated 22.02.2024 (Details/ documents in respect of Coal Import at Adani Dahej Port)

2.2 Vide the above mentioned letters, the Importer submitted the details of Import of Coal made through chartered vessels at Adani Hazira Port & Adani Dahej Port alongwith Freight Invoices (Provisional & Final), copy of Bill of Entry, sample copy of contracts (chartered agreements) between importer and vessel owner.

2.3 Whereas on scrutiny of Chartered Agreements made between Importer and Vessel owner, submitted by the importer (**RUD-3**) it is noticed that the Importer has agreed upon to pay port disbursement charges at discharge port on behalf of vessel owner and it will be deducted from freight. Further, it is agreed upon by the importer that Provisional DA's will be adjusted against first payment 90% Freight. The differential between PDA and FDA will be adjusted against 10% freight payment. For reference, relevant portion of a sample chartered agreement (*referred to as Fixture Note*) dated 15.10.2020 made between M/s Reliance Industries Limited, Mumbai and "OLDENDORFF CARRIERS GMBH & CO. KG. is BECK, GERMANY" is affixed as follows:

DATE : 15.10.2020

FIXTURE NOTE

IT IS THIS DAY MUTUALLY AGREED BETWEEN "OLDENDORFF CARRIERS GMBH & CO. KG, LUBECK, GERMANY" AS OWNER AND RELIANCE INDUSTRIES LIMITED, MUMBAI, INDIA AS CHARTERERS FOR SHIPMENT OF COAL UNDER THE FOLLOWING TERMS & CONDITIONS:-

Trade and Fixture strictly private and confidential.

1. Charterers: Reliance Industries Limited, Mumbai, India

2. Oldendorff TDN or sub To revert with full chain.

Owners Details & Full style / Chain(with PIC name / contact details):

Disponent Owners:

Head Owners:

Manning agents:

Masters name:

Crew nationality:

Nomination: Ten (10) days, unless otherwise agreed. In view of spot prompt laycan await performer details ASAP.

3. Vessel Details:

- Vessel Full details including hold capacities / Hold Hatch cover type & Dimensions
- Vessels Max Intake basis Load port / Discharge port with attached stow plan
- Vessel Itinerary / ETCD present port / ETA load port:
- WLTHC / Waterline to highest Point on vessel / Expected sailing draft at load port:
- Class/ P & I club/ IMO # / H& M under and insured value with validity:
- Cargo gear / SWL / Position with grabs cubic capacity and numbers
- Last 5 Cargoes / Ports
- Copies of Class / P & I (Club Name)/ ISM / ISPS, Gear Certs (valid)
- Owners to fill charterers questionnaire
- Vessel ETA discharge port with distance in nautical miles, intended vessels speed, and route.
- Vessel last 5 Port State Control reports & nil

4. All regulations & terms at load port to be followed as per port latest guidelines and amendments thereof if any.

5. (Owners to confirm (with performing vessel)

- Single Deck Bulk carrier with Engine / Bridge alt, age to be less than 20 years, (owners shall comply with the free pratique and Quarantine requirements for the load & discharge ports).
- Classed Highest Lloyds or Equivalent by a member of IACS
- Performing vessel to be suitable in all respects for all load and discharge facilities as per Terminal guidelines and Regulations. & vessel has to have sufficient bollards on deck to

OLDENDORFF CARRIERS GmbH & Co. KG India Branch
Maker: Mainly 47, 48th floor, 4 North Avenue,
Bandra Kurla Complex, Bandra East, Mumbai - 400 051, India

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F: +91 (22) 4715 4445
oldendorff.com

VAT Reg. No. DE 26254012
Company Registration: Amtsgericht Lubeck HRG 3716 H
Managing Directors: Peter Jelsa, Thomas Weber, Peter Jugh

Newcastle 30k L/R	Dahej (14mtrs)			Hazira(14mtrs)			Demurrage
Discharge Rate	25000	20000	15000	25000	20000	15000	Max Capped \$15,000
(USD) PMT	16.18	16.33	16.58	15.08	15.28	15.53	

b) Freight 90 % payable less estimated dispatch at load port and address commission only within 10 banking days of signing / releasing original bills of lading to charterer or representatives . and after receiving freight invoice from Owners on their letter head duly signed and stamped or in any case before breaking bulk. Owners to courier original invoice and supporting documents to Charterers following fax invoice or in any case before breaking bulk. Demurrage / Dispatch to be settled with balance 10 % latest 30 days from receipt of owner's laytime statement, signed Charter party and with all supporting documents, such as copy of Bills of Lading, Copy of N.O.R, S.O.F, L.O.P's, N.O.P's and other documents.

c) Any additional levelling / trimming if required by master to be for owners account and time.

d) Any dues and / or taxes / wharfages etc., on cargo shall be for Charterer's account but customary vessel's port expenses and any dues and / or taxes on vessel / flag / freight, even if measured by quantity of cargo on board is to be on Owners account at both ends.

