


F. No-GEN/ADJ/COMM/193/2025-Adjn-O/o Pr Commr-Cus-Mundra

	<p style="text-align: center;">सीमा शुल्क के आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PR. COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in</p>
A. File No.	GEN/ADJ/COMM/193/2025-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	MUN-CUSTM-000-COM-02-26-27
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	07.04.2026 07.04.2026
E. SCN No. & Date	GEN/ADJ/COMM/193/2025-Adjn dated 08.04.2025
F. Importer	M/s Janki Das Raghubar Dayal and Others.
G. DIN	20260471MO000061326F

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:
“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”
- 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.
- उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ 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/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty 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 जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE:

Intelligence developed by Directorate of Revenue Intelligence, Indore Zonal Unit (hereinafter referred to as 'DRI') suggested evasion of Customs duty by certain importers by way of under-valuation of "Walnut Kernel" at Adani Port and Special Economic Zone (hereinafter referred to as 'Mundra SEZ'). Further, intelligence developed by DRI indicated that two firms namely M/s Janki Das Raghubar Dayal (IEC: AAAFJ8733B) and M/s P S Packaging (IEC: AAQFP1516Q) having registered office at E-Pucca Bagh, Hapur, Uttar Pradesh and A7/106, South Side of GT Road, Ghaziabad, Uttar Pradesh - 201001 respectively (hereinafter both the firms are referred to as 'the importers') are indulging in duty evasion by way of under-valuation of imported "Walnut Kernel" at Mundra SEZ. Both the importers were importing "Walnut Kernel" from Chile under customs tariff item (CTI) 0802 32 00 at Mundra SEZ and clearing the imported goods by way of under-valuation at the Unit Price of 1.25 - 1.52 USD per Kgs in Domestic Tariff Area (DTA), much lesser than prevailing price of similar goods imported to evade Customs duty under the category of Traded Goods. Further, Walnut Kernel under Customs Tariff Item (CTI) 0802 32 00 of the First Schedule to the Customs Tariff Act, 1975, attracts BCD at the rate of 100% and IGST at the rate of 5%.

2. The firm, M/s Janki Das Raghubar Dayal has two proprietors, Shri Budh Prakash and his son, Shri Shishir Kumar Bansal. Further, M/s P S Packaging is proprietor firm and Shri Shishir Kumar Bansal is proprietor of the firm.

3. On 28.05.2024, a search was conducted at the registered premises of M/s Janki Das Raghubar Dayal situated at E-Pucca Bagh, Hapur, Uttar Pradesh. During the search proceedings, Shri Shishir Kumar Bansal who is one of the two proprietors in M/s Janki Das Raghubar Dayal and proprietor in M/s P S Packaging was present. Shri Shishir Kumar Bansal informed that documents related to import and export are kept with his accountant, Shri Nikhil Agrawal. Further, he informed that invoice and packing list in respect of import are received on his WhatsApp Number 9412224127 and therefore, his mobile, iPhone13 (W2H4XW3X1M) was seized under Section 110 of the Customs Act, 1962. The proceedings were recorded under Panchnama dated 28.05.2024 (**RUD-1**) drawn on the spot.

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

5. Statements of Concerned Persons

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

5.1 Statement of Shri Shishir Kumar Bansal, proprietor of M/s Janki Das Raghubar Dayal and M/s P S Packaging, was recorded on 28.05.2024 at DRI, Noida Regional Unit under Section 108 of the Customs Act, 1962 (RUD-3), wherein he, inter-alia, stated as under: -

- his name is Shishir Kumar Bansal; he is 48 years old; he is residing at 141, Nai Mandi, Pucca Bagh, Hapur, Uttar Pradesh; he is one of the two proprietors in M/s Janki Das Raghubar Dayal and proprietor of M/s P S Packaging; he obtained IEC in the name of M/s Janki Das Raghubar Dayal in the year 2017; his father is also one of the proprietors in M/s Janki Das Raghubar Dayal; M/s P S Packaging is a proprietorship firm and he is proprietor in the firm; both the firms are trading firms; he mainly imports Walnut In Shell and Walnut Kernel; he also imports food emulsifier; his mail ID is jankidas@gmail.com;

- M/s Janki Das Raghubar Dayal is situated at E-13, Pucca Bagh, Hapur, Uttar Pradesh and M/s P S Packaging is situated at A/7/106, South Side of G T Road, Gaziabad, Uttar Pradesh.
- he contacted Shri Yogesh Gupta of Ishika Bakers for import of Walnut Inshell and Walnut Kernel; he is his relative; Shri Yogesh Gupta used to give prices of the Walnut In Shell for import and he used to give orders for import; the import prices were decided by Shri Yogesh Gupta; he imported Walnut In Shell and Walnut Kernel from Al Arab, Dubai; Shri Yogesh Gupta had directed supplier in Al Arab Dubai to forward invoices and packing list directly to Shri Shailendra of GSM Shipping (Customs Broker); Customs Broker forwarded copy of Bill of Entry, invoices and packing list to him; thereafter, Shri Shailendra of GSM Shipping had requested for payment of customs duty on mobile phone; he had visited Dubai in January, 2024.
- they imported Walnut Inshell at USD 1.2 per Kgs and Walnut Kernel at USD 1.5 USD per Kgs.
- on being asked whether M/s P S Packaging has imported Walnut Kernel at the rate of USD 1.2 Kgs, he admitted that he had imported Walnut Kernel at unit price of USD 1.2 per Kgs.
- on being asked to explain similar price of Walnut In shell and Walnut Kernel, he admitted that import price of Walnut Kernel is always higher than Walnut In Shell; he also admitted that Walnut Kernel was imported at lower price in the name of both the firms, namely M/s Janki Das Raghubar Dayal and M/s P S Packaging; Shri Shailedra of GSM Shipping guided him to import Walnut Kernel at lower price at Mundra SEZ to save the customs duty.

5.2 Statement of Shri Shishir Kumar Bansal, proprietor of M/s Janki Das Raghubar Dayal and M/s P S Packaging, was recorded on 29.05.2024 at DRI, Noida Regional Unit under Section 108 of the Customs Act, 1962 (RUD-4), wherein he, inter-alia, stated as under: -

- On being asked to state varieties of Walnut In Shell and Walnut Kernel, he stated that he worked on commission basis and he did not know much about varieties of Walnut In Shell and Walnut Kernel.
- On being asked that he had stated that prices for Walnut In Shell and Walnut Kernel were given by one Shri Yogesh Gupta of Ishika Bakers and orders for import were also given through him during his statement on 28.05.2024 and to give contact details of Shri Yogesh Gupta, he stated that prices for Walnut In Shell and Walnut Kernel were not decided with Shri Yogesh Gupta; statement given by him was not true and correct; he had ordered for import of goods through one Shri Kush Agrawal who resides in Dubai and he visits to Delhi; he is the owner of one firm namely Al Arab Dates Factory, FZCO, Dubai; he made all imports from Al Arab Dubai; he had met Shri Kush Agrawal in Dubai in January, 2024.
- On being asked to give contact details of Shri Yogesh Gupta and Shri Kush Agrawal, he stated that the contact details of Shri Yogesh Gupta is 9810201600 and contact detail of Shri Kush Agrawal is (+97)1585970860 (Dubai) and (+27)795477541, Ghana.

- Since he had not imported Walnut for the last 06 month, he forgot name of owner of GSM Shipping in his previous statement and that his name is Shri Sumit Goyal and his contact number is 9879113980.
- On being asked to state business relations with Shri Kush Agrawal, he stated that Shri Kush Agarwal who lives in Dubai had suggested him to import Walnut Kernel; he had suggested to take help of Shri Sumit Goyal of GSM Shipping in respect of freight forwarding and customs clearance; he had suggested him to sell the imported goods to certain buyers; he had instructed him to sell the imported goods to M/s Harish Kirana Company, M/s Abhishek Traders and M/s Nuty and Buddy at the prices suggested by him and he got a commission of Rs. 1-1.5 Lakhs per container; the commission was credited into his account after completion of transactions; as all the transactions including filing of Bill of Entry, payment of customs duty, transportation of imported goods were done at the instructions received from Shri Kush Agarwal, therefore the details were shared with Shri Kush Agarwal.
- On being asked to state that how the import remittance and payment of customs duty was done for import of Walnut Kernel, he stated that import of Walnut Kernel was done as per instructions of Shri Kush Agarwal and the imported goods were sold in domestic market as per instructions of Shri Kush Agarwal; he was also instructed to sell the goods through Shri Sumeet Goyal of GSM Shipping; as he did not have money for import remittance and payment of customs duty, he transferred amount to GSM Shipping received from domestic buyers; he transferred payment to foreign supplier, Al Arab after receiving the payments from my domestic buyers; all the activities were done as per directions received from Shri Kush Agarwal; he submitted screen shot of his chat with Shri Kush Agarwal and Abhishek Garg
- he admitted under-valuation in import of Walnut Kernel by both his firms and assured that he will voluntarily deposit Rs. 75 lakhs against differential duty for import of Walnut Kernel.

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

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

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

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

6. iPhone13 mobile phone (MLPF3HN/A, S.No. W2H4XW3X1M) owned by Shri Shishir Kumar Bansal was recovered for seizure during panchnama proceedings dated 28.05.2024 for the purpose of investigation and was seized vide Seizure Memorandum dated 05.06.2024 (**RUD-6**). This unit vide letter dated 12.06.2024 (**RUD-7**) requested the Director, Central Forensic Science Laboratory, Bhopal for forensic analysis of mobile phone of Shishir Kumar Bansal seized vide Seizure Memorandum dated 05.06.2024. Director, CFSL vide their letter dated 28.08.2024 (**RUD-8**) forwarded forensic examination report of the said seized mobile phone. No incriminating evidence in respect of under-valuation of imported walnut kernel was recovered during analysis of the forensic data of the said mobile.

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

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

Walnut, there is yield in the range of 50% to 60% depending upon the types of walnut In-shell.

8. Import of Walnut In shell by M/s Janki Das Raghubar Dayal and M/s P S Packaging.

Shri Shishir Kumar Bansal has also imported walnut In shell in the name of M/s Janki Das Raghubar Dayal at Mundra SEZ and there is no import of Walnut In Shell in the name of firm, M/s P S Packaging. Further, there is no import of Walnut In Shell from port by both the firms. The import data of walnut In shell imported by M/s Janki Das Raghubar Dayal for the period December, 2022 to October, 2023 at Mundra SEZ are as follows:

S. No	BE Number	BE date	COO	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	1014241	11-10-2022	Chile	USD	INSHELL WALNUTS	17500	KG S	1
2	1014553	14-10-2022	Chile	USD	INSHELL WALNUTS	54600	KG S	1
3	1011793	29-06-2023	Chile	USD	INSHELL WALNUT	18500	KG S	1.0
4	1011795	29-06-2023	Chile	USD	INSHELL WALNUTS	36000	KG S	1.0
5	1011794	29-06-2023	Chile	USD	INSHELL WALNUTS	18500	KG S	1.0
6	1011797	29-06-2023	Chile	USD	INSHELL WALNUTS	18500	KG S	1.0
7	1011796	29-06-2023	Chile	USD	INSHELL WALNUTS	18500	NO S	1.0
8	1014228	25-07-2023	Chile	USD	WALNUTS INSHELL	17000	KG S	1.0
9	1016110	14-08-2023	Chile	USD	WALNUTS INSHELL	19000	KG S	1.0
10	1018576	11-09-2023	Chile	USD	WALNUTS INSHELL	18000	KG S	1.0
11	1018580	11-09-2023	Chile	USD	WALNUTS INSHELL	18000	KG S	1.0
12	1018724	13-09-2023	Chile	USD	INSHELL WALNUTS (CHANDLER 34/36)	18000	KG S	1.0
13	1018725	13-09-2023	Chile	USD	INSHELL WALNUTS (CHANDLER 34-36 MM)	18000	KG S	1.0
14	1021781	17-10-2023	Chile	USD	WALNUTS INSHELL	18000	KG S	1.0
15	1021782	17-10-2023	Chile	USD	WALNUTS INSHELL	18000	KG S	1.0

The import data of Mundra SEZ for the period December, 2022 to October, 2023 reveals that M/s Janki Das Raghubar Dayal have imported "Walnut In shell" at the unit price of 1.01 USD per kgs from Chile. Further, both the importers have also imported "Walnut kernel" at the similar price of "walnut

In shell” at Mundra SEZ i.e. 1.25 - 1.52 USD per Kgs. When kernels are removed from the In shell Walnut, there is yield in the range of 50% to 60%. It shows that the minimum unit price of Walnut kernels is always more than double of the unit price of Walnut In shell. Therefore, both the importers were importing and clearing “Walnut Kernel” by way of under-valuation at the Unit Price of 1.25 - 1.52 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

9. Provisions of Law relevant to this case:

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

(A) Provisions under Customs Act, 1962

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

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

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

9.4 Section 17 of the Customs Act, 1962:

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

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

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

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

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

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

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

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

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

9.5.5 As per the Rule 2 (1) (g) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007), the ‘Transaction Value’ means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962. As per Rule 2 (1) (d) of CVR, 2007 "identical goods"

means imported goods - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued; (ii) produced in the country in which the goods being valued were produced; and (iii) produced by the same person who produced the goods; Rule 2 (1) (f) defines "similar goods" as goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark; produced in the country in which the goods being valued were produced; and produced by the same person who produced the goods being valued;

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

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

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

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

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

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

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

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

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

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

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

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

9.7 SECTION 46: Entry of goods on importation:-

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

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

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

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

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

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

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

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

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 216 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) RELEVANT PROVISIONS OF SEZ ACT, 2005:

9.14 Definitions — In this Act, unless the context otherwise requires

.....

