

	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in</p>	 आज्ञादीका अमृत महोत्सव
A. File No.	:	GEN/ADJ/COMM/124/2023-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM- 027 - 24-25
C. Passed by	:	K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	01.11.2024. 01.11.2024
E. SCN No. & Date	:	SCN F.No. GEN/ADJ/COMM/124/2023-Adjn-O/o Pr.Commr-Cus-Mundra, dated 03.05.2023.
F. Noticee(s) / Party / Importer	:	M/s M Impex Trading Co., Shop No. H. No.-2, KH No. 20/6, Tek Chand Colony, Nilothi Extn. West Delhi-110041
G. DIN	:	20241171MO0000000B79

- यह अपील आदेश संबंधित 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 ग्राधिकरण, 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 - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक कितु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

BRIEF FACTS OF THE CASE:

M/s M Impex Trading Co., Shop No. H. No.-2, KH No. 20/6, Tek Chand Colony, Nilothi Extn. West Delhi-110041 (IEC NO: DNIPK9689B) (hereinafter referred to as 'the Importer'), are engaged in the import of mobile accessories vide below mentioned Bill of Entries at Mundra port.

Table 1

Sr. No.	Bill of Entry	Bill of Lading	Container No.
1	4104614 dt 27.05.2021	HASLC07210401296 dtd 10.05.21	BMOU 5408620
2	4079901 dt. 25.05.2021	HASLC07210401519 dtd 03.05.21	HALU 5632480
3	4018348 dt. 20.05.2021	HASLC07210401455 dtd 03.05.21	TCNU 7619456
4	4080134 dt 25.05.2021	SNKO03C210403524 dtd 10.05.21	SKHU 9309421
5	6376673 dt. 23.11.2021	HASLC 07210402108 dtd 03.05.21	DFSU 6077343
6	6376661 dt. 23.11.2021	HASLC 07210500121 dtd 03.05.21	BMOU 6136228
7	6377658 dt. 23.11.2021	HASLC 07210401574 dtd 03.05.21	BMOU5403171
8	6376610 dt 23.11.2021	EPIRCHNCWA207165 dtd 03.05.21	TGHU 9874914

Intelligence was gathered that goods had been mis-declared by the importer therefore, the goods covered under these B.E.'s & B.L.s were put on hold by the officers of SIIB, Mundra for detailed examination (*Bills of Entry mentioned at Sr. No. 5 to 8 were filed much later i.e. in the month of November 2021*).

2.1 Further, a search was carried out at "Shop No. 06, Near Kinetic KMS gate, opposite Shri Ram Way Bridge, Beside Sardarji Dhaba, Mundra under panchnama dated 11.06.2021 (**RUD-01**) and a truck having goods of the importer M/s M Impex while on its way to onward destination was intercepted and brought under panchnama to Hind CFS. The details of which are as under:-

Sr.No.	Description	Bill of entry/BL No.
1	Goods of Intercepted Truck No. MH46AR0499	Not Ascertained
2	Goods Found During Search From Shop No. 6, Near Kinetic KMS Gate Opp. Shriram Weigh Bridge	Not Ascertained

During the search, 120 cartons were found from the said premises which appeared to be Mobile Accessories and it appeared that the same had been imported by M/s M Impex Trading Company. Thereafter, Sh. Omprakash Godara, who was looking after the goods at that premises informed that 389 cartons were loaded the previous night from the same premises in Truck No. MH46AR0499 which is destined to New Delhi. Accordingly, truck no. MH46AR0499 was intercepted near Maruti Bombay Punjab hotel at NH-41, Chhadavada, Gujarat, 48 Kms away from Gandhidham, Gujarat. The proceeding were recorded under panchnama dated 11/12.06.2021 (**RUD-02**). Driver confirmed that the goods were loaded a shop near Sardar Dhaba, Mundra and going to Delhi. Goods imported under BE No. 4104614 dated 27.05.2021 were examined / inspected under panchnama dated 05.06.2021(**RUD-03**). During the examination/ inspection proceedings, *prima-facie*, it appears that goods have been mis-declared by the importer in terms of description, value and quantity. Further, search was conducted at the premises of the importer M/s M Impex Trading Company and CB, M/s Sark Enterprises by the Delhi Preventive (Customs). Accordingly, examination of goods mentioned in Table-1 was done under panchnama. The details of goods found as under:

BE No. 4104614 dated 27.05.2021.

Table A

Sr. No.	Details/ Marking mentioned on the packaging	Goods found during examination	No. of Carton s	Quantity per carton in Pcs/Kgs	Total Quantity in Pcs/Kgs
01	KT-JD	Wired Ear Phone, Lover Series, KDM, Bulk Pack	32	500	16000
02	ARC-M-36/ARC - M-38/ARC	Corrugated Packing Material for Ear Phones	45	27.34 Kgs	1230.30 Kgs

03	TN, USB Cable	Ticon FC-231 USB Cable (Individual Packing)	51	250	12750
04	TN, USB Cable	Ticon , FC-201, Micro, Fast USB Cable (Bulk Packing)	34	500	17000
05	TN, Aux Cable	Ticon AX-120 3.5MM,Aux Cable	52	250	13000
06	TN, OTG Cable	Ticon, Data Sync & Pure Copper cable (OTG Cable)	4	250	1000
07	KBK	Wired Ear Phone, Bulk Packing	40	2500	100000
08	Flex Gold	Wired White Ear Phone, Bulk Packing	25	2000	50000
09	KT-SH	KDM T10,Wired Stereo Ear Phone Individual Box Packing	100	100	10000
10	STG	Wireless Bluetooth Neck band Ear Phone, ST Prime, STBT-511,	50	100	5000
11	STG	ST Wireless One Ear Bluetooth Phone, STBTESL-520.	50	200	10000
12	STG, MXBT-301	Wireless Bluetooth Neck band Ear Phone	8	500	4000
13	STG	Plastic Packing Material of accessories	3	48 Kgs	144 Kgs
14	By Sea SP QLCK009	Plastic Mobile Back Cover of Different Colors , Unbranded	7	600	4200
15	Kannu/RS	ECG Cable Small	5	100	500
16	Kannu/RS	ECG Cable Big	5	50	250
17	NPKA	Plastic Housing of Mobile Charge,	4	20 Kgs	80 Kgs
18	NPKA	Small iron/other metal bits	2	38.800 Kgs	77.60 Kgs
19	NPKA	Male part/Socket of mobile chargers	4	29.180 Kgs	116.72 Kgs
20	NPKA	Small PCB/Circuit for Mobile Charger	3	2000	6000
21	SAM	Mobile Battery, Lithium ion Battery Black Color	22	240	5280
22	SAM DU	Mobile Battery, Lithium ion Battery Silver Color	45	208	9360
23	Pervesh	Lithium ion Mobile Battery, DM_BHAA R_41127167	182	320	58240
24	DKW	Glass Screen guard of mobile phone Note 9 Pro	5	1000	5000
25	Cover NAVSF QLCK009	Plastic Mobile Back Cover of different Colors, Unbranded	6	1000	6000
26	TN	Tickon Powerup Mobile Battery Li-ion Battery, BM 47, R-41143782	209	200	41800
27	AJD R2NB	Wireless Bluetooth Earphone Neck band in bulk pack	28	250	7000
28	KB /KBS	Plastic/Glass Screen guard of mobile phone 11D Tel For Vivo Y20/Y201/Y11S/Y12S	72	1000	72000
29	3BS	Wired Earphone in bulk packing	23	2000	46000
30	Glorious	PCB/Circuit for Mobile Charger	31	480	14880
31	QLCK009 PM 2	Wireless Bluetooth Neckband Earphone in bulk packing	30	500	15000
32	Glorious	Glue Packed in white plastic Packing	25	17.800 Kgs	445 Kgs
33	Glorious	Machine/Dispenser mentioned in Chinese language on the sticker as translated through google translator application	1	22.550 Kgs	22.550 Kgs
34	Pukz	Plastic/Rubber Airpods Pro Case	20	200	4000
35	NPKA 08	Corrugated boxes packing material	1	23 Kgs	23 Kgs
36	Nand	Plastic/Glass Film/ Screen guard for Tablets.	1	600	600
37	ROH	Wrist Smart watch/Band FK 75	1	50	50
		TOTAL	1226		

BE No. 4079901 dated 25.05.2021.