Extra dues on cargo due to vessel/ flag / ownership for Owners' account.

e) Demurrage/ Despatch: Max Capped USD 15000 PDPR Half Despatch for Laytime save Dends

f) Laytime to be reversible between load and discharge ports, and also reversible between 2 discharge ports if used.

g) Owners shall notify Charterers within 25 days after completion of discharge if demurrage has been incurred and any demurrage claim shall be fully and correctly documented, and received by Charterers with 30 days after completion of discharge. If owners fail to give notice of or to submit any such claim with documentation as required herein, within the limits aforesaid, charterer's liability for such demurrage shall be extinguished.

h) Any savings in PDA at load port/s or discharge port/s will be adjusted with balance freight due to owners during the final freight settlement. Dahej DA to be USD 130000 and Hazira DA to be USD 80000, DA at RG T'ANNA USD 85000

PDA at disport : RELIANCE INDUSTRIES LIMITED WILL PAY PORT DISBURSEMENT AT DISCHARGE PORT ON BEHALF OF OLDENDORFF AND DEDUCT FROM FREIGHT.

"PROVISIONAL DA'S WILL BE ADJUSTED AGAINST FIRST PAYMENT 90% FREIGHT THE DIFFERENTIAL BETWEEN PDA AND FDA WILL BE ADJUSTED AGAINST 10% FREIGHT PAYMENT ALONG WITH DEMURRAGE / DESPATCH."

OLDENDORFF CARRIERS GmbH & Co. KG India Branch
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oldendorff.com

MA. Reg. No. De 262234014
Company registration: Amtsgericht Lübeck, HRB 3718 m
Managing Director: Peter Thiele, Chairman: Michael Pöhl, Paul Pöhl

2.4 Whereas on scrutiny of Freight invoices (Provisional as well as Final) submitted by importer as well as Freight Invoice (Provisional) uploaded on EDI Portal, it is revealed that the Vessel's owner issue two freight invoices for freight charges. In first invoice i.e. provisional Invoice, they charge 90% of the freight amount and in final invoice, which is usually issued after completion of voyage, they charge remaining freight amount as well as other charges incurred by them during the voyage concerned. In both the freight invoices, Port disbursement charges are mentioned and deducted from freight amount charged in invoice. In Provisional freight invoice (90 % freight), estimated port disbursement charge (referred as *Estimated PDA*) is deducted and in final freight invoice, difference between final port disbursement charge (referred as *FDA*) and estimated port disbursement charge (referred as *Estimated PDA*) is adjusted. The Importer is declaring the freight amount in Bill of Entry after deducting said port disbursement charge from the actual freight charges. Thus, it appears that the importer is in practice of declaring lesser freight amount in Bill of Entry after deducting the Port Disbursement Charges paid by them on behalf of vessels owners/agents at discharge port. For reference, Sample Invoice No. 810354 dated 02.05.2019 (Provisional Invoice) alongwith respective Final Freight Invoice having Invoice No. 816401 dated 26.02.2020 issued by "OLDENDORFF CARRIERS GMBH & CO. KG. LUBECK, GERMANY in respect of import of Coal vide Bill of Entry No 3160565 dated 09.05.2019 is shown below:-

Provisional Freight Invoice:

02May19 14:50
RKD

OLDENDORFF 

Rolince Industries Limited
Hazira Manufacturing Division
Village - Mora : Po : Bhetha
Hazira - Surat
Gujarat

Invoice Date 02May2019
Invoice No. 810354
Our Reference 1902339,9150859000
Payment No 1

FREIGHT INVOICE	
QVP Date: 2Apr2019	Voyage no.: 1902339
Vessel: Vishva Jyoti (808375)	Operator: HAC
Charterer: Rolince Industries Limited	Raised By: NTH
Fixture Ref.: 2018/4653	
Note all values are in USD	
Load: Coal at Richards Bay, 78 221MT as per RI	
Discharge: at Hazira	
Total BL Quantity : 78.221MT	
90% of Freight: 78,221,000MT @ 11.86 USD/MT - Freight payable within 10 banking days, in anycase BBB.	
Address Commission of 2.500% on 100% Freight (USD 903,981.06)	
Miscellaneous : Estimated discharge port DA @ Hazira voy-1902339	
TOTAL	
E. & O. E.	

DUE DATE : 12May2019

Please remit according to the details below quoting our reference and invoice no.

Benef. Name: Oldendorff Carriers GmbH & Co.KG
Benef. Ac no.: 025771701 / IBAN DE:1230400220025771701
Benef. Bankname, Country: Commerzbank AG, Luebeck, Germany
Swift, ABA Transit no. etc.: COBADDIFF230

VAT clause:

Maritime shipping transactions are free of tax under German law. Services rendered may be subject to reverse-charge, if applicable in the country of the beneficiary.