(o) “import” means—

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

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

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

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

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

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

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

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

9.15 *47(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.*

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

10. Valuation of the undervalued goods cleared by M/s Janki Das Raghubar Dayal and M/s P S Packaging.

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

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

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

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

I. Country of Origin Chile: -

S. No	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INMUN 1	37309 99	14-12-2022	Shelled Walnuts Broken And Pieces	USD	3.25
2	INMUN 1	43459 91	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
3	INMUN 1	43468 16	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
4	INNSA 1	46724 73	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
5	INNSA 1	46724 73	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
6	INNSA 1	47031 35	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
7	INNSA 1	47031 35	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
8	INNSA 1	47221 58	20-02-2023	Walnut Kernels	USD	3.02
9	INMUN 1	47769 03	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
10	INMUN 1	47769 05	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
11	INMUN 1	48896 65	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
12	INMUN 1	48884 95	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
13	INMUN 1	48890 81	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
14	INMUN 1	48896 62	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
15	INNSA 1	50638 23	15-03-2023	Walnut Kernels	USD	3.09
16	INNSA 1	55706 51	18-04-2023	Walnut Kernels (Grade 2)	USD	2.1
17	INNSA 1	65746 11	24-06-2023	Walnut Shelled (Grade 2)	USD	2.25
18	INNSA 1	73233 28	12-08-2023	Walnuts Shelled	USD	2.8

19	INNSA 1	73233 28	12-08- 2023	Walnuts Shelled	USD	2.8
20	INNSA 1	73233 28	12-08- 2023	Walnuts Shelled	USD	2.8
21	INNSA 1	73233 28	12-08- 2023	Walnuts Shelled	USD	2.8
22	INBD M6	73378 38	13-08- 2023	Shelled Walnut (1800 Ctn/10kg)	USD	2.1
23	INMUN 1	75440 67	26-08- 2023	Shelled Walnuts	USD	2.85
24	INMUN 1	76813 32	05-09- 2023	Shelled Walnuts	USD	2.8
25	INBD M6	79060 64	19-09- 2023	Shelled Walnut (2000 Ctn/10kg)	USD	2.11
26	INNSA 1	81003 15	30-09- 2023	Walnut Kernels	USD	2.6
27	INNSA 1	81026 34	01-10- 2023	Walnut Kernels	USD	2.6
28	INMUN 1	82350 10	10-10- 2023	Shelled Walnuts	USD	2.8
29	INBD M6	85784 96	02-11- 2023	Shelled Walnut 80% Extra Light Halves Machine Cracked (1800 Ctn/10kg)	USD	2.1
30	INNSA 1	86315 83	04-11- 2023	Walnut Kernels	USD	2.1
31	INNSA 1	86338 08	05-11- 2023	Walnut Kernels	USD	2.6
32	INBD M6	87045 80	09-11- 2023	Shelled Walnut Chandler Halves 80/20 (1800 Ctn/10kg)	USD	2.1
33	INMUN 1	89444 62	25-11- 2023	Walnut Kernels	USD	2.6
34	INMUN 1	89444 78	25-11- 2023	Walnut Kernels	USD	2.66

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

10.5 Accordingly, actual value of the goods covered under DTA Thoka Numbers has been re-determined under Section 14 read with Rule 5 of the CVR, 2007, which provides for valuation on the basis of Transaction value of similar goods and specified that subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of similar goods sold for export

to India and imported at or about the same time as the goods being valued. After doing the same, the assessable value has been arrived at and differential duties upon the same have been calculated. **(Annexure- I, II)**

11. DUTY LIABILITY

11.1 The differential duty liable to be demanded under Section 28 (4) of the Customs Act, 1962 in relation to the imports of goods vide DTA Thoka Numbers in respect of past consignments in the name of M/s Janki Das Raghubar Dayal and M/s P S Packaging is computed in Annexure I &II.

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

TABLE-I - M/s Janki Das Raghubar Dayal

S. No.	Thoka Number	Thoka date	Declared/Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2020882	28-12-2022	5069396.25	7074596.25	5576335.88	7782055.88	2205720.00
2	2021048	30-12-2022	5322866.06	7428326.06	5855152.67	8171158.67	2316006.00
3	2000653	12-01-2023	11241254.22	15687733.02	12365379.6	17256506.3	4891126.68
4	2004232	04-03-2023	8360131.42	11666981.92	9196144.56	12833680.1	3637535.55
5	2004314	07-03-2023	2533181.25	3535181.25	2786499.38	3888699.38	1102200.00
6	2007347	29-04-2023	6535221.95	9060312.00	7188744.14	9966343.20	2777599.06
7	2007348	29-04-2023	2539380.21	3520550.21	2793318.23	3872605.23	1079287.00
8	2007802	06-05-2023	2539289.20	3497449.20	2793218.12	3847194.12	1053976.00
Total			44140721	61471130	48554793	67618243	1,90,63,450

**TABLE-II
M/s P S Packaging**

S.No.	Thoka Number	Thoka date	Declared / Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2018750	26-09-2023	9063742	15227086	9970116	16749795	67,79,679

12. Summary of Investigation by DRI

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

12.1 Shri Shishir Kumar Bansal created partnership firm namely **M/s Janki Das Raghubar Dayal** in his and his father's name and proprietorship firm namely **M/s P S Packaging** in his name for the purpose of evasion of Customs Duty by way of under valuation. He imported Walnut Kernel from different suppliers Dubai i.e. Al Arab Dates Factory FZCO & Naseer Bashir General Trading LLC by way of gross undervaluation at Mundra SEZ. Statement of Shishir Kumar Bansal was recorded on 28.05.2024 under Section 108 of the Customs Act, 1962, wherein he stated that one of his relative, Shri Yogesh Gupta of M/s Ishita Traders had ordered for import of walnut kernel. However, in his statement recorded on 29.05.2024 he stated that his statement given on 28.05.2024 was not true and correct and he had ordered it through Shri Kush Agrawal who resides in Dubai. As per Shri Shishir Kumar Bansal, Shri Kush Agarwal is Exporter and owner of Al Arab Dates Factory FZCO, supplier in this

case. Shri Shishir Kumar Bansal has been engaged in trading of dry fruits for many years & importing goods from different suppliers. It appears that he was trying to name other persons to mislead the investigation. Based on the under-valued invoices for the purpose of evasion of customs duty, the Bills of Entry were filed in the name of **M/s Janki Das Raghubar Dayal and M/s P S Packaging** for clearance of the imported goods. He admitted under-valuation in import of Walnut Kernel by both his firms and assured that he will voluntarily deposit Rs. 75 lakhs against differential duty for import of Walnut Kernel during his statement recorded on 29.05.2024 under Section 108 of the Customs Act, 1962.

12.2 The import data of Mundra SEZ for the period December, 2022 to September, 2023 reveals that M/s Janki Das Raghubar Dayal imported "Walnut In shell" including at the unit price of 1.01 USD per kgs from Chile. Further, they also imported "Walnut kernel" at the similar price of "walnut In shell" at Mundra SEZ i.e. 1.25 - 1.52 USD per Kgs. When kernels are removed from the In shell Walnut, there is production in the range of 50% to 60%. It shows that the minimum unit price of Walnut kernels is always more than double of the unit price of Walnut In shell. Therefore, M/s Janki Das Raghubar Dayal and M/s P S Packaging were importing and clearing "Walnut Kernel" by way of under-valuation at the Unit Price of 1.25 - 1.52 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

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

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

12.5 From the facts given above it appears that **M/s Janki Das Raghubar Dayal and M/s P S Packaging** had wilfully mis-declared the value of the goods. Both the importers had submitted under-valued invoices to evade Customs duty by wilful mis-statement of value of the goods. Hence, it appears that the Customs duty short paid is recoverable in terms of clause (b) of Section 28(4) of the Customs Act, 1962 due to wilful mis-statement of value of the goods by the importers before the Customs Authorities.

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

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

13.1 In view of above, the declared value of **Rs. 4,41,40,721/- (Rupees Four Crore Forty One Lakhs Forty Thousand Seven Hundred and Twenty One only)** of the goods imported and cleared by M/s Janki Das Raghubar Dayal in respect of 08 Thoka Numbers mentioned in Table –I of Para 11.2, and as detailed in Annexure I to the Investigation Report, appears liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as **Rs. 6,14,71,130/- (Rupees Six Crore Fourteen Lakhs Seventy One Thousand One Hundred and Thirty Only)** in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

13.2 The declared value of **Rs. 90,63,742/- (Rupees Ninety Lakhs Sixty Three Thousand Seven Hundred and Forty Two only)** of the goods imported and cleared by M/s P S Packaging in respect of 01 Thoka Numbers mentioned in Table –II of Para 11.2 and as detailed in Annexure II to the Investigation Report, appears liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as **Rs. 1,52,27,086/- (Rupees One Crore Fifty Two Lakhs Twenty Seven Thousand and Eighty Six Only)** in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

13.3 It appears that M/s Janki Das Raghubar Dayal have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods cleared in the past under Bills of Entry mentioned in Table I of Para 11.2, having total **re-determined assessable value of Rs. 6,14,71,130/- (Rupees Six Crore Fourteen Lakhs Seventy-One Thousand One Hundred and Thirty Only)** by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

13.4 It appears that M/s P S Packaging have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods cleared in the past under DTA Thoka Numbers mentioned in Table II of Para 11.2, having total **re-determined assessable value of Rs. 1,52,27,086/- (Rupees One Crore Fifty-Two Lakhs Twenty-Seven Thousand and Eighty-Six Only)** by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

13.5 Further, in respect of the past consignments covered by DTA Thoka Numbers, **differential duty** amounting to **Rs. 1,90,63,450 /- (Rupees One Crore Ninety Lakhs Sixty-Three Thousand Four Hundred and Fifty only)**, as worked out in the Annexure I and mentioned in Table I of Para 11.2, appears

liable to be recovered from **M/s Janki Das Raghubar Dayal** under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA *ibid*.

13.6 Further, in respect of past consignments covered by DTA Thoka Number, **differential duty** amounting to **Rs. 67,79,679 /- (Rupees Sixty-Seven Lakhs Seventy-Nine Thousand Six Hundred and Seventy-Nine only)**, as worked out in the Annexure II and mentioned in Table II of Para 11.2, appears liable to be recovered from **M/s P S Packaging** under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA *ibid*.