TABLE B

<u>MARK</u>	<u>ITEM NO</u>	<u>Sample fm.Box</u>	<u>DESCRIPTION</u>	<u>Box</u>	<u>QTY</u>	<u>Total QTY</u>
KBK		40	EXTENSION BOARD	40	80	3200
NSND		1	EARPHONE	1	600	600
NSND		4	EMPTY PACKING BOX, EARphone	1	600 Earphone and empty box	
NSND		3	EMPTY PACKING BOX	1	1000	1000
NSND		2	EARPHONE, Charging Cable	1	600 earphone and 800 charging Cable	1400
NSND		5	ear phone empty box	1	loose pack of empty box	
STG		38	EARPHONE	50	60	3000
SWARAJ		74,31,8	SPEAKER	99	100	9900
SSD			SELFIE RING LIGHT	45	200	9000
SSD		48	MOBILE HOLDER of bike	21	100	2100
SSD		68	SELF STICK REMOTE	3	2*2000+1*1000	5000
SK(B)		3	Car charger	3	200	600
JM		27	PCB FOR CHARGER	67	1000	67000
CK		90	CAR Display unit	123	20	2460
CK		144	Audio visual DATA CABLE	27	(150+200+100)	12150
CK		160	Glass frame	15	20	300
MANI		3	BATTERY CELL	4	360	1440
S.K(F)		33	C 6 LLED LIGHT	38	50	1900
S.K(F)	M609	24	CAR Fog LAMP	1	360	360
Sanju 5g gold		54,26	PCB FOR BATTERY	54	480	25920
SR		7	SCREEN PROTECTOR*	193	40	7720
Sanju 5g gold		1	Right left accessories for battery	1	100000	100000
NPBG	CR 100	10	CAR charger	12	800	9600
NPBG		49	BATTERY CELL	7	480	3360
DKW		16	Temper Glass	36	830	29880
MRP		12	SCREEN PROTECTOR	150	1000	150000
ROH		6	SMART BAND	10	60	1200
Lion(SM)		34	MOBILE HOLDER, Back Cover of Mobile	25	600	15000
SAM-DU	UN 3480	21	BATTERY CELL	26	228	5928
Sahu Raj			BATTERY CELL	22	480	10560
NPJR	12		OTG CONNECTOR	12	5000	5000
NPJR		1	LABELLING STICKER	1	30000	30000
					1090	

BE No. 4018348 dated 20.05.2021.

TABLE C

<u>Sr. No.</u>	<u>Details/ Markings mentioned on the packaging</u>	<u>Goods found during examination</u>	<u>Quantity of Cartons</u>	<u>Quantity per carton in Pcs/Kgs</u>	<u>Total Quantity in Pcs/Kgs</u>
1	SSD	Wired Ear Phone/head phone,	100	100	10000
2	SILCO	WiFi Smart Net Camera	60	56	3360
3	LION	(1)LION-P--Mobile Professional Fashion Case	18	2500	45000
		(2)LION-S—Mobile back cover for different models/brands	6	600	3600

4	TN	(1)Mobile Battery "Ticon" Brand, big (2)Mobile Battery "Ticon" Brand, small (3)Data Cable for mobiles different brands/models	20 59 26	200 200 170	4000 11800 4420
5	VSA-AJK	Transparent Sheet appear to be made of acrylic	48	5000	240000
6	BILLU	Vehicle Blackbox DVR Camera	20	20	400
7	SKE	(1)Data Transmission Cable (2)Display module to be used in automobiles	8 1	250 5	2000 5
8	AM	Wireless Bluetooth Speaker	56	50	2800
9	ANTI BLUE-KB	Mobile Protective Glass of different brands/variety	202	1000	202000
10	LN	Mobile Battery ROOFER 554461ART/2000A/3.7V, 2000MAH20210130, R-41157074	40	516	20640
11	SWARAJ	Wireless Earphone/Earbuds having marking i12	50	200	10000
12	KB	Mobile Protective Glass of different brands/variety	499	1000	499000
Total			1213		

BE No. 4080134 dated 25.05.2021.

TABLE D

<u>Sr. No.</u>	<u>Details/ Marking mentioned on the packaging</u>	<u>Goods found during examination</u>	<u>Quantity of Cartons</u>	<u>Quantity per carton in Pcs/Kgs</u>	<u>Total Quantity in Pcs/Kgs</u>
1	KT-ER	Wireless Bluetooth Neck band Ear Phone, Model- KDM-G2 Sonlid	220	400	88000
2	MAK POWER	Wireless Bluetooth Neck band Ear Phone, Model- CAM TV Waero	26	500	13000
3	SC20090064	Hitage Wireless Bluetooth Neck band Ear Phone, Model- NBT-1945	61	125	7625
4	KT-ER Model-	Wireless Bluetooth Neck band Ear Phone, KDM-A3 Steelsound	25	400	10000
5	KT-ER	Wired Ear Phone, Model-K16 (Champ)	70	500	35000
6	KT-ER	Wired Ear Phone, Model-T35 (Champ)	3	1000	3000
7	KT-ER	Wired Ear Phone, Model-T25 (Champ)	2	1000	2000
8	KT-ER	KDM Wired Ear Phone, Model- K19 (Champ)	244	400	97600
9	KT-ER	KDM Wired Ear Phone, Model- K210 (Champ)	37	200	7400
10	SC21040024 DIXX	Wireless Bluetooth Neck band Ear Phone, Model MM -S90, Dlxx	42	150	6300
11	SV BT (BTW)	Varni Wireless Bluetooth Neck band Ear Phone , Model- VR-B540	100	100	10000
12	KT-ER	Wireless Bluetooth Neck band Ear Phone, Model-KDM-A3 Steel sound	1	60	60
Total			831		

B.E. No. 6377658 dated 23.11.2021

TABLE E

<u>Sr. No.</u>	<u>MARKING ON BOX</u>	<u>DESCRIPTION</u>	<u>TOTAL BOX</u>	<u>PACKET PER BOX</u>	<u>TOTAL PCS/ KGS</u>
1	VIRAJ (UN-3480)	BATTERY CELLS (UNBRANDED)	28	9*40=360	10000 Pcs. approx.