OLDENDORFF CARRIERS GmbH & Co. KG
Völklinger Straße
25554 Lütbeck, Germany
Mail PO Box 2125 - D-23559 Lütbeck

Contact:
T: +49 451 75 00 0
F: +49 451 75 1 22
oldendorff.com

Legal Form:
GmbH & Co. KG
Körperschaftsteuer Nr. 4716 H
VAT Reg. No. DE264134002

General Partner: E. Egon Oldendorff Management GmbH,
Lübeck, Legal Form GmbH - Amtsgericht Lübeck
HRB 905 H. Z. Peter Thiele
Managing Directors: Peter Thiele, Thomas Weber, Peter Bugh

Final Freight Invoice:

26Feb20 14:50
MFE

OLDENDORFF 

Reliance Industries Ltd
Hazira Manufacturing Division
Village - Mora, PO BHATA
Hazira - Surat

Invoice Date 26Feb2020
Invoice No 816401
Gujrat Cdr 1R02339,9150850000
Reference
Payment No 4

FREIGHT INVOICE			
CP Date	2Apr2018	Voyage no.	1802339
Vessel	Vishwa Jyoti (808375)	Operator	VITE
Charterer	Reliance Industries Ltd	Revised By	MFE
Fixture Ref	2019/4652		
Note all values are in USD			
Load Coal at Richards Bay, 76,221MT as per BL			
Discharge at Hazira			
Total BL Quantity 76,221MT			
Balance of Freight 76,221.000MT @ 11.86 USD/MT USD 11.86 (Gross)PMT less Dis/Rate 90,368.11			
25,000 MT PWWD Dis/Rate @ 1/1 disport Hazira = Total, less previously invoiced			
813,582.95			
USD			
Difference is DA at Hazira(PDA-FDA= 101,547.99 - 97,973.71)			
3,573.29			
TOTAL 93,971.40			
E. & O. E.			
DUE DATE: 26Feb2020			
Please remit according to the details below quoting our reference and invoice no.			
Benef. Name: Oldendorff Carriers GmbH & Co.KG			
Benef. A/c no: 025771701 / IBAN DE: 1230400220025771701			
Benef. Bankname Country: Commerzbank AG, Luebeck, Germany			
Swift, ABA Transf no etc.: COBADEFF23U			
VAT clause:			
Maritime shipping transactions are free of tax under German law. Services rendered may be subject to reverse charge, if applicable in the country of the beneficiary.			

OLDENDORFF CARRIERS GMBH & CO. KG
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20556 Luebeck, Germany
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Legal form:
GmbH
Registered Office: Luebeck, Germany
VAT Reg. No. DE 257724962

General Partner: T. Egon Oldendorff Management GmbH,
T. Egon Oldendorff Management GmbH
Hamburg 10, 2. Peterstr.
Managing Directors: Peter Oldendorff, Thomas Oldendorff, Peter Oldendorff

2.5 On scrutiny of documents viz. Provisional Freight Invoices, Final Freight Invoices & Bills of Entry (RUD-4) submitted by Importer and EDI Portal data, total 102 Bills of Entry were found in which the importer has declared the lesser freight value after deducting the above referred Port Disbursement charges from the actual freight. Out of these 102 Bills of Entry, 64 Bills of Entry pertains to import of coal at Adani Hazira Port as detailed in Annexure-A/1 and 38 Bills of Entry pertain to import of coal at Adani Dahej Port as detailed in Annexure A/2. The said deduction of Port disbursement charges from the actual freight charges and subsequent mis-declaration of the said reduced freight amount in Bills of Entry resulted in reduction of Assessable Value of imported goods, which eventually resulted in short payment of duty. In view of above discussion, it appears that the importer has not declared the correct assessable value and undervalued the goods i.e. coal by way of not declaring the actual freight amount. Thereby, the importer has short/not paid the import duties on the said component of Port disbursement charges.

2.6 On scrutiny of the documents submitted by importer as well as data available on EDI portal, it appears that by adopting the above discussed practice of non-inclusion of

the port disbursement charges in freight component as well as assessable value of imported goods, the importer has short/not paid the Customs duty amounting to Rs.6,06,73,559/- as tabulated below,

Table-1 : Port Wise details of assessable value (declared value), port disbursement charges & Customs duty payable on port disbursement charges

Sr. No.	Name of the Port	Total No. of Bills of Entry	Assessable Value as per EDI portal as on 07.02.2024 (In Rs.)	Total port disbursement charges (FDA) (In Rs.)	Total Customs duty payable on port disbursement charges (In Rs.)
1	Hazira	64	18884621251	469648924	28017665
2	Dahej	38	11400049836	531779056	32655894
	Total	102	30284671087	1001427980	60673559

The Port/Bill of Entry wise detailed annexure for the above duty liability is annexed with this SCN and marked as Annexure-A/1 & Annexure-A/2.