13.7 Further, as the duty was short paid by wilful mis-statement and suppression of facts by the importer, as discussed in paras 12.5 and 12.6 above, M/s Janki Das Raghubar Dayal and M/s P S Packaging appears liable for penalty under the provisions of section 114A of the Customs Act, 1962.

14. Role played by various persons

14.1 Role played by Shri Shishir Kumar Bansal, Partner in M/s Janki Das Raghubar Dayal and Proprietor of M/s P S Packaging.

Shri Shishir Kumar Bansal created partnership firm namely **M/s Janki Das Raghubar Dayal** in his and his father's name and proprietorship firm namely **M/s P S Packaging** in his own name for the purpose of evasion of Customs Duty by way of under valuation. He imported Walnut Kernel from Dubai by way of gross under valuation at Mundra SEZ. He admitted under-valuation in import of Walnut Kernel by both his firms and assured that he will voluntarily deposit Rs. 75 lakhs against differential duty for import of Walnut Kernel during his voluntarily statement recorded on 29.05.2024 under Section 108 of the Customs Act, 1962, however, he has not deposited any duty. Further, for all the Bills of Entry filed in the name of **M/s Janki Das Raghubar Dayal and M/s P S Packaging**, Shri Shishir Kumar Bansal, knowingly and intentionally submitted invoices, declarations under the provisions of CVR, 2007, which did not divulge the actual value of the imported goods. It therefore appears that the documents and declarations used/ made at the time of the import of the consignments were knowingly and intentionally false / incorrect. Accordingly, Shri Shishir Kumar Bansal appears liable for penalty under the provisions of Section 114AA of the Customs Act, 1962.

15. The investigation in the matter has revealed that M/s Janki Das Raghubar Dayal and M/s P S Packaging have imported "Walnut Kernel" by way of under-valuation at Mundra SEZ. During this period, M/s Janki Das Raghubar Dayal and M/s P S Packaging had filed DTA Thoka Numbers for import of "Walnut Kernel", at Mundra SEZ having total re-determined Assessable Value of **Rs. 6,14,71,130/-, Rs. 1,52,27,086/-** respectively (as detailed in **Annexure- I and II**) by way of gross under-valuation. In view of the above stated under-valuation, wilful mis-statement and suppression of facts, **M/s Janki Das Raghubar Dayal and M/s P S Packaging** has evaded payment of Customs duty aggregating to **Rs. 1,90,63,450 /- and Rs. 67,79,679 /-** respectively as detailed in **Annexures- I and II** attached with this SCN.

15. Now, Therefore,

15.1 Shri Shishir Kumar Bansal, Partner in M/s Janki Das Raghubar Dayal (IEC: AAFFJ8733B) and the firm- M/s Janki Das Raghubar Dayal with regard

to the imports made vide Thoka Numbers specified in Table I of Para 11.2 above, are hereby called upon to show cause, in writing, to the Principal Commissioner of Customs, Custom House, Mundra, Gujrat within 30 days of receipt of this notice as to why:

- (i) The value of the goods imported vide 08 Thoka Numbers specified in Table I of Para 11.2 above should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as **Rs.6,14,71,130/- (Rupees Six Crore Fourteen Lakhs Seventy One Thousand One Hundred and Thirty Only)** in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;
- (ii) The goods, imported vide 08 Thoka Numbers specified Table I of Para 11.2 above, having re-determined value of **Rs.6,14,71,130/- (Rupees Six Crore Fourteen Lakhs Seventy One Thousand One Hundred and Thirty Only)**, should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- (iii) The differential duty payable i.e. **Rs. 1,90,63,450 /- (Rupees One Crore Ninety Lakhs Sixty Three Thousand Four Hundred and Fifty only)** should not be demanded and recovered from them under the provision of Section 28(4) of the Customs Act, 1962;
- (iv) The interest on the duty short paid should not be demanded and recovered from them under Section 28AA of the Act *ibid*;
- (v) Penalty should not be imposed on M/s Janki Das Raghubar Dayal under Section 114A of the Customs Act, 1962;
- (vi) Penalty should not be imposed on Shri Shishir Kumar Bansal under section 114AA of the Customs Act, 1962.

15.2 Shri Shishir Kumar Bansal, Proprietor of **M/s P S Packaging (IEC: AAQFP1516Q)** and **M/s P S Packaging** with regard to the imports made vide Thoka Number specified in Table II of Para 11.2 above, are hereby called upon to show cause, in writing, to the Principal Commissioner of Customs, Custom House, Mundra, Gujrat within 30 days of receipt of this notice as to why:

- (i) The value of the goods imported vide 01 Thoka Number specified in Table II of Para 11.2 above should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as **Rs. 1,52,27,086/- (Rupees One Crore Fifty-Two Lakhs Twenty-Seven Thousand and Eighty-Six Only)** in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;
- (ii) The goods, imported vide 01 Thoka Number specified Table II of Para 11.2 above, having re-determined value of **Rs.1,52,27,086/- (Rupees One Crore Fifty-Two Lakhs Twenty-Seven Thousand and Eighty-Six Only)**, should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- (iii) The differential duty payable i.e. **Rs. 67,79,679 /- (Rupees Sixty-Seven Lakhs Seventy-Nine Thousand Six Hundred and Seventy-Nine only)** should not be demanded and recovered from them under the provision of section 28(4) of the Customs Act, 1962;

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

(v) Penalty should not be imposed on M/s P S Packaging under Section 114A of the Customs Act, 1962;

(vi) Penalty should not be imposed on Shri Shishir Kumar Bansal under section 114AA of the Customs Act, 1962.

WRITTEN SUBMISSION:-

16. M/s Janki das Raghubar Dayal and M/s P S Packaging in their submission dated 12.05.2025 (received on 05.06.2025), *inter alia* submitted that

16.1. That the Noticee denies charges of undervaluation of goods, namely Walnut Kernel imported by him. ; that the Noticee had imported Walnut Inshell and Walnut Kernel; that there is no allegation of undervaluation in respect of import of Walnut Inshell; that the case of undervaluation is limited to import of Walnut -Kernel only; that suppliers of both items (Walnut Inshell & Walnut Kernel) are same in the present case; that the value shown in invoices issued by suppliers relating to Walnut Inshell was found to be genuine but in respect of Walnut Kernel, it was found to be dubious; that it *prima facie* appears to be improper and illogical; that had there been intention of undervaluation, it would have been in respect of both items; that the allegation of undervaluation in respect of Walnut -Kernel is, therefore, false and baseless; that the Notice did not suppress any value at Customs for clearance of the impugned imported goods; that all import documents *viz.*, invoice, packing list, Phytosanitary Certificate, Bill of Lading etc were submitted along with Bill of Entry filed on behalf the Noticee. That the Invoice value was true and nothing was paid over and above the invoice price; that the suppliers of goods are also an independent persons having no relation with the Noticee except relation of seller and buyer.; that all documents were properly appraised by the officer of the department at the time of assessment of duty and nothing was suppressed by the Noticee; that the payment to the suppliers was made through banking channel; that the demand of customs duty and proposal for confiscation of imported goods are contrary to provisions of the Act and hence, the same are liable to be quashed and withdrawn.

16.2. That the business model of the Noticee was that he came to know about the higher demand of Walnut in India. So, he contacted one Shri Kush Agarwal who was engaged to supply various kind of dry fruits including Walnut from his trading shop located at Free Trade Zone of Dubai; that Shri Kush Agarwal who was earlier doing business in India agreed to supply Walnut Inshell and Walnut Kernel at very competitive price; that M/s Fast Track CFS Pvt Ltd, Advani SEZ, Mundra, Kutch was notified party; that Goods were got cleared from Adani Special Economic Zone, Mundra Kutch by GSM Shipping, Customs Broker who used to receive all import documents directly from the supplier; that Bill of Entry was appraised as per Section 17 of the Customs Act, 17; that the payment of goods was made equal to invoice price through GSM Shipping who was subsequently reimbursed by the Noticee; that there was no discussion regarding any extra payment over and above invoice price; that the whole business was done with clean hands in accordance with the prevailing laws and

it has also been explained by Shri Shishir Kumar Bansal in his statement dated 28.05.24 and tax invoices issued by GSM Shipping on the Noticee endorse the above way of business. That the Invoices issued by GSM Shipping are enclosed as Annexure-I. That the above business model speaks that there was no chance of suppression of value of goods in the present case.

REJECTION OF DECLARED PRICE/VALUE UNDER RULE 12 THE CVR IS ILLEGAL:

16.3. They submitted that goods, i.e., Walnut-Kernel whose valuation is under dispute in the present case was cleared after final assessment of Bills of Entry filed by the Noticee; that for the purpose of determination of 'value' for charging Customs duty, provisions of section 14 of the Customs Act, 1962 and the Customs Valuation Rules, 2007 are applied.

16.4 That Section 14 is applicable for determination of value of only imported goods. ; that the value of imported goods would be determined in accordance with the provisions of Rules made under the said section. If the goods are not imported goods, provisions of section 14 would not be applicable. Further, under the said section, the CVR (Customs Valuation Rules) has been framed. Rule 1(3) of the CVR specifies that the said rules shall apply to *imported goods*.

16.5 That Reliance is placed on the judgment of the Hon'ble Supreme Court in Commissioner of Customs Vs. Dilip Kumar & Company, wherein it was held that when the words of a statute are clear and unambiguous, the same must be interpreted in their plain and ordinary meaning without adding or subtracting anything from the language of the provision. A similar principle was reiterated in Grasim Industries Ltd v. Collector of Customs, wherein the Hon'ble Supreme Court observed that no word used in a statute can be treated as redundant and the legislative intent must be gathered strictly from the language employed in the provision.

16.6 Further, they relied on the decision of the Tribunal in Oil India Ltd v. Commissioner of CGST and Steelage Industries Ltd v. CCE, wherein it has been held that adjudicating authorities cannot travel beyond the scope of the statutory provisions or enlarge the ambit of the law.

16.7 Applying the above settled principles, it is evident that the provisions of Section 14 of the Customs Act and the Customs Valuation Rules, 2007 apply only to "imported goods." In cases where the goods have already been cleared and no longer qualify as "imported goods," the declared value cannot be rejected nor can the value be re-determined by invoking the Valuation Rules. In this regard, they also relied upon the judgment of the Hon'ble Punjab & Haryana High Court in Jairath International v. Union of India and Famina Knit Fabs v. Union of India, wherein it was held that goods already exported are not covered within the definition of "export goods" and therefore cannot be subjected to re-assessment under the Valuation Rules.

16.8 Further, they referred that Hon'ble Supreme Court in Eicher Tractors Ltd v. Commissioner of Customs has held that for the purpose of customs valuation, the transaction value, i.e., the price actually paid or payable, must

be accepted unless there is credible evidence to reject the same. Likewise, in *Dee Kay Exports v. Commissioner of Customs*, the Tribunal held that undervaluation cannot be alleged unless there is evidence of extra remittance or additional consideration.

16.9 They submitted invoices and documents received from the supplier and stated that there is no evidence on record to establish that any additional amount was paid over and above the declared invoice value. In the absence of any cogent evidence of manipulation of invoices, extra remittance, or misdeclaration as contemplated under Rule 12 of the Customs Valuation Rules, 2007, rejection of the declared transaction value and redetermination of value is legally unsustainable.

REDETERMINATION OF VALUE:

16.10 They further submitted that the Notice proposes rejection of the declared transaction value and redetermination of value under Rule 5 of the Customs Valuation Rules, 2007 on the basis of contemporaneous NIDB data treating the goods as “similar goods.” However, as per Rule 2(f) read with Rule 5 of the said Rules, valuation on the basis of similar goods can be adopted only when the goods are shown to possess comparable characteristics, quality, commercial interchangeability, commercial level and quantity, supported by demonstrable evidence. In the present case, the Department has relied solely on NIDB data without producing any supporting documents such as contemporaneous Bills of Entry or evidence to establish that the goods relied upon for comparison were of the same quality, quantity and commercial level. It is well settled that NIDB data by itself cannot be the sole basis for enhancement of value.