2	VIRAJ	BATTERY PARTS (PCB)	1	11 KGS	11 KGS
3	BILLU-8T (QLCK009)	WIRELESS TWS-T8 (WIRELESS EARPODE)	15	100 PCS	1500PCS
4	SILICO - L21 (QLCK009)	TWS-L21 (WIRELESS EARPODS) WITH CHARGING	32	200 PCS	6400 PCS
5	TIP-TOP (QLCK009)	SMART BRACELETS(M4)	10	100	1000 PCS
6	TIP-TOP	INTELLIGENT HEALTH BRACELETS(M3)	30	100	3000 PCS
7	NKP	BATTERY CELLS (UNBRANDED)	16	23	350 KGS
8	AMN	TOUCHTEK BATTERY CELLS	12	7 KGS	84 KGS
9	AMN	TOCHTECK MINI WIRELESS SPEAKER	39	100	3900 pcs approx
10	KB	SCREEN GUARDS	94	40*25=1000	94000 pcs
11	KBK-QLCK009	CARGT BLUETOOTH CAR CHARGER	14	200	2800 pcs
12	KBK-QLCK009	WIRELESS MUSIC RECEIVER	6	10 KGS	60 KGS
13	KBK-QLCK009	USB WIRELESS DONGLE	10	11.6	116 KGS
14	RHN	SCREEN GUARD G-TEL	68	100*10=1000	68000 PCS
15	RHN	UNBRANDED PLASTIC MOBILE COVER	46	16 KGS	740 KGS
16	PRD	FOXCONN USB 1.5 MINI-B CABLE	5	2*20*10=400	2000 PCS
17	PRD	USB TYPE C	3	DIFFERENT PACKING	1000 PCS
18	PRD	USBA-MICRO B	4	500 PCS	2000 PCS
19	PRD	P2 CONTROLLER	2	14 KGS	28 KGS
20	MT-13	MOBILE COVERS	40	DIFFERENT PACKING	24100 PCS
21	GKP	BLUETOOTH NECKBAND EARPHONE(UNBRANDED)	11	9*1000 2*500	10000PCS
22	KIVI	BATTERY CELLS	4	25 KGS	100 KGS
23	GLAMOUR	BLUETOOTH EARPHONE	8	7*400 1*200	3000 PCS
24	STG	BLUETOOTH EARPHONE	30	DIFFERENT PACKING	3000 pcs
25	ASHURAJ	IRON RING FOR MOBILE	20	4000	80000 PCS
26	AMRIK	MOBILE COVERS	30	DIFFERENT PACKING	14757
27	BW-DELHI	17S BLUETOOTH EARPODS	25	200	5000 pcs
28	SUPER-D	SCREEN GUARD (UNBRANDED)	422	1000	422000 PCS
		Total	1025		

B.E NO. 6376673 dated 23.11.2021

TABLE F

<u>Sr No</u>	<u>MARKING OF BOX</u>	<u>DESCRIPTION</u>	<u>TOTAL BOX</u>	<u>PACKET/BOX ON KGS</u>	<u>TOTAL QUANTITY</u>
1	V R J	Mobile Back Covers	14	DIFFERENT PACKING	12,558 pcs
2	KAP	MOBILE BACK COVER	18	500*17 250*1	8750 PCS
3	LITO	PLASTIC PACKING MATERIAL	18	45 KGS	802 KGS
4	STG	PVC PACKING BOX	22	20*19 2*6	386 KGS
5	BAWA	PLOY BAGS FOR EARPHONE	7	46.7 KGS	327 KGS
6	BAWA	OXYGEN GENERATOR	1	1	1 PCS
7	TN	TICON WIRELESS EARBUDS (TWS-180)	10	100 PCS	1000 PCS

8	PNB	PORTABLE WIRELESS SPEAKER (A006)	65	30 PCS	1950 PCS
9	VIRAJ	PUBG TRIGGER	21	500 PCS	10500 PCS
10	VIRAJ	BATTLEGROUND TRIGGER	5	1000 PCS	5000 PCS
11	STG	PACKING BOX	24	34 KGS	800 KGS
12	STG	BLUETHOOH EARPHONE(NECKBAND) ST PRIME	5	1000 PCS	5000 PCS
13	STG	PACKING LACE	2	23 KGS	46 KGS
14	KIVI	BATTERY CELLS	6	DIFFERENT PACKING	2086 PCS
15	GH	MOBILE BACK COVER	2	600	1200 PCS
16	STPR	MOBILE SCREEN GUARD	8	1000 PCS	8000 PCS
17	ZLT	KEYLIGHT WIRELESS SPEAKER	200	50 PCS	10000 PCS
18	KY-JD	KDM STEREO EARPHONE	87	500	43500 PCS
19	QGS	WALTA STEREO HEADSET BT	133	1000 PCS	133000 Pcs
20	STRPH	PACKING RUBBER CASE FOR AIRPODS ALONG WITH HINGE	20	500 PCS	10000 PCS
21	SANJU 5G GOLD	BATTERY CELL (UNBRANDED)	52	480;520	25000 PCS approx..
22	NNKP	BATTERY CELL (UNBRANDED)	29	420;480	13000 PCS approx..
23	NPGP	BATTERY CELL GLAMOR LI-ON BATTERY	33	30 KGS	990 Kgs. apprx
24	QQQ	WALTA STEREO HEADSET BT	20	500 PCS	10000 PCS
25	QGR	WALTA BT DIVINE HEADPHONE	50	600 PCS	30000 PCS
26	VSA-LT	LEIXY GLASS DISPLAYSCREEN WITH ATTACHED ICS	28	375 PCS	10000 PCS approx
		Total	880		

B.E. No. 63776661 dated 23.11.2021

TABLE G

<u>Sr. No.</u>	<u>Marking on Box</u>	<u>Description</u>	<u>Total Box</u>	<u>Package/pcs</u>	<u>Total Qty</u>
1	SK(F)	LED HEADLIGHT	10	50 pairs	500 pairs
	SK(F)	LED SUPER LAMP	1	20	20 pairs
	SK(F)	LED FLASH LIGHT	2	50 pair	100 pairs
2	KB (i)	MOBILE SCREEN PROTECTOR	66	1000	66000 pcs
	KB (ii)		70	1000	70000 pcs
	KB (iii)		142	1000	142000 pcs
3	TN	BATTERY MOBILE (TICON POWER UP)	240	239*200=47800 1*193=193	47993 pcs details as per Annexure C1
4	BILLU-TW	I7S TWS BLUETOOTH	125	200	25000 pcs
5	713	MOBILE BACK COVER	140	800	112000 pcs
6	KBK BOYA BY-MI	MIC AUDIO RECORDER	5	120	600 pcs
		ELECTRIC PARTS	1	1600 PCS	1600PCS
7	SSD	LED MUSIC BULB	100	50	5000 pcs
8	DNS-CABLE	DATA CABLE (W)	81	1000	110000 pcs
		(B)	29	1000	
9	DV910	WIRELESS HEADSET BLUETOOTH	10	500	5000 pcs
		CABLE CHARGING	1	5000	5000 pcs
		EARBUDS BLUETOOTH	1	15.850KGS	15.85 KGS
10	SAMPARK	PLASTIC COVER FOR EARPHONE	7	395.15 KG	395.15 KG
11	DADI (SO-QLCK009)	ANTI LOST/THEFT DEVICE	5	500	2500 pcs
12	NMKG	MOBILE BATTERY (REACTIVE)	12	Details as per annex. C-2	10,500 pcs
13	NPGB	MOBILE BATTERY (LAMOUR)	12		2880 pcs
	NPGB-13	DIE 1 SET (QLCK009)	1	1 SET DIE + 200 BATTERY	201 pcs
		TOTAL	1061		