2.7 Whereas, during the course of investigation, the importer has submitted copy of total 130 manual challans vide which they have paid Customs Duty amounting to Rs.5,86,43,184/- (Duty Liability Rs.6,06,73,559.0 – Duty yet to be paid Rs.20,30,375.0) against the duty liability on these port disbursement charges/allowances. However, the amount of Rs.20,30,375/- is yet to be paid by the importer. Vide the above referred challans, interest amounting to Rs. 1,91,93,666/- has also been paid by the importer, however that interest component includes interest on other duty payment made by the importer and is not limited to interest liability in the instant case only. Port/Bill of Entry wise detailed calculations of these payment and Customs duty yet to be paid, is annexed with this SCN and marked as Annexure-B/1 & Annexure-B/2.

3. Enquiry Conducted With M/s Reliance Industries Limited

3.1 During the course of inquiry, Summons dated 04.08.2021 (**RUD- 05**) was issued to Shri Dharendra Kumar Sinha, Vice President, Indirect Taxation, M/s Reliance Industries Limited for recording the Importer's version of facts. Shri Dharendra Kumar Sinha, appeared before the Superintendent (SIIB) on 04.08.2021 and his statement dated 04.08.2021 (**RUD- 06**) was recorded under section 108 of the Customs Act, 1962. During his statement dated 04.08.2021, Shri Dharendra Kumar Sinha agreed that port disbursement charges/allowance, paid by them on behalf of the vessel owner, were adjusted in freight invoice and such adjustment of disbursement allowance at Dahej and Hazira port has reduced final amount of freight invoices and the said port disbursement charges /allowance were not calculated for arriving at the final value for duty payments. His statement dated 04.08.2021 is reproduced hereunder:-

“Q.1: What are being imported and exported through ports and ICD of South Gujarat by M/s Reliance Industries Ltd?

Ans: M/s Reliance Industries Ltd is having four manufacturing units in area of South Gujarat and UT of Dadra Nagar Haveli and Daman and most of the import of raw materials and exports of finished goods are being done through Ports of Dahej and Hazira. Further, coal required for our coal based power unit at Hazira and Dahej plants which we also importing at Hazira port and Dahej port respectively.

Q.2: Do your concern M/s Reliance Industries Limited import coal in chartered vessels from various countries? How the payment of freight is done to such chartered vessels?

Ans: Our need of coal is substantial for our power units and hence we are importing ship loads of coal by way of chartering the vessels for such imports.

The payment of freight is being done against freight invoices raised on the basis of contracts with owner of chartered vessels.

Q. 3: It has been noticed in the freight invoices submitted for assessments of Bills of Entry filed for import of Coal at Custom House, Dahej and Hazira that certain expenses done by M/s Reliance Industries at both the ports are being adjusted against the amounts of freight bills. Can you explain the arrangement?

Ans: Some vessel owners who were not having any office in India had requested that as they were not having any establishment in India so the payments of charges at Dahej and Hazira port should be made by M/s Reliance which would be reimbursed by them as disbursement allowance (DA) and in certain contract the request was made part of contract also.

Q. 4: Did M/s Reliance Industries made the payment of expenses at Dahej and Hazira ports on behalf of vessel owners?

Ans: Yes, M/s Reliance has made payment of such expenses on behalf Vessel owner in all such cases where it was requested.

Q.5: Do you agree that adjustment of such disbursement allowance for expenses paid on behalf of vessel owners, in the freight invoices, have reduced the final freight?

Ans: Certain vessel owners, at the time of raising the freight Invoice has adjusted such disbursement allowance in their freight invoices itself instead of making separate payment for the same. Therefore, it is correct that such adjustment of disbursement allowance for our payment of expenses/charges on behalf of vessel owners at Dahej and Hazira port has reduced final amount of freight invoices.

Q.6: Why duty was not paid on the part of freight which were paid as expenses on behalf of freight owner?

Ans: The said freight Invoices with adjustment of disbursement allowance were taken by our account section and our taxation team for Dahej and Hazira as regular freight bills and only final amounts were taken into consideration for duty payment and mistakenly the adjustment of disbursement allowance were not calculated for arriving the final value for duty payments.

Q.7: When such arrangement detailed at question no. 03 to 06 was started and is it the current practice also?

Ans: It was started due to change in our contract after implementation of GST i.e., from December 2017 and was continued upto start of January 2021. Once the issue came into the notice of management, such disbursement allowance adjusted in the freight bills are now considered for arriving the value for duty payments.