16.11 They submitted that the Reliance is placed on the decision of the Hon’ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Customs* and *Sanjivani Non-Ferrous Trading Pvt Ltd v. Commissioner of Customs*, wherein it was held that the transaction value, i.e., the price actually paid or payable, must ordinarily be accepted unless the Department establishes valid grounds under the Valuation Rules for rejecting the same. Further, in *South India Television Pvt Ltd v. Commissioner of Customs* the Hon’ble Supreme Court held that mere suspicion or reliance on external data is insufficient to reject invoice value and undervaluation must be proved by cogent evidence of comparable imports or additional consideration.

16.12 They relied on the case of the Tribunal in *Topsia Estates Pvt Ltd v. Commissioner of Customs* wherein it has categorically held that declared value cannot be enhanced merely on the basis of NIDB data without independent supporting evidence, particularly when price variations may arise due to differences in quality, size and quantity. Similarly, in *Anisha Traders v. Commissioner of Customs* it was held that the burden lies upon the Department to establish that the declared value is incorrect and that NIDB data can at best serve as a guideline and cannot be directly applied unless the goods satisfy the parameters of identical or similar goods. The Hon’ble Delhi High Court in *Niraj Silk Mills v. Union of India* has also held that valuation enhancement solely on the basis of NIDB data without corroborative evidence is legally unsustainable.

16.13 They submitted that in the present case, there is no evidence on record to establish any extra payment or additional consideration paid by the Noticee to the supplier, nor has the Department produced contemporaneous import documents to substantiate the allegation of undervaluation. On the contrary, the suppliers have clarified that the goods supplied consisted of smaller broken walnut kernels sourced directly from farmers during harvest season, which naturally command lower prices due to quality and sourcing factors. In the absence of cogent evidence satisfying the parameters prescribed under Rule 5 of the Customs Valuation Rules, 2007, rejection of the declared transaction value and consequent redetermination of value is legally unsustainable and liable to be set aside.

ENHANCEMENT OF DECLARED VALUE IS IMPERMISSIBLE WHEN CONTEMPORANEOUS DATA OF AT PAR AVAILABLE:

16.14 That with a view to ascertain the contemporaneous import price of Walnut Kernel of Chile origin, import data available on the website <https://www.volza.com> was examined, which reveals that the value of Walnut Kernel imported into India was as low as USD 1.11 per Kg and USD 1.49 per Kg during the relevant period. They have imported the said goods at prices ranging from USD 1.50 to USD 1.51 per Kg, as evidenced from the supplier invoices placed at Annexure-I, which are broadly in line with the contemporaneous import prices. Further, in terms of Rule 4(3) of the Customs Valuation Rules, 2007, which is equally applicable while determining value under Rule 5, the lowest contemporaneous transaction value is required to be adopted. When the lowest value available in contemporaneous data is considered, the declared value of the Noticee cannot be said to be lower than the prevailing import prices. Accordingly, rejection of the declared transaction value and its enhancement for the purpose of demanding differential duty is contrary to the provisions of the Customs Valuation Rules, 2007 and therefore not legally sustainable.

DEMAND OF DIFFERENTIAL CUSTOMS DUTY UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962 NOT SUSTAINABLE:

16.15 They submitted that the Notice, in para 12.5 and 12.6, seeks to invoke the provisions of Section 28(4)(b) and (c) of the Customs Act, 1962 alleging wilful mis-statement and suppression of facts on the ground that the Noticee had declared a lower value of the imported goods. However, the said allegation is wholly unsustainable in law. They had filed the Bills of Entry in terms of Section 17(1) of the Customs Act, 1962 by self-assessing the duty on the basis of the invoice price, which represents the transaction value as envisaged under Section 14(1) of the Act. All relevant import documents including commercial invoices and Bills of Entry were duly submitted at the time of clearance and no adverse finding was recorded during assessment or investigation. There is also no evidence on record to establish that any amount over and above the invoice price was paid to the supplier. In the absence of any cogent evidence of additional consideration, collusion or manipulation of documents, the allegation of wilful mis-statement or suppression of facts is without basis and the invocation of the extended period under Section 28(4) is not legally sustainable.

16.16 They placed Reliance on Whirlpool of India Ltd v. Commissioner of Customs wherein the Tribunal held that the extended period of limitation cannot be invoked in the absence of evidence of wilful mis-statement or suppression of facts. Similarly, in P.G. Electroplast Ltd v. Commissioner of Customs it was held that where imports were assessed at the time of clearance and all relevant documents were furnished to the Department, the allegation of suppression cannot be sustained and the extended period cannot be invoked. The Hon'ble Bombay High Court in Mahindra & Mahindra Ltd v. Union of India also held that invocation of the extended period alleging suppression is impermissible when all material facts were already within the knowledge of the Department.

16.17 Further, in Commissioner v. SpiceJet Ltd the Tribunal held that where the Department was already aware of the relevant facts through records and audit, the extended period of limitation cannot be invoked subsequently. A similar view has been taken by the Tribunal in Arya Logistics v. Commissioner and Godrej Consumer Products Ltd v. Commissioner holding that when the relevant facts are already disclosed to the Department, invocation of extended limitation is not justified.

16.18 The Tribunal has also consistently held that mere self-assessment or filing of returns cannot be treated as suppression unless there is deliberate intent to evade duty. In this regard reliance is placed on Wellworth Project Developers Pvt Ltd v. Commissioner of CGST and T.S. Motors India Pvt Ltd v. Commissioner of CGST & Central Excise, wherein it was held that suppression must be deliberate and with intent to evade tax; otherwise, the extended period cannot be invoked.

16.19 The above principle has also been affirmed by the Hon'ble Supreme Court in Pushpam Pharmaceuticals Co v. Collector of Central Excise and Uniworth Textiles Ltd v. Commissioner of Central Excise, wherein it was categorically held that mere omission or failure is not suppression unless it is deliberate and with intent to evade duty. Further, the Hon'ble Supreme Court in Commissioner of Central Excise v. Ballarpur Industries Ltd and Nestor Pharmaceuticals Ltd v. Commissioner of Central Excise held that the adjudicating authority cannot travel beyond the allegations contained in the show cause notice.

16.20 In the present case, all import documents were submitted to the Department at the time of assessment and the goods were cleared after due examination by the proper officer. The Department had full knowledge of the transactions and no new evidence has emerged subsequently to justify reopening the assessments. Therefore, the allegation of suppression of facts is baseless and the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 is wholly unjustified. Consequently, the demand raised beyond the normal limitation period is barred by limitation and liable to be set aside.

GOODS WHICH ARE NOT AVAILABLE CANNOT BE CONFISCATED:

16.21 As regards the proposal for confiscation in respect of the 8 Bills of Entry, they submitted that the said Bills of Entry were finally assessed and the

goods had already been cleared for home consumption and are not physically available. It is a settled position of law that confiscation proceedings being *in rem* are directed against the goods themselves, and in the absence of the goods, such proceedings cannot be sustained. Further, Section 125 of the Customs Act, 1962 mandates grant of an option of redemption fine only where confiscated goods are available for redemption.

16.22 Judicial pronouncements have consistently held that where goods are not physically available, neither confiscation nor redemption fine can be imposed. In *Blue Dart Express v. CC* [1999 (111) ELT 102 (Tri.)], it was held that redemption fine is merely an option in lieu of confiscation and not a penalty. In *CC v. Bhooramal* [2000 (125) ELT 118 (Mad.)], it was observed that confiscation proceedings are *in rem*; however, such proceedings presuppose the existence of goods. The Hon'ble Bombay High Court in *Finesse Creation Inc.* [2009 (248) ELT 122 (Bom.)], affirmed by the Supreme Court in 2010 (255) ELT A120 (SC)] categorically held that in the absence of goods, confiscation and redemption fine are not permissible. Similar views have been taken in *Raja Impex (P) Ltd.* [2008 (235) ELT 623 (Tri.-LB)], *Bramhani Industries Ltd.* [2018 (363) ELT 277 (Tri.-Chennai)] and *P.B. Enterprises* [2017 (355) ELT 430 (Tri.-Del)], wherein it has been consistently held that once goods are cleared and not available, confiscation under Section 111 and consequential redemption fine under Section 125 cannot be sustained.

In view of the above settled legal position, they submitted that the proposal for confiscation and imposition of redemption fine in the present case is not legally tenable.

GOODS ALREADY CLEARED FOR HOME CONSUMPTION AGAINST FINALLY ASSESSED BEs CANNOT BE CONFISCATED:

16.23 It is submitted that the proposal for confiscation under Section 111(m) of the Customs Act, 1962 is legally unsustainable, as the impugned goods had already been finally assessed and cleared for home consumption. A plain reading of Section 111 makes it evident that only "imported goods" are liable for confiscation. As per Section 2(25) of the Act, "imported goods" do not include goods which have been cleared for home consumption; thus, upon such clearance, the goods lose their character as "imported goods" and fall outside the ambit of Section 111.

16.24 This position stands settled by judicial pronouncements. In *Bussa Overseas & Properties Pvt. Ltd.* [2004 (163) ELT 304 (Bom.)], affirmed in 2004 (163) ELT A160 (SC)], it was held that goods cease to be "imported goods" once cleared for home consumption and cannot thereafter be confiscated. Similar views were taken in *Southern Enterprises* [2005 (186) ELT 324 (Tri.)], *K.B. Tyres* [2023:PHHC:124090], and *Subir Modak* [2022-TIOL-75-CESTAT-KOL], wherein it was consistently held that post-clearance, goods lose their imported character and are not amenable to confiscation or reassessment.

In view of the above settled legal position, they submitted that the proposal for confiscation of goods already cleared for home consumption is contrary to law and liable to be set aside.

NO PENALTY IS IMPOSABLE U/S 114A OF THE CUSTOMS ACT,62

16.25 They submitted that the proposal for imposition of penalty under Section 114A of the Customs Act, 1962 is wholly unwarranted and legally

untenable. Section 114A provides for mandatory penalty equivalent to the duty or interest determined under Section 28(8) only in cases involving collusion, wilful mis-statement, or suppression of facts. In the present case, no such ingredients are established.

16.26 That they had furnished all requisite import documents, including original invoices, packing lists, Bills of Lading, and other supporting documents, at the time of filing the Bills of Entry. All particulars relating to the supplier, invoice number, and transaction details were fully disclosed and were subject to due verification by the assessing authorities. Additional information and documents, wherever called for, were also duly submitted during assessment. There is no allegation in the show cause notice of any discrepancy or mismatch among the documents filed, nor any evidence of fabrication or manipulation. In the absence of any suppression or wilful mis-declaration, the essential conditions for invocation of Section 114A are not satisfied.

16.27 Further, it is a settled position that where the demand of duty itself is not sustainable, the question of imposition of penalty under Section 114A does not arise, as the quantum of penalty is co-extensive with the duty determined. Accordingly, the proposal for penalty under Section 114A is liable to be dropped.

PENALTY ON SHRI SHISHIR KUMAR BANSAL:

16.28 They submitted that the proposal for imposition of penalty upon Shri Shishir Kumar Bansal, Partner of the Noticee firm, under Section 114AA of the Customs Act, 1962 is wholly unsustainable in law and on facts. Section 114AA contemplates penalty only where a person knowingly or intentionally makes, signs or uses any declaration, statement or document which is false or incorrect in any material particular. Thus, the existence of conscious knowledge and deliberate intent is a sine qua non for invocation of the said provision.

16.29 In the present case, the allegations that Shri Bansal deliberately undervalued the goods and created the firm for evasion of duty are without any cogent evidence. The firm is an existing entity since prior to the introduction of GST, which is verifiable from statutory records, and hence the allegation of its creation for evasion is baseless. The import documents, including invoices, were issued by the foreign supplier and were submitted as such before the Customs authorities without any alteration or manipulation. There is no finding in the show cause notice identifying any specific document as false or incorrect in any material particular.