Goods found in Truck No. MH46AR0499

TABLE H

Sr. No.	Details/Marking mentioned on the packaging	Goods found during examination	Quantity of Cartons	Quantity per carton in Pcs/ Kgs	Total Quantity in Pcs/Kgs
01	Pervesh-SEA, Haoran Technology Co. Ltd, BIS No. 41149187, ISI 6046 - Part-2	Mobile Batteries	73	240	17520
02	STG	Bluetooth Neck band Earphone Unbranded, Bulk Packing	06	500	3000
03	Bhvan	Bluetooth Neck band Earphone Unbranded, Bulk Packing	02	1000	2000
04	NK	Wired Earphone White Color, Unbranded, Bulk Packaging	11	2500	27500
05	CKSO-QLCK009	Wipes of Paper	04	13.600 Kgs	54.40 Kgs
06	QLCK009 bhuvan	Wireless Earpods Unbranded	10	100	1000
07	ZLT	Card Reader unbranded Bulk Pack	13	10000 Pcs (32.520 Kgs)	130000 Pcs (422.76 Kgs)
08	ZLT TC OTG	OTG Cables Keylight	05	2000	10000
09	SILCO QLC009	Bluetooth Neck band Earphone unbranded Bulk pack	15	200	3000
10	3BS TP 7	Rubber Pieces of Earphone	01	10.150 Kgs	10.150 Kgs
11	3BS L3	Bluetooth Neck Band Earphone unbranded	04	500	2000
12	SILCO	RGB LED Light Soft Ring Light	34	30	1020
13	Plastic Bags without any markings	Small Data Cable Bulk pack	02	7000	14000
14	QLCK009 KB	Mobile Screen Protector Film/ Mobile Screen Guard	42	10*120 Pkt= 1200 Pcs	50400
15	QLCK009 M/S B88	Wifi Smart Net Camera	16	50	800
16	SSD QLCK009	Bluetooth Neckband Earphone Unbranded Bulk pack	09	500	4500
17	SSD QLCK009	17S TWS Earbud Wireless	20	200	4000
18	SSD QLCK009	Wireless Neckband Bluetooth Earphone	20	100	2000
19	ARBB SEA Q162	Wired Earphone Bulk Pack	10	2000	20000
20	PRD	Video Game Remote	03	50	150
21	Extra SA50/SA30 RZD	Mobile Screen Protective Film/Screen Guard Redmi 4A/SA/3S	26	1000	26000
22	CK	Mobile Screen Protective Film/Screen Guard F62	01	1200	1200
23	QLCK009	Mobile Battery Lion Polymer Battery	01	300	300
24	NAVSF Cover	Mobile Plastic Cover	01	1000	1000
25	Ravi	Wired Unbranded Earphone	12	2500	30000
26	Vanzikate	XVR Video Recorder	17	21	357
27	SK	Solar Power Perfume Difuser for Car	03	200	600
28	JC	Wired Earphone JP Gold Bulk	03	2000	6000
29	AB	Neckband Earphone Bulkpack	20	700	1400
		TOTAL	384		

Goods found in Shop No. 06, Near Kinetic KMS gate, Beside Sardarji Dhaba, Mundra

TABLE I

<u>Sr. No</u>	<u>Markings on boxes</u>	<u>Goods Found</u>	<u>No. of cartons</u>	<u>No. of pieces in each boxes</u>	<u>Total Quantiy</u>
1	QLCK009 TUKTUK	Wireless Earpod Tiger Ear-1	50	100	5000
2	NEG	808 Wireless Blue Tooth Neck Band Glamour GM 808	20	100	2000
3	ET-ER	Wireless Blue Tooth Neckband Earphone KDM Pluto	11	60	660
4	TOMS	Wireless Blue Tooth Neckband Tiger Yuva-04	30	100	3000
5	unnumbered	small phone accessories in boxes without markings and numbers	09	-	-

Bill of Entry No. 6376610 dated 23.11.2021

TABLE J

<u>S. No.</u>	<u>Description of Goods</u>	<u>Marks</u>	<u>No. of Cartons</u>	<u>Quantity in each carton</u>	<u>Total Quantity</u>
1	Mobile Back Cover	CCS	2	400 approx	800
2	Wireless Ear pods (Brand i7S TWS Model)	DADI & BILLU	155	200	31000
3	Data Cable	ONS Cable	59	1000	59000
4	Mobile Screen plastic	Dishu Mobile	3	3075	25425
	Mobile Camera Screen Protector		9	1800 approx	
5	Tempered Glass	VKY	34	2000	68000
6	Mobile Battery - R - 41179477	Mamta	31	140	4340
7	Mobile Battery - R - 41137081	AJKK	22	approx 500 each	11000
8	Wireless Neck band	BT Earphone	43	1000	74200
			39	800	
9	Packing Material (Electropad)		5	4000	20000
10	Packing material (Gureena Gold OTG + USB)		11	Total 302 packets of approx 100 each	30200
11	Mobile Back Cover	Dishu Mobile	109	Approx 575 pcs each	62675
12	Screen Protector/Tuffen Glass	ABR	200	1000	200000
13	Tripod	Yuntang	72	20	1440
14	Wireless Ear Pods (Brand TWS T -T8 Model)	DADI & BILLU	10	100	1000
15	Smart Bracelet	Hand watch	6	600	4000
			2	200	
16	Hand watch with Cigarette Lighter	Hua Yue	10	100	1000
17	Small accessories like sponge, small stickers	Sponge Stickers etc	9	75000	105000
				30000	
18	Plastic Protection Cable	Black Mix Colour	7	5000	9000
				4000	
19	Squeeger Rubber Tape	Super HD Kiwi - 4000 mm	38	20	1196
			42	10	
			2	8	
			920		

2.2. Search of premises of Transporter

Based upon information about the official transporter of the importer, a search was conducted at the office premises of transporter M/s Citizens Carrier of India, Mumbai under panchnama dated 17.06.2021 and it was gathered that the transporter started business with the importer from April 2021 onwards as per transaction details. Further, a statement dated 18.06.2021 of Shri. Monu, Employee of M/s Haryana Parivahan Mundra was recorded wherein he stated that they had arranged for vehicles for transportation of goods as per requirement placed by M/s Citizen Transport Carrier of India.

2.3 Search of CB M/s Sark Enterprises

A search was conducted at the office premises of CB M/s Sark Enterprises situated at B-38, Flat No. 5, 1st Floor, Vishwakarma Colony, New Delhi under panchnama dated 09.07.2021 and statement of the CB was recorded.

2.4 Searches conducted by Customs Preventive, Delhi at the below mentioned four different premises of the importer M/s M Impex Trading Co. which as under:

- i. J-4, Block-B-1, Mohan Cooperative, Industrial Estate, Mathura Road, New Delhi-110044.
- ii. A-28, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044.
- iii. H.No. 02, KH No. 20/6, Tekchand Colony, Nilothi Extn. Nr. Glass Factory, Delhi-110041.
- iv. Plot No.-33, Block A, Mohan Cooperative Industrial Estate, Mathura Road, Delhi.-44.

During the search of all the above premises, it was learnt that M/s M Impex Trading Company is also registered with Amazon vide Merchant Id No. 6183154812.