Q. 8: Can you detail the differential amount of duty due against such improper valuation of freight invoices?

Ans: As discussed and directed earlier, total calculation of such short payment of duty was communicated through mail to your office on various dates. The liability against such improper valuation of freight invoices are tabulated as under:-

Sr. No.	Port	No. of Bills of Entry	Total Differential amt.	Total Duty payable	Total Interest payable

1	Dahej	44	51,78,95,435/-	4,07,15,556/-	1,30,14,666/-
2	Hazira	62	67,19,80,566/-	2,82,93,669/-	85,74,767/-

A duly signed worksheet for above derivations is also being produced in this statement. Payments of duty amount and the interest accrued till the date of payment from the date of filling of respective bills of entry, final or provisionally assessed, have already been made. Details of payments and the mode has also been given in the worksheet produced today.

I have further to add that as we have made all payments of duty outstanding or due against such improper valuation of imports as detailed in my replies above alongwith interest due from the date of filling of bills of entry which include both finally assessed bill of entry and provisionally assessed bill of entry, therefore, we wish to opt for waiver of Show Cause Notice in the issue. We are also ready to pay the amount penalty as decided by the competent authority in the issue on all the bill of entries which are finally assessed. However, we wish to request for waiver of penalty also to the competent authority."

3.2 During the course of investigation, Importer submitted Letter No. RIL / Coal/DA/DAHEJ & RIL/Coal/DA/ HAZIRA both dated 11.10.2021 (**RUD-7**) wherein it has been requested to close the matter without issuance of any show cause notice and without imposing any penalty in terms of Section 28(2) of the Customs Act, 1962.

3.3 In response to above referred letter dated 11.10.2021 of Importer, this office issued Letter No. VIII/09-04/SIIB/2020-21 dated 08.11.2021 & reminder letter dated 07.01.2022 to Importer(**RUD-8**), wherein it is *inter-alia* conveyed that "disbursement allowance" paid by M/s Reliance Industries Limited on behalf of vessels owners and subsequently reimbursed by way of deduction from freight bills, were not declared and included in the freight amounts and thereby actual freight were undervalued/mis-declared in all such Bills of Entry in violation of Section 46 as well as Section 17 of the Customs Act, 1962 read with Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007 resulted into under valuation of imported goods; therefore, they were requested to furnish the details of payment of penalty made by them in terms of Section 28(5) of the Customs Act, 1962.

3.4 During the course of investigation, the importer has paid penalty amounting to Rs.26,99,960/- vide challan No. 07/2021-22 dated 27.01.2022 and Rs.20,24,443/- vide Challan No. 08/21-22 dated 27.01.2022 in respect of 55 Bills of Entry pertaining to Adani Hazira Port & Adani Dahej Port respectively (**RUD-9**). The Importer has paid the penalty in respect of only 40 Bills of Entry of Adani Hazira Port and only 15 Bills of Entry of Adani Dahej Port as detailed hereunder:

Table-2: Bill of Entry wise details of penalty paid vide Challan reference no. 07/2021-22 dated 27.01.2022 in respect of Bills on Entry pertaining to Adani Hazira Port:

S.No.	Bill of Entry No.	Bill of Entry Date	Amount of penalty paid as communicated by the importer
1	4937119	24-Jan-2018	80289
2	5386450	28-Feb-2018	77690
3	5586312	15-Mar-2018	88843
4	6199139	1-May-2018	77744
5	6601887	31-May-2018	85385
6	6793216	14-Jun-2018	76920
7	7104860	6-Jul-2018	47037
8	7278726	19-Jul-2018	76943
9	7486103	3-Aug-2018	42782
10	7563333	9-Aug-2018	78226

11	7671347	17-Aug-2018	88377
12	7915371	5-Sep-2018	44904
13	8017319	12-Sep-2018	82202
14	8380460	9-Oct-2018	85061
15	8627269	27-Oct-2018	45883
16	9118027	4-Dec-2018	63008
17	9283657	17-Dec-2018	53924
18	2007626	11-Feb-2019	46379
19	2053212	14-Feb-2019	57105
20	2321682	7-Mar-2019	49325
21	2489108	19-Mar-2019	69235
22	2817244	12-Apr-2019	45635
23	2862543	16-Apr-2019	79378
24	2982212	25-Apr-2019	102787
25	3160565	9-May-2019	81662
26	3254767	16-May-2019	58513
27	3622375	12-Jun-2019	52671
28	3930946	4-Jul-2019	52886
29	3939548	5-Jul-2019	79069
30	4230006	26-Jul-2019	58734
31	4333970	2-Aug-2019	93765
32	5060314	26-Sep-2019	64795
33	5129501	1-Oct-2019	78824
34	5405273	23-Oct-2019	95724
35	5481265	30-Oct-2019	48238
36	5860625	28-Nov-2019	37587
37	5862335	28-Nov-2019	80563
38	6158828	20-Dec-2019	50518
39	6488485	16-Jan-2020	52754
40	6578068	22-Jan-2020	68595
Total			2699960