16.30 Further, the statement dated 29.05.2024, wherein Shri Bansal is alleged to have admitted undervaluation and offered to deposit Rs. 75 lakh, was recorded under coercive circumstances and cannot be relied upon in the absence of independent corroborative evidence. It is a settled position that statements obtained under duress have no evidentiary value. Moreover, in his statement, Shri Bansal had clarified that the goods were procured at a lower price on account of inferior quality, which explains the declared value and negates any allegation of intentional undervaluation.

16.31 The requirement of establishing knowledge and intent for invoking Section 114AA has been emphasized in judicial pronouncements. In *Mohd. Ilyas v. Commissioner* [2018 (362) ELT A218 (SC)], the Hon'ble Supreme Court held that penalty under Section 114AA is not leviable in the absence of specific findings regarding the nature of false or incorrect material. Similarly, in *Parag*

Domestic Appliances v. CC, Cochin [2018 (360) ELT 547 (Tri.-Bang.)], it was held that penalty under Section 114AA cannot be imposed unless deliberate knowledge and intention are clearly established and the exact falsity in the documents is demonstrated.

16.32 They further submitted that penalty has been proposed both on the partnership firm and its partner, which is impermissible in law. It is a settled position that a partnership firm has no independent existence separate from its partners. In *Amrit Laxmi Machine Works* [2014 (303) ELT 161 (Bom.)], the Hon'ble Bombay High Court held that separate penalties on the firm and its partners are not sustainable. This view has been consistently followed by the Tribunal in *Shah Petroleums* [2023 (5) Centax 191 (Tri.)], *Mulchand M. Zaveri* [2020 (372) ELT 417 (Tri.)] and *D. Jewel* [2019 (369) ELT 1244 (Tri.)].

In view of the above facts and settled legal position, the essential ingredients of Section 114AA are not satisfied and the proposal for imposition of penalty upon Shri Shishir Kumar Bansal is liable to be dropped.

Applying ratio of the above decisions they submitted that no penalty on Shri Shishir Kumar Partner of the Noticee's firm is imposable.

M/s P.S Packaging vide letter dated 05.06.2025 also submitted the defense reply as above.

16.33 Besides above, they also submitted that, in the case of a proprietorship concern, the firm and its proprietor are not distinct legal entities but one and the same. Accordingly, simultaneous imposition of penalty on both the proprietorship firm and the proprietor for the same offence amounts to double penalisation of a single person, which is not sustainable in law. Reliance is placed on the decision in *Noor Mohd & Brothers* (CESTAT Kolkata), wherein it was held that penalty on both the proprietorship firm and the proprietor would amount to duplication of penalty. Further, the Hon'ble Punjab and Haryana High Court in *Vinod Kumar Gupta* has also held that a proprietorship firm lacks a separate legal identity, and therefore, penalty imposed on the firm is effectively a penalty on the proprietor; imposition of a separate penalty on the proprietor is thus impermissible.

16.34 In view of the above submissions, they humbly prayed that the Show Cause Notice issued in the present case may kindly be quashed, Demand of duty may be dropped along with penalty. Proposal of confiscation of goods may also be quashed.

16.35 Further, vide E mail dated 05.03.2026 ,they submitted an additional submission as under:

- i. Both firms were undoubtedly engaged in the business of import of Wanut In-shell and Walnut Kernels of Chile Origin from Dubai based two dealers namely Al Arab Dates Factory and Nasheer Bashir General Trading co. Allegation of undervaluation was only in relation to import of Walnut Kernels.
- ii. In para -8 of the SCN at page -6, reason for doubt for undervaluation of Walnut Kernels was mentioned as the value of Walnut Kernels must

be over and above the value of Walnut In-shell by 100% because yield of Walnut kernel is approximately 50% of Walnut In-shell. Value of Walnut In-shell was declared to be 1.01 USD/ Kg which was found to be correct by the department. It has been viewed by the department that in case cost of 1Kg Walnut In-shell is USD 1.01/Kg and yield of Kernel is 50%, cost of Kernel must be USD 2/ Kg whereas cost of Kernel was declared by the importer was USD 1.50 /Kg. If argument of the department is taken as correct the value Walnut Kernel must be 200% of the value of Walnut In-shell and accordingly it would be 2 USD/Kg but it was declared to be 1.50 USD/Kg. Thus, there is undervaluation of Walnut Kernels. In this context, it is submitted that the said logic of the department regarding undervaluation is baseless. Fixation of cost of Kernel is done on the basis of purchase cost Walnut Shell.

- iii. Declared value of Walnut Kernel was rejected under rule 12 (iii)(a) of the CVR on the ground that value of identical or similar goods imported at about the same time in comparable quantity and comparable commercial transactions was substantially higher than the declared value. In para-10.3 at page-13 of the SCN, BEs showing import of Chile Origin Walnuts Kernels on different ports along with its value are described but there are no mention of quantities and transaction terms and conditions. Hence, the value declared in the said BEs cannot be compared with the value declared in the present case. Hence, rejection of declared value is not supported by provisions of law.
- iv. In para-10.4 at page-14 of the SCN, the department redetermined value by enhancing declared value of Walnut Kernels merely based on NIDB data by applying rule 5 of the Valuation Rules, i.e., by treating the imported Walnut Kernels similar to goods declared in BEs filed on other ports without disclosing the data regarding comparable quantities and comparable commercial transaction. In lack of above parameters, walnut kernels taken for redetermination of value cannot be treated as similar goods. Hence application of rule 5 of the CVR for redetermination of the declared value is totally improper.
- v. Demand of differential duty is not sustainable when enhancement of value is not correct.
- vi. It is a settled legal position that declared value cannot be enhanced on the basis of NIDB data.

Contemporaneous data:

- i. As per contemporaneous data available on Volza indicates that value of Walnut Kernel valued from 1.11 USD/Kg to 1.49 USD/Kg. Rule 4(3) of the CVR specifies that lowest contemporaneous value is to be taken for valuation.

Redetermination of value by applying provisions of CVR and section 14 of the Customs Act:

- i. Rule 1(3) of the CVR provides that provisions of these rules are applicable to 'imported goods'. Similarly, section 14 of the Customs Act provides manner of determination of 'imported goods'. Term

'imported goods' is defined under section 2(25) of the Customs Act as goods brought from outside India but not cleared from Customs. Here in this case goods are finally cleared. Hence, they are not imported goods. So, provisions of CVR and section 14 would not be applicable.

Confiscation of goods which are not physically available:

- i. Confiscation of Walnuts Kernels which are not physically present cannot be ordered under section 111(m) of the Customs Act, 1962. Confiscation of goods under section 111 is applicable only in respect of improperly imported goods. Imported goods is defined under section 2(25) as "*imported goods*" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.
- ii. In the present case, the goods, i.e., Walnut Kernels, were cleared after final assessment lost the character of imported goods. Hence, Walnut Kernels is not liable to confiscation.
- iii. Section 125 of the Customs Act provides that an option would be given to redeem the confiscated goods on payment of specified fine. When goods are not available, giving such option would be meaningless.

Demand is time barred:

- i. Demand in the present case has been made under section 28(4) which is applicable when there is suppression or wilful misstatement.
- iv. Penalty under section 114AA on Shri Shishir Kumar Bansal *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.*

RECORD OF PERSONAL HEARING:

17. Following the principle of natural justices and the provisions laid down in the Customs Act, 1962, Opportunities of personal hearing in the case were given to the noticee on 18.02.2026 and 27.02.2026.

17.1 1st PH on 18.02.2026:-

No one appeared in the personal hearing fixed on 18.02.2026.

17.2 2nd PH on 27.02.26.

Shri Amar Pratap Singh, consultant appeared through video conference before me on behalf of Noticee No 01(M/s Janki Das Raghubar Dayal), 02(M/s P S Packaging) and 03(Shri Shishir Kumar Bansal and reiterated their earlier submission made vide letter dated 12.05.2025 (received on 05.06.2025), Further, He also submitted their additional submission vide email dated 05.03.2026.

DISCUSSION AND FINDINGS:-

18. I have carefully examined the Show Cause Notice, the relied upon documents (RUDs), and all other evidence available on record. The present case

relates to duty-evasion by way of under-valuation of imported Walnut Kernel. The importers were importing "Walnut Kernel" from Chile under customs tariff item (CTI) 0802 32 00 at Mundra SEZ and clearing the imported goods by way of under-valuation at the Unit Price of 1.25 - 1.52 USD per Kgs in Domestic Tariff Area (DTA), much lesser than prevailing price of similar goods imported to evade Customs duty under the category of Traded Goods.

19. From the evidence gathered during investigation, it has emerged that M/s Janki Das Raghubar Dayal (IEC No. AAAFJ8733B) and M/s P.S.Packaging(AAQFP1516Q) both firms have indulged in evasion of Customs duty by way of under valuation of imported Walnut Kernel from Chile at Mundra SEZ and clearing the said imported goods in Domestic Tariff Area (DTA) at much lesser price than prevailing price of similar goods. M/s Janki Das Raghubar Dayal has imported the goods i.e. Walnut Kernel vide 08 Bills of Entry(Thoka number) at the declared assessable value of Rs.4,41,40,721 and M/s P.S.Packaging has imported the goods i.e. Walnut Kernel vide 01 Bill of Entry(Thoka number) at the declared assessable value of Rs. 90,63,742 and clearing the such goods at the unit price of 1.25 -1.52 USD per Kg in Domestic Tariff Area (DTA) at Mundra SEZ.. In view of the investigation and its findings, the show cause notice proposes the re-determined the value of Rs.6,14,71,130 against the declared value of Rs.4,41,40,721 from M/s Janki Das Raghubar Dayal and re-determined the value of Rs. 1,52,27,086 against the declared value of Rs.90,63,742/- from M/s P.S.Packaging in terms of Section 14 of the Customs Act,1962 read with Rule 5 of CVR,2007. The Show Cause Notice also proposes the demand of differential duty of 1,90,63,450/- from M/s Janki Das Raghubar Dayal and Rs. 67,79,679/- from M/s P.S.Packaging under Section 28(4) of the Customs Act,1962 along with applicable interest, confiscation of the imported goods under Section 111(m) of the Customs Act, 1962, and imposition of penalties on the firms and persons concerned under Section 114A and 114AA of the Act.

20. Based on the allegations made in the Show Cause Notice and the material available on record, I find that the following common issues arise for adjudication in respect of M/s Janki Das Raghubar Dayal (IEC No. AAAFJ8733B) and M/s P S Packaging (IEC No. AAQFP1516Q), which are required to be examined and decided:

(i) Whether the declared value of the goods imported by M/s Janki Das Raghubar Dayal vide 08 Thoka Numbers specified in Table I of Para 11.2 and by M/s P S Packaging vide 01 Thoka Number specified in Table II of Para 11.2

is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and whether the same is required to be re-determined under Section 14 of the Customs Act, 1962 read with Rule 5 of the said Rules at Rs. 6,14,71,130/- and Rs. 1,52,27,086/- respectively;

(ii) Whether the goods imported and cleared under the aforesaid Thoka Numbers, having re-determined assessable values as above, are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962 on account of alleged misdeclaration of value;

(iii) Whether the differential duty amounting to Rs. 1,90,63,450/- in respect of M/s Janki Das Raghubar Dayal and Rs. 67,79,679/- in respect of M/s P S Packaging is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962;

(iv) Whether interest on the said differential duty is liable to be demanded and recovered under Section 28AA of the Customs Act, 1962;

(v) Whether penalty is liable to be imposed on M/s Janki Das Raghubar Dayal and M/s P S Packaging under Section 114A of the Customs Act, 1962 for alleged wilful misstatement and suppression of facts;

(vi) Whether penalty is liable to be imposed on Shri Shishir Kumar Bansal under Section 114AA of the Customs Act, 1962 for knowingly and intentionally using or causing to be used false or incorrect documents in the course of importation.