3. Statements recorded

3.1 Statement of Shri Monu, Employee of M/s Haryana Parivahan, Mundra, Transport Contractor and Commission Agent was recorded under Section 108 of the Customs Act, 1962 on 18.06.2021 (RUD-04) wherein, he inter-alia stated that:

- They take order from different transporters/persons and arranged Commercial vehicles for transport of goods mainly from Mundra Port & Kandla port to Delhi and Bombay. As per requirement of vehicle, they arrange vehicle/trucks from local transporters and send the same at the loading point as per address given. They take commission from both sides for arrangement of vehicles.
- They have arranged 10 vehicles for transport of goods as per requirement of M/s Citizen Transport Carrier of India, Mumbai which were destined to Delhi including 01 Truck No. MH46AR0499 that is caught by Customs and presently lying in Hind CFS along with goods loaded. In the Consignment Note/Lorry receipt of the goods loaded in Truck No. MH46AR0499, Consignee is mentioned as M/s M Impex Trading.
- On being asked about the place from where the goods were loaded in Truck No. MH46AR0499. He stated that the goods were loaded from Shop No. 06, Near Kinetic KMS Gate, Opposite to Shri Ram Way Bridge, Beside Sardarji Dhaba, Mundra.
- On being asked that all the previous Consignments were loaded from the Shop No. 06, Near Kinetic KMS Gate, Opposite to Shri Ram Way Bridge, Beside Sardarji Dhaba, Mundra. He stated that Mr. Gopi contacted the drivers and he had called the drivers to come at loading point, as per his knowledge all goods into the truck were loaded near Kinetic KMS Gate, Opposite to Shri Ram Way Bridge, Beside Sardarji Dhaba, Mundra, direct from containers into the trucks except the truck no. MH46AR0499 which was loaded from the godown/Shop No. 06, Near Kinetic KMS Gate, Opposite to Shri Ram Way Bridge, Beside Sardarji Dhaba, Mundra.
- On being asked what the delivery address of the all consignments was he stated that all goods will go to Delhi as per the address mentioned in Delhi. After arranging

the truck, he informs the Truck No. and driver's number to Mr. Shinu. On reaching the truck near Delhi someone calls the drivers and tells him the exact address where goods to be delivered and after delivery of the goods, person takes sign on the same consignment as a proof that goods have been delivered.

- On being asked as per the list submitted, two vehicles i.e MH46AR6961 and RJ14GH7702 loaded on 01.06.21 & 04.06.21 respectively. He was asked to call the drivers of both vehicle and try to get the delivery address. He called the driver of Vehicle no. MH46AR6961, who informed that goods were unloaded somewhere at "Nilo thi Goan, Balaji Dharm Kanta, Nagloi Najafgarh Road" in a godown having tinshed roof. Another driver of Vehicle No. RJ14GH7702 informed the unloading address as "Nangloi Delhi Dhansa Road".

3.2 Statement of Shri Rajan Arora, one of the partners in M/s Sark Enterprise was recorded under Section 108 of Customs Act, 1962 on 09.07.2021(**RUD-05**), wherein, he inter-alia stated that:

- On being specifically asked about M/s M Impex Trading Company, Delhi, how did M/s SARK Enterprises come in contact with M/s. M Impex Trading Company, Delhi. He stated that one of his friends Shri Narender Narula (9318376633) introduced him to Shri Rahul Kapoor on phone and asked him if he wanted to file the papers of this company (M/s M Impex Trading company) for Customs Clearance to which he agreed. All the paper work and payment details were shared by him with Shri Narender Narula or his staff like Shri Prince on phone.
- On being asked how the correspondences of M/s Sark Enterprises B-38, Flat No. 5, 1st Floor, Vishwakarma Colony, New Delhi-110044 was done with M/s M Impex Trading Company. He stated that after the meeting as he had mentioned earlier, all the required documents to file a Bill of Entry such as packing list, commercial invoice and Bill of Lading etc. were forwarded by Shri Prince at WhatsApp Number to the mobile number of M/s SARK Enterprises. He had submitted all the chat details in his support.
- On being asked about the method of work of the CB he stated that M/s Sark Enterprises used to issue tax invoices in the name of M/s GND Cargo Movers, H.No.190/5, Part VI, Sector-5, Gurgaon, Haryana (one of the tax invoice submitted). Shri Narender Narula is, the owner of this firm. However, they were yet to receive the amount of their services. He also submitted his bank details: Account Holder name: M/s SARK ENTERPRISES Account Number: 1113102000000903 Name of the bank: IDBI Bank Branch: Derawal, Derawal Nagar, Delhi IFSC Code: IBKLO001113.
- He stated that all the correspondences regarding the paper filing of M/s M_Impex Trading Company were dealt with from his email account.

3.3 Statement of Shri Prince Rana, employee of M/s GND Cargo (GND Cargo Movers), was recorded under Section 108 of Customs Act, 1962 on 01.12.2021(**RUD-06**), wherein, he inter-alia stated that:

- M/s GND Cargo is situated at address Flat No. 217, Peepal Apartment, Sector 17E, Dwarka - 75.
- He knew Shri Rahul Kapoor, Proprietor of M/s M Impex Trading through Shri Narender Narula and for any Customs related work he used to talk to Shri Rahul Kapoor or his employees.
- On being asked about Shri Ketan Sood and how did he know Ketan Sood and how he got clearance work of M/s M Impex Trading, he stated that Shri Ketan Sood is his neighbour and childhood friend. During Covid 19, Ketan lost his job and then he recommended Ketan to Shri Narender Narula to give him some work. Then Shri Narender Narula assigned him the Customs related work of M/s M Impex Trading and he was sent to Mundra.
- On being asked to inform about the payment process of Customs Duty & other taxes in relation with M/s M Impex Trading, he stated that most of the time M/s

M Impex Trading used to make self payment of their duty liability and some time whenever they had more containers or they had shortage of funds they asked M/s GND Cargo to pay duty on their behalf and then M/s M Impex Trading transferred the money into the account of M/s GND Cargo.

- On being asked why they were involved in duty payment process, was there any agreement between M/s GND Cargo and M/s M Impex Trading regarding payment of duty and handling of Customs Clearance Work, he stated that sometimes they asked GND Cargo to pay the duty and most of the time they had themselves paid their duty liability. There is no agreement as such but there is a letter of authorization from M/s M Impex addressed to DC (Customs), Mundra dated 15.01.2021.
- On being asked to explain the process from starting upto clearing of the goods the entire sequence of events for clearance of the goods of M-Impex, he stated that the concerned documents like B/L, Invoice, Packing list were handed over by Shri. Rahul Kapoor or any other person from their office by hand at their office. The documents were scrutinized and handed over to Shri. Rajan Arora of M/s Sark Enterprise for further Customs Clearing Work. After getting Out of Charge of the Bill of Entry, the CB M/s Sark Enterprise used to inform them i.e the forwarders and then they would inform M/s M-impex to arrange for transportation of cleared goods from Mundra Port.
- On being asked to peruse whatsapp chat between GND Cargo and Shri Rajan Arora and inform about the same, he stated that he had seen and perused the same. He accepted that this chat was between him and employee of Shri Rajan Arora of Sark Enterprise. The entire chat pertained to their routine work related to Customs Clearance, duty payment, out of charge, delivery order payment, CFS payment, detention payment and such other day to day work related matters.