Table-3: Bill of Entry wise details of penalty paid vide Challan reference No. 08/21-22 dated 27.01.2022 in respect of Bills on Entry pertaining to Adani Dahej Port:

S. No.	Bill of Entry No.	Bill of Entry Date	Amount of penalty paid as communicated by the importer
1	5960042	12-Apr-2018	148559
2	7322010	23-Jul-2018	161308
3	7743664	23-Aug-2018	115304
4	7942606	6-Sep-2018	125579
5	8421324	11-Oct-2018	181852
6	8846185	14-Nov-2018	179190
7	9347906	21-Dec-2018	80043
8	9660904	16-Jan-2019	128520
9	2035742	13-Feb-2019	102223
10	2229868	28-Feb-2019	82326
11	2793217	10-Apr-2019	153927
12	3158499	9-May-2019	153621
13	3531597	5-Jun-2019	191768
14	4361760	5-Aug-2019	109585
15	4429820	9-Aug-2019	110638
Total			2024443

LEGAL PROVISIONS RELEVANT TO THE CASE:-

4. The following legal provisions are applicable to the case, which are detailed hereunder:

- 4.1 Section 14 of the Customs Act, 1962
- 4.2 Section 17 (1) of the Customs Act. 1962;

- 4.3 Section 46 of the Customs Act, 1962;
- 4.4 Section 111(m) of the Customs Act, 1962;
- 4.5 Section 112 of the Customs Act, 1962;
- 4.6 Section 28(4) of the Customs Act, 1962;
- 4.7 Section 114A of the Customs Act, 1962;
- 4.8 Section 114AA of the Customs Act, 1962;
- 4.9 Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- 4.10 Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
- 4.11 Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

4.1 Section 14 of the Customs Act, 1962:

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;
- (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).]

4.2 Section 17 (1) of the Customs Act. 1962

SECTION 17. Assessment of duty. - (1) An Importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

4.3 Section 46 of the Customs Act, 1962

Entry of goods on importation. - (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed] :

[**Provided** that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system] , allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

[(3) The importer shall present the bill of entry under sub-section (1) [before the end of the day (including holidays) preceding the day] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

[**Provided** that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that] a bill of entry may be presented [at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

[**Provided** also that] where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

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

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

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

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

4.4 Section 111(m) of the Customs Act, 1962

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India, shall be liable to confiscation: -

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

4.5 Section 112 of the Customs Act;

Penalty for improper importation of goods, etc.-Any person, -

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,-

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

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

- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty ⁴ [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]
- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

4.6 Section 28(4) of the Customs Act, 1962;

SECTION 28. Recovery of [duties not levied or not paid or short-levied or short paid or erroneously refunded. –

(1).

(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.

4.7 Section 114A of the Customs Act, 1962

Penalty for short-levy or non-levy of duty in certain cases.—Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:]

[Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

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

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

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

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

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

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

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

4.8 Section 114AA of the Customs Act, 1962

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

4.9 Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Determination of the method of valuation . -(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

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

Provided that -

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

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

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

(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.

4.10 Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Cost and services . - (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely: -

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, molds and similar items used in the production of the Imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

- (c) royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation .- Where the royalty, license fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

[(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include -

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- (b) the cost of insurance to the place of importation;

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded .

Explanation - The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.]

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

4.11 Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

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.

5. Discussion on provisions of Law:-

5.1 As per Section 17 (1) of the Customs Act, 1962, an Importer shall self-assess the duty leviable on imported goods while making entry under section 46. As per Section 46(1) of the Customs Act, 1962, the importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing. Further, as per Section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the

contents of such bill of entry. As per Section 46(4A) of the Customs Act, 1962 the importer who present a bill of entry shall ensure (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

5.2 As per Section 14 of the Customs Act, 1962, 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 shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. As per first proviso to Section 14 *ibid*, 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.

5.3 As per Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Subject to rule 12 *ibid*, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10 *ibid*.

5.4 As per Rule 10 (2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, for the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include - (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation; (b) the cost of insurance to the place of importation.

5.5 Section 111(m) of the Customs Act, 1962 provides for Confiscation of improperly imported goods, which do not correspond in respect of value or in any other particular with the entry made under this at. In the instant case, the Importer did not include the port disbursement charge/allowance in the freight amount while arriving at assessable value for payment of applicable import duty. However, said port disbursements charge/allowance was required to include in freight amount.

5.6 As per Section 112 of the Customs Act, 1962, Any person (a) who, in relation to improperly imported goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111 or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, is liable for penalty.

5.7 Section 28(4) of the Customs Act, 1962 provides for Recovery of any duty which 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.