21. I find that the above issues, being interlinked and arising out of a common set of facts, evidences, and a unified modus operandi, are required to be examined conjointly; accordingly, I proceed to consider and adjudicate the same together in the succeeding paragraphs. I further find that the primary issue for determination is whether the declared value of the goods imported vide 08 Thoka Numbers, as detailed in Table I, and 01 Thoka Number, as specified in Table II of Para 11.2 above, is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and whether the assessable value is required to be re-determined at Rs. 6,14,71,130/- and Rs. 1,52,27,086/- respectively, in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the said Rules.

REJECTION OF ASSESSABLE VALUE DECLARED BY THE IMPORTERS-

22. For proper appreciation of the issue, the relevant statutory provisions governing valuation are reproduced hereunder for ease of reference.:-

“1] 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:

(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).]”

Rule 5. Transaction value of similar goods.-

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

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

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

Further, the definition of 'similar goods' as defined as per Rule 2(f) of Customs Valuation Rules, 2007 is reproduced below:-

2(f) *"similar goods" means imported goods -*

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

23. I observe that Section 14 of the Customs Act, 1962 mandates that the assessable value of imported goods shall be the "transaction value", i.e., the price actually paid or payable for the goods when sold for export to India, subject to the conditions that the buyer and seller are not related and that price is the sole consideration for the sale. I observe that Section 14 of the Customs Act, 1962 mandates that the assessable value of imported goods shall be the "transaction value", i.e., the price actually paid or payable for the goods when sold for export to India, subject to the conditions that the buyer and seller are not related and that the price is the sole consideration for the sale. However, the said transaction value is liable to be rejected in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, where the proper officer has reason to doubt the truth or accuracy of the declared value. In this regard, I now proceed to examine the evidences brought on record during the course of investigation so as to determine whether there exist sufficient grounds to doubt the truth and accuracy of the declared assessable value in the present case.

Price Analysis of Walnut Kernel vis-à-vis' Walnut In-shell and Examination of Declared Value-

24. At the outset, it is necessary to understand the nature of the imported goods under consideration, namely Walnut Kernel vis-à-vis' Walnut In-shell. Walnut kernels are obtained after subjecting walnut in-shell to various processing operations such as hulling, drying and shelling, wherein the outer hard shell is removed to extract the edible portion. It is a matter of common commercial understanding that during this process, only about 50% to 60%

yield of kernels is obtained from walnut in-shell, with the remaining portion constituting shell and other by-products. Therefore, by its very nature, Walnut Kernel, being a processed and value-added product, commands a significantly higher price in comparison to Walnut In-shell, which is the raw agricultural produce.

24.1 I find that the Noticee, namely M/s Janki Das Raghubar Dayal, had imported Walnut In-shell at Mundra SEZ during the period from December, 2022 to October, 2023, whereas no such imports were made by M/s P S Packaging. The import data of Walnut In-shell by M/s Janki Das Raghubar Dayal is reproduced below:

S. No	BE Number	BE date	COO	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	1014241	11-10-2022	Chile	USD	INSHELL WALNUTS	17500	KGS	1
2	1014553	14-10-2022	Chile	USD	INSHELL WALNUTS	54600	KGS	1
3	1011793	29-06-2023	Chile	USD	INSHELL WALNUT	18500	KGS	1.01
4	1011795	29-06-2023	Chile	USD	INSHELL WALNUTS	36000	KGS	1.01
5	1011794	29-06-2023	Chile	USD	INSHELL WALNUTS	18500	KGS	1.01
6	1011797	29-06-2023	Chile	USD	INSHELL WALNUTS	18500	KGS	1.01
7	1011796	29-06-2023	Chile	USD	INSHELL WALNUTS	18500	NOS	1.01
8	1014228	25-07-2023	Chile	USD	WALNUTS INSHELL	17000	KGS	1.01
9	1016110	14-08-2023	Chile	USD	WALNUTS INSHELL	19000	KGS	1.01
10	1018576	11-09-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
11	1018580	11-09-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
12	1018724	13-09-2023	Chile	USD	INSHELL WALNUTS (CHANDLER 34/36)	18000	KGS	1.01
13	1018725	13-09-2023	Chile	USD	INSHELL WALNUTS (CHANDLER 34-36 MM)	18000	KGS	1.01
14	1021781	17-10-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
15	1021782	17-10-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01

24.2 From the above data, it is evident that M/s Janki Das Raghubar Dayal imported Walnut In-shell at a unit price of approximately USD 1.00–1.01 per kg from Chile. However, it is seen that both the Noticees have imported *Walnut Kernel* at prices ranging between USD 1.25 to 1.52 per kg, which is only marginally higher than the price of Walnut In-shell. In view of the admitted industry position that the yield of kernels from in-shell walnuts is only about

50% to 60%, it logically follows that the price of Walnut Kernel should be substantially higher, and in fact at least double, as compared to the price of Walnut In-shell. Therefore, the declaration of Walnut Kernel at prices comparable to that of Walnut In-shell is commercially untenable and contrary to normal trade practice. Accordingly, I find that the declared value of Walnut Kernel at USD 1.25 to 1.52 per kg is prima facie grossly understated, thereby giving rise to a reasonable doubt regarding the truth and accuracy of the declared transaction value in terms of Rule 12 of the Customs Valuation Rules, 2007.

24.3 I find that the fact that the price of walnut kernels is higher than that of walnut in-shell stands unequivocally established not only from the technical and commercial considerations discussed hereinabove but also from the categorical admissions made by the concerned persons during the course of investigation. In this regard, I note that Shri Shishir Kumar Bansal, Partner of M/s Janki Das Raghubar Dayal and proprietor of M/s P.S. Packaging, in his voluntary statement dated 28.05.2024, has inter alia admitted that walnut kernels command a higher price than walnut in-shell. Question 7 of the statement dated 28.05.2024 of Shri Shishir Kumar Bansal is reproduced below:-

का आयात किया है और Walnut Kernel 1.5 USD प्रात कलाग्राम का इकाई कामत पर आयात किया है।

प्रश्न 6: आयात आंकड़ों के अनुसार, आपने अपनी फर्म, मै. पी एस पैकेजिंग, में 1.2 USD प्रति किलोग्राम की इकाई कीमत पर अखरोट गिरी का भी आयात किया है।

उत्तर; मैं स्वीकार करता हूँ कि मैंने 1.2 अमेरिकी डॉलर प्रति किलोग्राम की इकाई कीमत पर Walnut Kernel की एक खेप भी आयात की है।

प्रश्न 7: कृपया Walnut Inshell and Walnut Kernel की समान कीमत का औचित्य बताएं

उत्तर; मैं स्वीकार करता हूँ कि Walnut Kernel का आयात मूल्य हमेशा Walnut Inshell से अधिक होता है। मैं यह भी स्वीकार करता हूँ कि हमारी दोनों फर्मों यानी जानकीदास रघुबर दयाल और पी एस पैकेजिंग द्वारा Walnut Kernel का आयात कम कीमत पर किया गया है। पूछे जाने पर मैंने बताया कि जीएसएम शिपिंग के श्री शैलेन्द्र ने मुझे Customs Duty बचाने के लिए Mundra SEZ से कम मूल्य पर अखरोट गिरी के आयात के लिए मार्गदर्शन दिया है।

S. Bansal
28/05/2024

Shri Shishir Kumar Bansal
28/05/2024

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Similarly, Shri Sumeet Goyal, proprietor of GSM Shipping in his voluntary statement dated 02.07.2024, has also corroborated the said position. Question No. 6 of his statement is reproduced below:-

corroborated the above facts by admitting that walnut kernel always commands a higher price than walnut in-shell and that the declared value of walnut kernel in the impugned imports was on the lower side. He also confirmed his role in handling import documents received directly from the overseas supplier and facilitating clearance of goods, thereby evidencing his active involvement in the import process. I find that the aforesaid statements are voluntary in nature, have not been retracted, and are corroborative on material particulars, including the role of Shri Kush Agrawal as the controlling person and the fact of undervaluation. Such self-incriminating and consistent admissions carry significant evidentiary value and clearly establish that the declared transaction value of walnut kernel does not represent the true and correct value, thereby justifying rejection of the same under Rule 12 of the Customs Valuation Rules, 2007.

26. I observe that statements recorded under Section 108 of the Customs Act, 1962 have strong evidentiary value in quasi-judicial proceedings and are admissible as substantive evidence. In this regard, I rely on the following judgements wherein the courts have held the evidentiary value of statements recorded under Section 108:-

a. The Hon'ble Supreme Court in the judgement in the case of Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar-1997 (96) E.L.T 211(S.C) has held as under:-

"7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940 and K.I Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C) = (1997) 3 SCC 721."

b. The Hon'ble Supreme Court has observed in the case of Naresh J. Sukhwani Vs Union of India reported as 1996 (83) E.L.T 258 and held as under :-

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs official under Section 108 of the Customs Act, 1962. That material incriminates the petitioner inculpating him in contraventions of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention as much as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we don't think that there is any illegality in the order of confiscation of foreign currency and imposition penalty. There is no ground warranting reduction of fine."

27. Further, I rely on the order passed by the Hon'ble CESTAT, Mumbai in the case of M/s. S.M. Steel Ropes reported as 2014 (304) E.L.T.591 (Tri. Mumbai), wherein the Hon'ble Tribunal, by referring to various judgements of Hon'ble Supreme court and High Courts, held that confirmation of duty demand on the basis of voluntary statements is sustainable in law. Relevant Para 5.1 is reproduced as under:-

"5.1 As regards The adjudicating authority has confirmed the demand only on the basis of figures given in the statements of Shri Balkrishna Agarwal. In the absence of delivery challans which were recovered and seized at the time of Panchanama proceedings, he has not taken the computation of demands based on such delivery challans as reflected in the annexure to the show cause notice. Therefore, the adjudicating authority has

strictly proceeded based on the evidences available which in the present case are the statements of Shri Balkrishna Agarwal. As to the question whether the demands can be confirmed on the strength of confessional statements, this position stands settled by the decision of the Hon'ble Apex Court in the case of *K.I pavunny v. Asstt. Collector (HQ) Central Excise Collectorate, Cochin- 1997 (90) E.L.T. 241 (S.C.)* wherein it was held that confessional statements of accused, if found to be voluntary, can form the sole basis for conviction. Only if it is retracted, the Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful. In the present case, we find that there is no retraction of the confessional statement by Shri Balkrishna Agarwal. As regards the lack of corroborative evidence, it is a settled position of law that "admitted facts need not be proved" as held by the Hon'ble High Court of Madras in the case of *Govindasamy Ragupathy- 1998 (98) E.L.T. 50 (Mad)*. In a recent decision in the case of *Telestar Travels Pvt. Ltd. -2013 (289) E.L.T. 3 (S.C.)*, the Hon'ble Apex Court held that reliance can be placed on statement if they are based on consideration of relevant facts and circumstances and found to be voluntary. Similarly in the case of *CCE, Mumbai vs. Kalvert Foods India Pvt. Ltd. -2011 (270) E.L.T. 643 (S.C.)* the Hon'ble Apex Court held that if the statements of the concerned persons are out of their volition and there is no allegation of threat, force, coercion, duress or pressure, such statements can be accepted as a valid piece of evidence. **In the light of the above decisions, we are of the considered view that the confirmation of duty demand based on the voluntary statements of the Managing Partner of the appellant firm is sustainable in law. Consequently the interest and penal liabilities imposed on the appellants would also sustain."**

CONTEMPORANEOUS DATA OF SIMILAR GOODS-

28. I find that, in terms of Rule 12 of the Customs Valuation Rules, 2007, one of the valid grounds for doubting the truth and accuracy of the declared value is the availability of contemporaneous import data of identical or similar goods at significantly higher prices. In the present case, I observe that the NIDB data reveals that other importers have imported similar goods, i.e., walnut kernels/shelled walnuts of Chile origin, during the same period at various ports in India at prices ranging approximately from USD 2.1 to USD 3.25 per kg, as detailed in the table below:-