3.4 Statement of Shri Ketan Sood, employee of M/s GND Cargo (GND Cargo Movers) was recorded under Section 108 of Customs Act, 1962 on 19.07.2021 (**RUD-07**) wherein, he inter-alia stated that:

- On being asked to explain the working/profile of firm M/s GND Cargo, he stated that M/s GND Cargo is a CHA Firm and deals mainly with Mobile Accessories and other goods.
- On being asked about the owner of M/s GND Cargo, and how many employees were there in the GND Cargo, he stated that Sh. Narendra Narula is the owner of M/s GND Cargo. Sh. Ravi, Sh. Prince, Sh. Sanju are the other employees, whom he knew. There are other employees, whom he did not know.
- On being asked how many times did he visit office of M/s GND Cargo, a Custom Broker Firm, Sector-14, Peepal Apartment, Dwarka, Delhi-110078 he stated that he visited the office of M/s GND Cargo 03-04 times.
- On being asked who sent him at Mundra Port, he stated that Sh. Narendra Narula sent me at Mundra Port. His Mobile Numbers are 9899298802 & 9318376633.
- On being asked for which work he sent Ketan at Mundra Port, he explained that there are consignments of M/s M Impex Trading Company which are on hold by SIIB, Mundra and asked Ketan to get the goods shifted to from CFS to Bonded warehouse and hand over the empty containers to shipping line. He gave the mobile number of Sh. Mohit, an employee of M/s Sark Enterprises for help and gave Ketan authority letters in the name of M/s M Impex Trading Company.
- On being asked, what did he know about M/s M Impex Trading Company He stated that he did not know M/s M Impex Trading Company personally. Sh. Narendra Narula and Sh. Prince Rana informed him that M/s M Impex Trading Company is a very big company and engaged in import of Mobile Accessories.
- On being asked about the total number of Consignments cleared by M/s M Impex Trading Company from Mundra, He stated that as informed by Sh. Narendra Narula and Sh. Prince, there are total 08 consignments on hold by SIIB of M/s Impex Trading Company, out of which bills of entry not filed for 03 Containers.

- On being asked, what was imported under bills of entry filed in the name of M/s M Impex Trading Company. He stated that Sh. Narendra Narula and Sh. Prince told me that Mobile Accessories have been imported by M/s M Impex Trading Company and M/s Creative Accessories.
- On being asked which goods have been found during examination from the containers on hold by SIIB of M/s M Impex Trading Company and M/s Creative Accessories, He stated that he was informed by Sh. Narendra Narula and Sh. Prince that Earphones have been declared and Bluetooth earphones/headphones have been found during examination of SIIB. He did not have any first hand knowledge.

3.5 Statement of Shri Narender Kumar Narula, Proprietor of M/s GND Cargo (GND Cargo Movers) was recorded under Section 108 of Customs Act, 1962 on 30.11.2021(**RUD-08**), wherein, he inter-alia stated that:

- M/s GND Cargo is situated at address Flat No. 217, Peepal Apartment, Sector 17E, Dwarka - 75. There is no other address.
- there are total 4 persons working in the firm namely Shri Prince Rana (Documentation) , Shri Sanjeev Sharma (Field Work), Shri Vikki (peon) & Shri Ravi Garg (Accounts Work).
- he knew Shri Rahul Kapoor, Proprietor of M/s M Impex Trading since last 2 years through some reference and they approached him for their Customs clearance work related to mobile accessories.
- he provided his Aadhar Card having no. 5485 7759 4294 and stated that he is currently residing at Flat No. 1874, Upper Ground Floor, Sector 7, Ramphal Chowk, Dwarka – 110075.
- On being asked, with whom he was in touch in M/s M Impex Trading during their import Clearance work and to whom did he give the Customs Broker work and did he also handle their transportation work, He stated that he normally approached Shri Rahul Kapoor from M/s M Impex Trading and he did not handle transportation work and he was only looking after Customs Clearance Work. He had given the Customs Broker work to Shri Rajan Arora of M/s Sark Enterprises as he knew him from before because they work in same field.
- On being asked, what are the other ports where he did work of M/s M Impex Trading, He stated that apart from mundra, he also cleared their goods at Delhi Airport. Infact, the work was started from Delhi Airport only during the year 2020. Till date they have cleared two or three import consignments of Mobile Acessories at Customs Air Cargo Complex, Delhi.
- On being asked, was he aware that there is under valuation in the invoices, He stated that the value reflected in the invoices is the regular value at which goods of similar kind are getting cleared through different ports so the value mentioned in the invoices seems to be proper.
- On being asked to inform about the payment process of Customs Duty & other taxes in relation with M/s M Impex Trading, He stated that M/s M Impex Trading transferred the money into the account of M/s GND Cargo and then M/s GND Cargo makes payment for Custom Duty and other taxes.
- On being asked what was their involvement in duty payment process, was there any agreement between M/s GND Cargo and M/s M Impex Trading regarding payment of duty and handling of Customs Clearance Work. Further, also inform that whether M/s M Impex Trading were aware that his licence is suspended, He stated that regarding the agreement between M/s GND Cargo and M/s M Impex Trading, He stated that he will provide the documents mentioning that M/s M Impex Trading has handed over the work to M/s GND Cargo and also complete KYC documents. Regarding payment of duty and handling of Customs Clearance work, He stated that M/s GND Cargo have raised invoice to M/s M Impex Trading and thereafter M/s Sark Enterprises have raised invoice to M/s GND Cargo for Customs related work. He will produce the copies of invoices and also the letter

pertaining to KYC. Yes, M/s M Impex were aware that his licence is suspended and he will act as a forwarder. Further, M/s Sark Enterprises and M/s M Impex Trading were not known to each other.

- On being asked to explain the process from starting upto clearing of the goods the entire sequence of events for clearance of the goods of M-Impex. He stated that the concerned documents like B/L, Invoice, Packing list were handed over by Shri. Rahul Kapoor or any other person from their office by hand at my office. The documents were scrutinized and handed over to Shri. Rajan Arora of M/s Sark Enterprise for further Customs Clearing Work. After getting Out of Charge of the Bill of Entry, upon request and intimation from the authorized person of M/s Sark Enterprise, they inform M/s M-impex to contact their transporter for clearance of their goods from Mundra Port.
- On being asked that some of the goods from the containers were found to be mis-declared what did he have to say about that, he stated that this can be ascertained only at the time of examination of the cargo, they are not having any idea about the same.
- On being asked was he aware about any other case of customs department which has been booked against M/S M-Impex, New Delhi. He stated that no, to the best of his knowledge he is not aware if any case has been booked at any Customs port against M-impex New Delhi.
- On being asked, what did have to say about the statement of Shri. Ketan Sood dated 19/07/2021 recorded before the Supdt. Customs SIIB Mundra and statement of Shri Rajan Arora dated 09.07.2021 recorded before Supdt Customs Delhi Preventive, he stated that he has seen the statement of Shri Ketan Sood who was his employee & Shri Rajan Arora and agreed to the contents of the same and as a token of having seen the same he put his dated signature on the statement dated 19/07/2021.

3.6 Statement of Shri Rahul Kapoor, Proprietor of M/s M Impex Trading Co. was recorded under Section 108 of Customs Act, 1962 on 17.08.2021 (**RUD-09**) wherein, he inter-alia stated that they have been importing glassware since April 2017 and mobile accessories since January 2021. They have imported 13 containers of Glass ware and 47 containers of mobile accessories since then. They deal with M/s Yiwu Yihung Import Export co. and M/s Qiao Yang Trading Co. of China through the contact person Mansoor. They do not have any chat back up. They place orders verbally over phone. He shall produce the details of Bank Statement. Most of the crockery and mobile accessories are supplied to Customers of Karol Bagh, Delhi; that they have Amazon Id - 6183154812. He shall provide the details of sales and purchases done through the said ID. Their office and godown address is H.No.-2, Kh. No.-20/6, Tekchand Colony, Nilothi Extension, Delhi-110041 and there is no other office or godown of his trading firm.