5.8 Section 114A of the Customs Act, 1962, provides for Penalty for short-levy or non-levy of duty in certain cases. Further, Section 114AA of the Customs Act, 1962 prescribes penalty for *knowingly or intentionally making, signing or using, or causing to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business.*

6. Discussion on Contraventions: -

6.1 As per Section 17 (1) of the Customs Act, 1962, the Importer shall self-assess the duty leviable on imported goods while making entry under section 46 on imported goods under section 46. As per Section 46(4) of the Customs Act, 1962, the Importer shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and as per Section 46(4A) *ibid* the importer shall ensure (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition while presenting a bill of entry. In the instant case, while execution of Chartered Agreements between Importer and Vessel owner, the Importer has agreed upon to pay port disbursement charges at discharge port on behalf of vessel owner and it will be deducted from freight. Further, it is agreed upon by the importer that Provisional DA's will be adjusted against first payment of 90% Freight. The difference between PDA and FDA will be adjusted against 10% freight payment. In terms of these agreement, the vessel owner deducted/adjusted port disbursement charge/allowance paid by the importer on discharge port on behalf of vessel owner on import of coal through chartered vessels at Hazira Port & Dahej Port, in freight Invoice. The importer while filing the Bills of Entry has not included port disbursement charges in freight amount that resulted in non inclusion of that amount in assessable value. The Importer have wrongly declared the freight/Assessable value by way of not including the port disbursement charge/allowance paid by them on discharge port on behalf of vessel owner in assessable value for payment of import duty on import of coal through chartered vessels at Hazira Port & Dahej Port. In view of the act/omission discussed hereinabove, it appears that the Importer intentionally had not included the said port disbursement charges in assessable value to evade the payment of import duty on the said port disbursement charges and this resulted into short/non-payment of import duty amounting to Rs.6,06,73,559/-on differential assessable value amounting to Rs.100,14,27,980/-.

6.2 In the instant case, the Importer knew that they are paying port disbursement charges on behalf of the vessel owner and the said port disbursement should form the part of assessable value. If the importer would not have paid the said port disbursement on behalf of the vessel owner, then the said amount would have been paid by the vessel owner himself, in that case the said port disbursement charge would not be adjusted in freight invoice by the vessel owner. Therefore, the Importer, intentionally not included the port disbursement in assessable value and has made wilful mis-statement about the freight and the assessable value in the Bills of Entry. It appears that on being investigated by the department and only after being pointed out, the importer agreed to pay the duty, which otherwise could not have been detected/recovered and the importer might have been successful in evasion of duty.

6.3 Further, it can be seen from the sample provisional freight invoice and final freight invoice attached at para 2.4 of this SCN that these Port disbursement Charges were being adjusted by the vessel owner with narration "*Miscellaneous- Estimated discharge port DA at Hazira voy-_____*" & "*Difference in DA at Hazira (PDA-FDA = _____ - _____)*" respectively. The provisional freight invoices and final freight invoices do not bear any details to show that these Port disbursement charges were being actually paid by the importer directly to the discharge port. The said material facts came to the notice of the department only after initiation of the inquiry and precisely only after obtaining/receipt of the copy of the Chartered Agreements made between Importer and Vessel owner that the importer agreed upon to pay port disbursement at discharge port on behalf of vessel owner and this adjustment in the freight invoices is due to this agreement. Therefore, it appears that the importer has willfully mis-stated in the Bills of Entry and suppressed above material facts from the department. Thus, it appears that the Importer, had will-fully and intentionally evaded the payment of Customs duty on the said imports amounting to Rs. 6,06,73,559/- which is liable to be recovered from the Importer as per Section 28(4) of the Customs Act, 1962 along with Interest under Section 28AA of the Customs Act, 1962 and this act also renders themselves liable for Penalty under Section 114A of the Customs Act, 1962.

6.4 The Importer, by not paying the import duty on port disbursement charges on import of coal, did not follow the condition for the subject imports and therefore, as per Section 111 of the Customs Act, 1962, the goods were improperly imported which renders

the goods imported vide above mentioned Bills of Entry, liable for Confiscation as per Section 111(m) of the Customs Act, 1962. Further, Section 112(a) & (b) of the Customs Act, 1962, provides for Penalty for improper importation of goods under Section 111 of the Act.

6.5 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the value, description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate Duty accordingly. In the instant case, the Importer tried to evade the payment of import duty on the said imports by way of wrong declaration of assessable value by way of non-inclusion of port disbursement charges in assessable value whereas port disbursement charges were to be included in freight value/ assessable value. Therefore, it appeared that Importer, have willfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Therefore, it appears that the Importer knowingly or intentionally used to declare wrong assessable value. Therefore, it appears that for the said contravention, they have rendered themselves liable for Penalty under Section 114AA of the Customs Act, 1962.