Country of Origin Chile:-

S. No.	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INMUN 1	37309 99	14-12-2022	Shelled Walnuts Broken And Pieces	USD	3.25
2	INMUN 1	43459 91	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
3	INMUN 1	43468 16	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
4	INNSA 1	46724 73	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
5	INNSA 1	46724 73	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
6	INNSA 1	47031 35	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
7	INNSA 1	47031 35	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
8	INNSA 1	47221 58	20-02-2023	Walnut Kernels	USD	3.02
9	INMUN 1	47769 03	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
10	INMUN 1	47769 05	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
11	INMUN 1	48896 65	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3

12	INMUN 1	48884 95	03-03- 2023	Shelled Walnuts-Broken And Pieces	USD	3
13	INMUN 1	48890 81	03-03- 2023	Shelled Walnuts-Broken And Pieces	USD	3
14	INMUN 1	48896 62	03-03- 2023	Shelled Walnuts-Broken And Pieces	USD	3
15	INNSA 1	50638 23	15-03- 2023	Walnut Kernels	USD	3.09
16	INNSA 1	55706 51	18-04- 2023	Walnut Kernels (Grade 2)	USD	2.1
17	INNSA 1	65746 11	24-06- 2023	Walnut Shelled (Grade 2)	USD	2.25
18	INNSA 1	73233 28	12-08- 2023	Walnuts Shelled	USD	2.8
19	INNSA 1	73233 28	12-08- 2023	Walnuts Shelled	USD	2.8
20	INNSA 1	73233 28	12-08- 2023	Walnuts Shelled	USD	2.8
21	INNSA 1	73233 28	12-08- 2023	Walnuts Shelled	USD	2.8
22	INBDM 6	73378 38	13-08- 2023	Shelled Walnut (1800 Ctn/10kg)	USD	2.1
23	INMUN 1	75440 67	26-08- 2023	Shelled Walnuts	USD	2.85
24	INMUN 1	76813 32	05-09- 2023	Shelled Walnuts	USD	2.8
25	INBDM 6	79060 64	19-09- 2023	Shelled Walnut (2000 Ctn/10kg)	USD	2.11
26	INNSA 1	81003 15	30-09- 2023	Walnut Kernels	USD	2.6
27	INNSA 1	81026 34	01-10- 2023	Walnut Kernels	USD	2.6
28	INMUN 1	82350 10	10-10- 2023	Shelled Walnuts	USD	2.8
29	INBDM 6	85784 96	02-11- 2023	Shelled Walnut 80% Extra Light Halves Machine Cracked (1800 Ctn/10kg)	USD	2.1
30	INNSA 1	86315 83	04-11- 2023	Walnut Kernels	USD	2.1
31	INNSA 1	86338 08	05-11- 2023	Walnut Kernels	USD	2.6
32	INBDM 6	87045 80	09-11- 2023	Shelled Walnut Chandler Halves 80/20 (1800 Ctn/10kg)	USD	2.1
33	INMUN 1	89444 62	25-11- 2023	Walnut Kernels	USD	2.6
34	INMUN 1	89444 78	25-11- 2023	Walnut Kernels	USD	2.66

29. I further observe that the declared value of the impugned goods by the Noticees, being in the range of USD 1.25 to USD 1.52 per kg, is significantly lower than the contemporaneous import prices of similar goods with undervaluation ranging from 27.6% to 40.5%. Such substantial variation in prices, without any justifiable reasons, provides reasonable grounds to doubt the truth and accuracy of the declared transaction value. Accordingly, I hold that the contemporaneous import data available on record clearly indicates undervaluation and justifies rejection of the declared value under Rule 12 of the Customs Valuation Rules, 2007.

30. In view of the above discussion and findings and judicial pronouncements referred above, I hold that the assessable values declared by both the noticees are liable to be rejected under Rule 12 of the Customs Valuation Rules, 2007.

RE-DETERMINATION OF ASSESSABLE VALUES-

31. In the case of consignments imported by M/s Janki Das Raghubar Dayal and M/s P S Packaging, I find that the value declared at the time of import did not reflect the actual value of the goods, as similar goods were imported contemporaneously at significantly higher values in comparable quantities and commercial transactions. Therefore, the invoices submitted at the time of import of the said consignments cannot be relied upon, being incorrect and false documents in terms of Rule 11 of the Customs Valuation Rules, 2007.

32. As the value of the goods cannot be determined under Rule 3(1) of the said Rules, the same is required to be determined by sequentially proceeding in terms of Rule 4 to Rule 9. I find that efforts were made to ascertain the value of the goods by perusing the NIDB data relating to contemporaneous import of identical goods in terms of Rule 4 of CVR, 2007. However, as no such identical goods data was available, the value could not be determined under Rule 4. Therefore, I proceed to Rule 5 of CVR, 2007, which provides for valuation on the basis of transaction value of similar goods imported at or about the same time. Rule 5 is reproduced as under:-

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.*

33. On perusal of the NIDB data, contemporaneous imports of similar goods from Chile were noticed at various ports during the relevant period. The details of such imports are tabulated below:

Country of Origin Chile: -

S. No	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INMUN1	3730999	14-12-2022	Shelled Walnuts Broken And Pieces	USD	3.25
2	INMUN1	4345991	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
3	INMUN1	4346816	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
4	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
5	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
6	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
7	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1

8	INNSA1	4722158	20-02-2023	Walnut Kernels	USD	3.02
9	INMUN1	4776903	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
10	INMUN1	4776905	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
11	INMUN1	4889665	03-03-2023	Shelled Walnuts- Broken And Pieces	USD	3
12	INMUN1	4888495	03-03-2023	Shelled Walnuts- Broken And Pieces	USD	3
13	INMUN1	4889081	03-03-2023	Shelled Walnuts- Broken And Pieces	USD	3
14	INMUN1	4889662	03-03-2023	Shelled Walnuts- Broken And Pieces	USD	3
15	INNSA1	5063823	15-03-2023	Walnut Kernels	USD	3.09
16	INNSA1	5570651	18-04-2023	Walnut Kernels (Grade 2)	USD	2.1
17	INNSA1	6574611	24-06-2023	Walnut Shelled (Grade 2)	USD	2.25
18	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
19	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
20	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
21	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
22	INBDM6	7337838	13-08-2023	Shelled Walnut (1800 Ctn/10kg)	USD	2.1
23	INMUN1	7544067	26-08-2023	Shelled Walnuts	USD	2.85
24	INMUN1	7681332	05-09-2023	Shelled Walnuts	USD	2.8
25	INBDM6	7906064	19-09-2023	Shelled Walnut (2000 Ctn/10kg)	USD	2.11
26	INNSA1	8100315	30-09-2023	Walnut Kernels	USD	2.6
27	INNSA1	8102634	01-10-2023	Walnut Kernels	USD	2.6
28	INMUN1	8235010	10-10-2023	Shelled Walnuts	USD	2.8
29	INBDM6	8578496	02-11-2023	Shelled Walnut 80% Extra Light Halves Machine Cracked (1800 Ctn/10kg)	USD	2.1
30	INNSA1	8631583	04-11-2023	Walnut Kernels	USD	2.1
31	INNSA1	8633808	05-11-2023	Walnut Kernels	USD	2.6
32	INBDM6	8704580	09-11-2023	Shelled Walnut Chandler Halves 80/20 (1800 Ctn/10kg)	USD	2.1
33	INMUN1	8944462	25-11-2023	Walnut Kernels	USD	2.6
34	INMUN1	8944478	25-11-2023	Walnut Kernels	USD	2.66

34. From the above, it is evident that similar goods of comparable description and origin were imported contemporaneously at values ranging between USD 2.10 to USD 2.85 per Kg. In terms of Rule 5(2) of CVR, 2007, where more than one transaction value of similar goods is found, the lowest such value shall be adopted. Accordingly, I find that the assessable value of the subject goods is required to be re-determined at USD 2.10 per Kg. This value is consistent with contemporaneous imports of similar goods from Chile during the relevant period. Consequently, the declared transaction value is rejected under Rule 12 of CVR, 2007, and the assessable value is re-determined under Section 14 of the Customs Act, 1962 read with Rule 5 of CVR, 2007.

35. I find that the reliance placed by the importer on data sourced from the website *Volza.com* and on certain unauthenticated supplier invoices annexed

by them cannot be accepted for the purpose of customs valuation under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Firstly, Rule 5 of CVR, 2007 mandates that the transaction value of similar goods must be derived from contemporaneous imports assessed by Customs authorities in India, and not from unverified commercial websites or self-produced unauthenticated supplier invoices. The NIDB database maintained by the Department is the recognized and reliable source of contemporaneous import data, as it reflects actual imports cleared through Indian Customs, duly assessed and verified. Secondly, the values cited by the importer (USD 1.11 to USD 1.51 per Kg) are significantly lower than the range of values (USD 2.10 to USD 2.85 per Kg) found in the NIDB data for similar goods of Chile origin imported at or about the same time. Such wide deviation indicates that the figures relied upon by the importer are not representative of genuine commercial transactions in India, but rather selective quotations or invoices that cannot be relied upon, being incorrect and misleading.

35.1 The noticees have argued that goods having been cleared for home consumption cannot be subjected to re-determination of value is legally incorrect, as the provisions of Section 28 of the Customs Act specifically permit recovery of duty short-levied even after clearance, and any contrary interpretation would defeat the very purpose of the Act. Accordingly, I hold that rejection of the declared value is proper, justified, and in accordance with law.

35.2 I find that Shri Shishir Kumar Bansal had orchestrated the creation of two firms, namely M/s Janki Das Raghubar Dayal and M/s P S Packaging, with the intent to facilitate import of walnut kernels through a structured mechanism of undervaluation so as to evade payment of appropriate customs duty. The imports were made from suppliers based in Dubai, viz. Al Arab Dates Factory FZCO and Naseer Bashir General Trading LLC, at grossly suppressed values through Mundra SEZ. The statements of Shri Shishir Kumar Bansal recorded under Section 108 of the Customs Act, 1962 on 28.05.2024 and 29.05.2024 are contradictory in nature, wherein he initially attempted to attribute the imports to other persons and subsequently retracted the same, admitting that the imports were arranged through his associate in Dubai. Such inconsistent statements clearly indicate a deliberate attempt to mislead the investigation. More importantly, he has categorically admitted to undervaluation of walnut kernel imports undertaken in the name of both firms and even undertaken to deposit an amount of Rs. 75 lakhs towards differential duty, thereby establishing conscious knowledge and intent. I further observe that the present case is not based merely on comparative data, but is supported by substantive evidence including the admitted position of undervaluation by Shri Bansal, the abnormal and commercially untenable pricing of walnut kernels vis-à-vis walnut in-shell, and the consistent pattern of undervaluation revealed from contemporaneous import data. The submission of documents such as invoices and Bills of Entry does not, by itself, establish the correctness of the declared value when the very authenticity and truthfulness of such declared value is under serious doubt. The contention of the Noticees that the demand under Section 28(4) is unsustainable for want of wilful misstatement or suppression of facts is wholly misconceived. Undervaluation can be proved not only through evidence of extra remittance but also through circumstantial evidence such as admissions, abnormal pricing patterns, and deviation from

contemporaneous values, all of which are clearly present in the instant case. I therefore find that the element of wilful misstatement and suppression of facts with intent to evade payment of duty stands clearly established, justifying invocation of the extended period under Section 28(4) of the Act. Consequently, I hold that the demand is not hit by limitation and is legally sustainable, and the submissions of the Noticees in this regard are devoid of merit and liable to be rejected.

DUTY LIABILITY

36. The differential duty liable to be demanded under Section 28 of the Customs Act, 1962 in relation to the imports of goods vide DTA Thoka Numbers in respect of past consignments in the name of M/s Janki Das Raghubar Dayal and M/s P S Packaging is computed in Annexure I &II.