3.7 Further, statement of Shri Rahul Kapoor, Proprietor of M/s M Impex Trading Co. was recorded under Section 108 of Customs Act, 1962 on 13.10.2021 (**RUD-10**), wherein he inter-alia stated that:

- M/s. M. Impex is a trading proprietor ship firm. He is the sole proprietor of the firm. His firm deals with import and trading of glassware and mobile accessories.
- they are involved in the business of import since past 02 years. Earlier they had imported from ICD Tughlakabad TKD, ICD Piyala and Mundra Port.
- M/s Sark Enterprises Mundra had been appointed as the CHA or Customs Broker. The licence is held by Shri. Rajan Arora C.B no. ACUFS0835MCH002. They have their office in Gandhidham at Office No. 5, IIInd Floor, Plot No. 222, Ward 12/B, ~~Narik Complex~~ Gandhidham - 370201. Mohit Tekwani F/G card holder, his employee is handling the work on behalf of Customs Broker in Mundra port.
- On being asked, did he agree to Misdeclaration of items imported actually as against those declared in the Bills of Entries no. 4104614/27.05.2021, 4079901/25.05.2021 and 4080134/25.05.2021, he stated that the goods are not mis-

declared completely but partially to some extent that the supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff.

- On being asked did he agree with Undervaluation of items imported in the Bills of Entry no. 4104614/27.05.2021, 4079901/25.05.2021 and 4080134/25.05.2021, he stated that they are ready to furnish the details of remittances made to overseas supplier in the past and in the case of these imports too. It can be checked that similar goods are imported at more or less similar prices at other ports in India too. Due to Corona Pandemic, we have got huge discount in this shipment hence, the goods are priced on the lower side.
- On being asked, why did he not present himself earlier, he stated that his father Shri. Raju Kapoor underwent implantation of pace maker surgery at New Delhi after which he became restricted in movement. His father also is suffering from high diabetes and chrosis of the liver.

4. Seizure of Goods

Whereas, *prima facie*, upon examination, the goods appeared to be undervalued. The CB, Importer or their authorized representatives did not present themselves at the time of examination even later on, despite being informed. In the absence of the CB, Importer or their authorized representatives, the goods were valued on the basis NIDB data and DRI alert and 40% of the value of goods shown in e-commerce website. The goods having total value at Rs.13,35,69,699/- were put under seizure on respective dates as shown in the below table.

<u>Sr. no</u>	<u>Bill of entry/ BL No.</u>	<u>Container no.</u>	<u>Value as per Seizure Memo</u>	<u>Date of Seizure</u>
1	BE No. 4104614	BMOU 5408620	2,82,90,211/-	31.07.21
2	BE no. 4079901	HALU 5632480	1,45,94,280/-	31.07.21
3	BE no. 4018348	TCNU 7619456	2,06,45,360/-	31.07.21
4	BE No. 4080134	SKHU 9309421	01,29,22,940/-	31.07.21
5	Bl HASLC07210401574	BMOU5403171	1,92,50,987/-	28.07.21
6	HASLC07210402108	DFSU 6077343	1,92,98,358.8/-	28.07.21
7	HASLC07210500121	BMOU 6136228	1,86,07,562.71/-	28.07.21
8	EPIR CHNC WA 207165	TGHU 9874914	58,54,327/-	29.12.21

5. Revaluation of the Cargo

5.1 However, the importer M/s M. Impex trading Co. contested the seizure value of the cargo and vide letter dated 26.10.2021 requested for proper valuation of the cargo, which was approved by the competent Authority. Accordingly, the value of goods was re-determined on the basis of NIDB data wherein identical goods were available on NIDB data. However, in most other cases prices of identical goods was not available and therefore in absence of identical references, for the purpose of revaluation of the cargo, an empanelled Chartered Engineer namely Shri. Varun Chandok was appointed to ascertain the value of the goods based on Customs Valuation Rules 2007 to arrive at the Fair Market Value and Assessable Value. The CE submitted his report dated 18.12.2021 (**RUD-11**). Based on the Valuation report given by the CE and the NIDB data, the goods are re-valued at **Rs. 5,07,43,266/-**. The Bill of Entry wise re-determined value is given in the table below:

<u>Sr. No.</u>	<u>Bill of Entry No. & Date</u>	<u>Container No.</u>	<u>Value as per Bill of Entry</u>	<u>Present Value</u>	<u>Duty payable</u>	<u>Duty paid</u>	<u>Differential Duty</u>
1	4104614 Dtd 27.05.2021	BMOU - 5408620	1043380	6972485	2833954	400630	2433324
2	4079901 Dtd 25.05.21	HALU- 5632480	853776	6419543	2626153	329591	2296560
3	4018348 Dtd 20.05.21	TCNU- 7619456	1010770	9530	45050	382898	

4	4080134 Dtd 25.05.21	SKHU-9309421	653749	5571920	2087798	244960	1842838
5	6376673 Dtd 23.11.21	DFSU-6077343	806768	5069306	1949151	0	1949151
6	6376661 Dtd 23.11.21	BMOU-6136228	885885	6366532	2513444	0	2513444
7	6377658 Dtd 23.11.21	BMOU-5403171	1071492	5227023	1999037	0	1999037
8	6376610 Dtd 23.11.21	TGHU-9874914	867994	5854327 (Total of sr. no. 1 to 8 is 4,81,11,666)	2264264	0	2264264 (Total of sr. no. 1 to 8 is 1,74,90,772)
9	Cannot be ascertained	GODOWN	-	-	-	-	-
10	Cannot be ascertained	TRUCK	-	-	-	-	-
	Both 9 & 10 of one BE			2631600	1009462		1009462
			7193814	50743266	19858313	1358079	18500234

5.2 The re-determined assessable value was accepted by the importer vide letter dated 20.12.2021, consequently the import assessment group was asked for provisional release of the goods with re-assessment of Bills of Entry mentioned at serial no. 1 to 8 of the above table i.e to pay the differential duty of **Rs.1,74,90,772/-** and to provide bank guarantee of 50% of the differential duty along with bond of full value of goods. In compliance thereof the importer has paid the entire amount of differential duty and executed Bank Guarantee of **Rs.87,45,386/- (Eighty seven lakhs forty five thousand three hundred and eighty six only)** in respect of Bill of Entries mentioned at serial no. 1 to 8 of the above table. Consequently, the goods were provisionally released by the competent authority. Further vide letter dated 01.02.2022 importer requested to release the goods mentioned at Sr. No. 9 & 10 valued at **Rs. 26,31,600/-** attracting differential duty of **Rs. 10,09,462/-**, the importer was asked to furnish bank guarantee of 150 % of duty to cover the duty and fine/penalty i.e. Bank guarantee of Rs. 15,15,000/- (Fifteen lakhs fifteen thousand only). Importer vide letter dated 14.03.2022 informed that they were ready to submit bank guarantee of amount **Rs 15,15,000/-** and furnished the same. Consequently, these goods were also released.

6. Relevant Legal provisions

SECTION 46. Entry of goods on importation. — (1) The importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed] :

..