7. Now, therefore, M/s Reliance Industries Limited (IEC-0388066415) having manufacturing unit at Village-Mora, Post – Bhatha, Surat-Hazira Road, Dist-Surat, Gujarat-394510 & P.O- Dahej, Taluka – Vagra, District-Bharuch, Gujarat-392130 and registered office at 3rd Floor, Maker Chambers IV, 222, Nariman Point, Mumbai-400021, are hereby called upon to Show Cause in writing to the Principal Commissioner of Customs, Ahmedabad having his Office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad - 380009, as to why:-

- (a) The assessable value of Rs.3028,46,71,087/- (declared value) (Rupees Three Thousand Twenty Eight Crore, Forty Six Lakh, Seventy One Thousand and Eighty Seven Only) in respect of the import of coal at Adani Hazira Port & Adani Dahej Port vide 102 Bills of Entry, as mentioned in Para 2.6 above in this Show Cause Notice, should not be rejected and re-determined as Rs. 3128,60,99,067/- (after adding the differential amount of Rs.100,14,27,980/- Port Disbursement Charges) under Section 14 of the Customs Act, 1962 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as applicable;
- (b) Subject goods having assessable value of Rs.3028,46,71,087/- (declared value) (Rupees Three Thousand Twenty Eight Crore, Forty Six Lakh, Seventy One Thousand and Eighty Seven Only) imported through Adani Hazira Port & Adani Dahej Port, shall not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for being imported by declaring wrong assessable value.
- (c) The differential Customs Duty amounting to Rs. 6,06,73,559/- (Rupees Six Crore, Six Lakh, Seventy Three Thousand, Five Hundred and Fifty Nine only) short paid in course of imports of coal through Adani Hazira Port & Adani Dahej Port vide 102 Bills of Entry, as mentioned in Para 2.6 above in this Show Cause Notice, in respect of which duty was not paid on port disbursement charges, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 and the Customs Duty amounting to Rs. 5,86,43,184/- (Rupees Five Crore, Eighty Six Lakh, Forty Three Thousand, One Hundred and Eighty Four only) already paid by them should not be appropriated against the above demand;
- (d) Interest should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 on the Customs Duty demanded at (c) above;
- (e) Penalty should not be imposed upon them under Section 112(a) & (b) of the Customs Act, 1962 for improper importation of goods by declaring wrong

assessable value, resulting in non/short payment of Customs Duty, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962;

- (f) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962, for improper importation of goods by declaring wrong assessable value and also by reasons of wilful mis-statement and suppression of facts with an intent to evade payment of Customs Duty as elaborated above resulting in non/short payment of Duty, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962, and also rendered Customs Duty recoverable under Section 28(4) of the Customs Act, 1962;
- (g) Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962 for knowingly or intentionally declaring wrong assessable value;

8. The above noticee(s) are further required to state specifically in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submissions, it shall be presumed that they do not wish to be heard in person. They should produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defence.

9. If no reply is received within 30 (Thirty) days of receipt of this notice or if the noticee do not appear before the adjudicating authority when the case is posted for personal hearing, the case will be decided *ex-parte* on merit, on the basis of the material available on record without further reference to them.

10. This Notice is issued without prejudice to any other action that may be taken against them, under this Act or any other law for the time being in force. The Department reserves its right to add, amend, modify or supplement this notice at any time on the basis of evidences available/gathered later on, prior to the adjudication of the case.

11. The relied upon documents for the purpose of this notice are listed in the **Annexure-C** and are enclosed with this notice.

Encl:-Annexure -'A/1, A/2, B/1, B/2 & C'



(Shiv Kumar Sharma)
Principal Commissioner

BY SPEED POST A.D.

Date: 30.04.2024

F. No. VIII/10-40/Pr.Commr/O&A/2023-24

DIN-20240471MN000000B91E

To,

1. M/s Reliance Industries Limited (IEC-0388066415)
Village-Mora, Post – Bhatha,
Surat-Hazira Road, Dist-Surat – 394510
2. M/s Reliance Industries Limited (IEC-0388066415)
P.O- Dahej, Taluka – Vagra,
District-Bharuch -392130

Copy To:

- 1) The Additional Commissioner of Customs (in-charge Hazira Port), Customs Hazira Port, Hazira-Choryashi, Surat-395007

- 2) The Additional Commissioner of Customs (in-charge Dahej Port), Customs Dahej Port, Lakhigam, Taluka – Vagra, Distt- Bharuch - 392130
- 3) The Deputy/ Assistant Commissioner of Customs, Customs Hazira Port, Hazira-Choryashi, Surat-395007
- 4) The Deputy/ Assistant Commissioner of Customs, Customs Dahej Port, Lakhigam, Taluka – Vagra, Distt- Bharuch - 392130
- 5) The Deputy/ Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website;
- 6) Guard File.