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

TABLE-I - M/s Janki Das Raghubar Dayal

S. No.	Thoka Number	Thoka date	Declared/Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2020882	28-12-2022	5069396.25	7074596.25	5576335.88	7782055.88	2205720.00
2	2021048	30-12-2022	5322866.06	7428326.06	5855152.67	8171158.67	2316006.00
3	2000653	12-01-2023	11241254.22	15687733.02	12365379.6	17256506.3	4891126.68
4	2004232	04-03-2023	8360131.42	11666981.92	9196144.56	12833680.1	3637535.55
5	2004314	07-03-2023	2533181.25	3535181.25	2786499.38	3888699.38	1102200.00
6	2007347	29-04-2023	6535221.95	9060312.00	7188744.14	9966343.20	2777599.06
7	2007348	29-04-2023	2539380.21	3520550.21	2793318.23	3872605.23	1079287.00
8	2007802	06-05-2023	2539289.20	3497449.20	2793218.12	3847194.12	1053976.00
Total			44140721	61471130	48554793	67618243	1,90,63,450

**TABLE-II
M/s P S Packaging**

S.No.	Thoka Number	Thoka date	Declared / Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2018750	26-09-2023	9063742	15227086	9970116	16749795	67,79,679

36.2 In view of the above, the differential duties of customs as detailed in tables above are required to be demanded and recovered under Section 28(4) of the Customs Act, 1962 alongwith interest at the applicable rate under Section 28AA of the Customs Act, 1962.

CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962 AND IMPOSITION OF REDEMPTION FINE:

37. I find that the present case pertains to import of walnut kernels wherein the goods have been grossly undervalued at the time of filing of Bills of Entry, thereby rendering the declared value incorrect and not reflective of the actual transaction value. I observe that the Show Cause Notice has proposed

confiscation; however, the applicable provision in the present case is Section 111(m) of the Customs Act, 1962, which deals with improper importation of goods on account of misdeclaration in value or any material particular.

The relevant provision of Section 111(m) of the Customs Act, 1962 is reproduced below:

“(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;”

37.1 On a plain reading of the above provision, I observe that any imported goods which do not correspond in respect of value or any material particulars with the declarations made in the Bills of Entry are liable for confiscation. I find that in the present case, the noticees have declared significantly suppressed values for the imported walnut kernels, which are not in consonance with the contemporaneous import prices of similar goods and the actual transaction value. The undervaluation adopted by the noticees amounts to misdeclaration of value within the meaning of Section 111(m) of the Customs Act, 1962.

Accordingly, I find that the imported goods, namely walnut kernels covered under the impugned Bills of Entry, are liable for confiscation under Section 111(m) of the Customs Act, 1962 for misdeclaration of value

37.2 I find the goods imported are not available physically for confiscation, but I rely upon the order of Hon’ble madras High Court in case of M/s Visteon Automotive Systems India limited reported in 2018 (9) G.S.T.L. 142(Mad.) wherein the Hon’ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed action 125, against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section(2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section(1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this act...”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant the redemption fine is in fact to avoid such consequences flowing the payment of redemption fine saves the goods from getting confiscated. Hence, their physical

availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No.(iii)".

37.3 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018(9) G.S.T.L.142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020(33) G.S.T.L. 513(Guj) and the same has not been challenged by any of the parties concerned. Hence, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of import of the goods, can't be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018(9) G.S.T.L.142 (Mad) is squarely applicable in the present case, Accordingly, I observe that the present cases also merits imposition of Redemption Fine.

Imposition of Penalties on main noticee and Co-Noticees

38. As regards the imposition of penalty upon M/s. Janki Das Raghubar Dayal and M/s. P S Packaging, I find that the differential duty demand in the present case has been rightly confirmed under Section 28(4) of the Customs Act, 1962 on account of wilful mis-statement and suppression of material facts with intent to evade payment of duty. The acts of omission and commission on the part of both the noticees, as discussed in detail in the foregoing paragraphs of this Order, clearly establish that they had deliberately submitted under-valued invoices and failed to declare the true and correct value of the imported goods, resulting in evasion of Customs duty amounting to Rs. 1,90,963,450/- in the case of M/s. Janki Das Raghubar Dayal and Rs. 67,79,679/- in the case of M/s. P S Packaging. Since the ingredients for invocation of Section 28(4) stand satisfied and the duty demand has been confirmed accordingly, the provisions of Section 114A of the Customs Act, 1962 get automatically attracted. I, therefore, hold that both the noticees are liable to penalty under Section 114A of the Customs Act, 1962, which is imposable in cases involving suppression or wilful mis-statement leading to short-levy or non-levy of duty.

38.1 As regards imposition of penalty on Shri Shishir Kumar Bansal, Partner of M/s. Janki Das Raghubar Dayal and proprietor of M/s. P S Packaging under Section 114AA of the Customs Act, 1962, I find that he was well aware of the undervaluation of the goods with an intent to evade duties of customs. In this regard, I find that Shri Shishir Kumar Bansal Partner of M/s. Janki Das Raghubar Dayal, and proprietor of M/s. P S Packaging, has tendered statement

on 28.05.2024 and 29.05.2024. During the course of statement, Shri Shishir Kumar Bansal admitted the under valuation in import of walnut kernel by both his firms.

38.2 As regards the imposition of penalty on Shri Shishir Kumar Bansal, I find that he has played a central and decisive role in the entire modus operandi adopted for evasion of Customs duty. The records reveal that he had deliberately created the partnership firm M/s. Janki Das Raghubar Dayal in his own name and in the name of his father, and also operated the proprietorship concern M/s. P S Packaging, with the clear intent to facilitate import of goods through gross under-valuation. He effected imports of Walnut Kernel from Dubai through Mundra SEZ by significantly suppressing the true transaction value of the goods. I further find that, in his voluntary statement dated 29.05.2024 recorded under Section 108 of the Customs Act, 1962, Shri Shishir Kumar Bansal has unequivocally admitted to such under-valuation in respect of imports made through both the aforesaid firms and had also undertaken to deposit an amount of Rs. 75 lakhs towards differential duty; however, he has failed to honour the said commitment, which further corroborates his mala fide intent.

38.3 It is also evident from the material on record that, in respect of all the Bills of Entry filed in the names of the aforesaid firms, Shri Shishir Kumar Bansal had knowingly and intentionally caused to be submitted invoices and declarations under the Customs Valuation Rules, 2007, which did not reflect the true and correct value of the imported goods. Thus, the documents and declarations used at the time of import were false and incorrect to his knowledge and were deliberately employed to mislead the Customs authorities. In view of the above findings, I hold that Shri Shishir Kumar Bansal has knowingly used and caused to be used false and incorrect material, statements and documents in connection with the import of goods, thereby rendering himself liable to penalty under *Section 114AA of the Customs Act, 1962*.

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

:-ORDER:-

IN CASE OF M/S JANKI DAS RAGHUBAR DAYAL

- i.** I order to reject the declared assessable value of Rs. 4,41,40,721/- in respect of 08 Thoka Numbers mentioned in Table-I of Para 11.2 and as detailed in Annexure I to the notice, in terms of Rule 12 of the Customs

Valuation (Determination of Value of Import Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962.

- ii.** I order to re-determine the assessable value of 08 Thoka Numbers mentioned in Table-I of Para 11.2 and as detailed in Annexure I to the notice as Rs. 6,14,71,130/- under Section 14 (1) of the Customs Act, 1962 read with Rule 5 of Customs Valuation (Determination of Value of Import Goods) Rules, 2007.
- iii.** I determine and confirm the demand of the differential duty amounting to Rs. 1,90,63,450/- (Rupees One Crore Ninety Lakhs Sixty-Three Thousand Four Hundred and Fifty only), under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s Janki Das Raghobar Dayal situated at E-13, E-Pucca Bagh, Hapur, Uttar Pradesh under section 28(4) of the Customs Act, 1962.
- iv.** I order to recover the interest from them at appropriate rate under Section 28AA of the Customs Act, 1962 on the duty confirmed at (iii) above.
- v.** I hold that the goods as detailed in Annexure-I to the notice, having re-determined assessable value of Rs. 6,14,71,130/- are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. I impose a redemption fine of Rs. 1,00,00,000/- (Rupees One Crore only) under Section 125 of the Customs Act, 1962.
- vi.** I impose a penalty of Rs. 1,90,63,450 /- (Rupees One Crore Ninety Lakhs Sixty-Three Thousand Four Hundred and Fifty only), upon M/s Janki Das Raghobar Dayal situated at E-13, E-Pucca Bagh, Hapur, Uttar Pradesh, Gujarat under Section 114A of the Customs Act, 1962.
- vii.** I impose a penalty of Rs. 50,00,000/- (Rupees Fifty lakhs Only) upon Shri Shishir Kumar Bansal, Partner of M/s Janki Das Raghobar Dayal situated at E-13, E-Pucca Bagh, Hapur, Uttar Pradesh under Section 114AA of the Customs Act, 1962.

IN CASE OF M/S P S PACKAGING

- i.** I order to reject the declared assessable value of Rs. 90,63,742/- in respect of 01 Thoka Numbers mentioned in Table-II of Para 11.2 and as detailed in Annexure II to the notice, in terms of Rule 12 of the Customs Valuation (Determination of Value of Import Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962.

- ii.** I order to re-determine the assessable value of 01 Thoka Numbers mentioned in Table-II of Para 11.2 and as detailed in Annexure II to the notice as Rs. 1,52,27,086/- under Section 14 (1) of the Customs Act, 1962 read with Rule 5 of Customs Valuation (Determination of Value of Import Goods) Rules, 2007.
- iii.** I determine and confirm the demand of the differential duty amounting to Rs. 67,79,679/- (Rupees Sixty-Seven Lakhs Seventy-Nine Thousand Six Hundred and Seventy-Nine only) under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s P S Packaging situated at A7/106, South Side of GT Road, Ghaziabad, Uttar Pradesh – 201001 under Section 28(4) of the Customs Act, 1962.
- iv.** I order to recover the interest from them at appropriate rate under Section 28AA of the Customs Act, 1962 on the duty confirmed at (iii) above.
- v.** I hold that the goods as detailed in Annexure-II, having re-determined assessable value of Rs. 1,52,27,086/-are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. I impose a redemption fine of Rs. 35,00,000/- (Rupees Thirty Five lakhs only) under Section 125 of the Customs Act, 1962.
- vi.** I impose a penalty of Rs. 67,79,679/- (Rupees Sixty-Seven Lakhs Seventy-Nine Thousand Six Hundred and Seventy-Nine only), upon M/s P S Packaging situated at A7/106, South Side of GT Road, Ghaziabad, Uttar Pradesh – 201001 , Gujarat under Section 114A of the Customs Act,1962.
- vii.** I impose a penalty of Rs. 10,00,000/- (Rupees Ten lakhs Only) upon Shri Shishir Kumar Bansal, Proprietor of M/s P S Packaging situated at A7/106, South Side of GT Road, Ghaziabad, Uttar Pradesh – 201001 under Section 114AA of the Customs Act, 1962.
- 40.** This OIO is issued without prejudice to any other action that may be taken against the importer under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(Nitin Saini)

Pr. Commissioner of Customs,
Custom House, Mundra

DIN- 20260471M0000061326F

F.No. GEN/ADJ/COMM/193/2025-Adjn

To,

1. M/s Janki Das Raghubar Dayal situated at E-13, E-Pucca Bagh, Hapur, Uttar Pradesh.
2. M/s P S Packaging situated at A7/106, South Side of GT Road, Ghaziabad, Uttar Pradesh – 201001.
3. Shri Shishir Kumar Bansal having residential address at 141, Nai Mandi, Pucca Bagh, Hapur, Uttar Pradesh.

Copy to:

1. The Chief Commissioner, Gujarat Customs zone, Ahmedabad
2. The Additional Director, Directorate of Revenue Intelligence (DRI), Indore Zonal Unit Zonal Unit, First Floor, BSNL Telephone Exchange Building, Transport Nagar, Indore (M.P.)-452014.
3. The Superintendent (EDI/TRC/Legal), Custom House, Mundra.
4. Guard file/Office Copy.