..

(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.]

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

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an 1 [arrival manifest or import manifest] or import report which are not so mentioned;

(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 transhipment referred to in the proviso to sub-section (1) of section 54];

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 5[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, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

Section 117. Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [Four lakh rupees].

Customs Brokers Licensing Regulation act 2018 (CBLR 2018 in brief).

Regulation 10 of the CBLR 2018 lays down the obligation of the Customs Broker. The relevant Sub clauses are that the CB shall :-

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

7. **Summary of Investigation:**

The statements of various persons involved directly or indirectly were recorded namely the importer, the Customs Broker, the Freight Forwarder, and the employees of the Freight Forwarder. The facts emerging from the statements of each are summarized below:

7.1 Facts emerging from the Statement of Shri Rajan Arora, the Customs Broker and one of the partners in M/s Sark Enterprise, who inter-alia stated that:

All the paper work and payment details were shared by him with Shri Narender Narula or his staff like Shri Prince on phone. Further, all the correspondences regarding the paper filing of M/s M-Impex Trading Company were dealt with from his email account. He was contacted by the importer on the basis of recommendation given by Shri. Narendra Narula of M/s GND Cargo. Shri. Rajan Arora was actively involved in preparation of papers and filing of import documents. All the work of import clearance was given to him by Shri. Narendra Narula who had been clearing the imports of M/s M-Impex since last two years and were directly in touch with the importer M/s M-Impex - Rahul Kapoor and his father Shri. Raju Kapoor.

7.2 Facts emerging from the Statements of Shri Prince Rana & Shri Ketan Sood, working in M/s GND Cargo Movers & Shri Narendra Kumar Narula, Proprietor of M/s GND Cargo Movers.

Shri. Narendra Narula was the contact person between the importer and the C.B. Their firm M/s GND Cargo Movers was handling the import & Customs clearance work related to mobile accessories work related to M/s Impex and Narendra Narula had given the Customs Broker work to Shri Rajan Arora of M/s Sark Enterprises as their own licence was suspended. They were in regular touch with the importer and the CB for all clearance related work. They were raising invoices for the services rendered from M/s M-Impex.

7.3 Facts emerging from the Statement of Shri Monu Employee of M/s Haryana Parivahan Mundra, Transport Contractor and Commission Agent

M/s Haryana Parivahan Mundra, are engaged in managing the transportation of imports of the importer to various destinations of Delhi and other places. They arranged 10 vehicles for transport of goods as per requirement of M/s Citizen Transport Carrier of India, Mumbai which were destined to Delhi including 01 Truck No. MH46AR0499 which was detained by Customs. In the Consignment Note/Lorry receipt of the goods loaded in Truck No. MH46AR0499 Consignee was mentioned as M/s M Impex Trading. The goods were loaded from Shop No. 06, Near Kinetic KMS Gate, Opposite to Shri Ram Way Bridge, Beside Sardarji Dhaba, Mundra. The previous consignments were unloaded somewhere at "Nilothi Goan, Balaji Dharm Kanta, Nagloi Najafgarh Road" in a godown having tin-shed roof and at "Nangloi Delhi Dhansa Road".

7.4 Facts emerging from the Statements of Shri Rahul Kapoor, S/o Raju Kapoor, Proprietor of M/s M Impex Trading Co.

The importing firm deals with Import and trading of glassware and mobile accessories. They are selling goods on-line E-commerce site through M/s Amazon Merchant Id - 6183154812. They have imported 47 containers of mobile accessories so far. M/s Sark Enterprises Mundra had been appointed as the CHA or Customs Broker. The licence is held by Shri. Rajan Arora C.B no. ACUFS0835MCH002. He accepted that the goods are mis-declared partially to some extent and cited the reason that the supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff. Regarding Undervaluation of items he stated that similar goods are imported at more or less similar prices at other ports in India too. Due to Corona Pandemic, they had

got huge discount in this shipment hence the goods are priced on the lower side. The proprietor of M/s M Impex, Shri Rahul Kapoor has an established mechanism for import of goods namely "mobile accessories" from China. They have been importing since long and are not new to this trade. Shri Rahul Kapoor has accepted to the mis-declaration of quantity and in his Statement citing shortage of staff during Covid as the reason. The revaluation of the goods was done by an empanelled CE and the value of the goods after revaluation has been accepted by the importer, which implies that the importer has accepted that the goods were undervalued by them and the import price of the goods was not the fair price.

8. Section 17(1) of the Act provides that "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". Therefore, the responsibility to correctly assess duty has been cast on the importer. The government has thus placed huge reliance on the self-assessment made by the importer. It appears that the importer mis-declared the goods in terms of value and quantity and evaded Customs Duty. The importer by their aforesaid act of omission and commission has thus contravened the provisions of Section 46(4) and 46(4A) of the Act. The Section 111(m) of Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, are liable to confiscation. As the importer had mis-declared the goods, with the intention to evade proper Customs Duties, the same, are liable to confiscation under Section 111 (m) of the Act.

8.2. Section 112(a)(ii) of the Act, provides that any person who, in relation to any goods, does or omits to do any act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such act, in case of dutiable goods, other than prohibited goods, shall be liable to penalty. In the present case, as the goods are liable to confiscation under Section 111(m) of the Act as stated in preceding paras and by their act of omission and commission, it is evident that Shri Rahul Kapoor, Proprietor of M/s. M Impex Trading Co., is liable to penal action under Section 112(a)(ii) of the Act.

8.3 The Role of the Freight forwarder Shri. Narendra Narula of M/s GND Cargo Movers is also questionable in as much as is evident from his statement that he is fully involved in the day to day activities of the firm. He has been involved in clearing cargo of the importer from various ports. Their own license was suspended therefore the customs clearing work was handed over to CB Shri Rajan Arora of M/s Sark Enterprises. Thus, it can be very well said that he is actively assisting and conniving with the importer in the contraventions of the provisions of the customs Act- 1962 and therefore Shri. Narendra Narula of M/s GND Cargo Movers is liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

8.4 From the investigations, it is also forthcoming that the Customs Broker M/s Sark Enterprise has not exercised due diligence in filing the Bills of Entry of the importer. It is forthcoming that the Customs Broker has failed to discharge his statutory obligations in as much as they have neither conducted the KYC properly nor have taken due care in conducting the verification of the documents supplied to them by the importer through a third person. From the above it is very much evident that the Customs Broker M/s Sark Enterprise has failed to discharge his duties in terms of Sub-clause (d), (e), (m) & (n) Customs Brokers Licensing Regulation Act 2018 and have therefore rendered himself liable to Penalty under Section 117 of the Customs Act, 1962.

● 9. In view of above, a notice was issued to the importer **M/s. M Impex Trading Co. through its proprietor**, to Show Cause to **the Commissioner of Customs**, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, as to why: -

- i. The declared value amounting to **Rs. 71,93,814/-** (Rupees Seventy One Lakhs Ninety Three Thousand Eight hundred and Fourteen only) of seized goods as detailed at Para 5.1 which are grossly undervalued as well as mis-declared, should not be rejected under Rule 12 of CVR, 2007 and re-determined to **Rs. 5,07,43,266/-** (Rupees Five Crores Seven Lakhs Forty Three Thousand Two Hundred Sixty Six Only) under Rule 3 of CVR, 2007.
- ii. The seized goods totally re-determined valued at **Rs. 5,07,43,266/-** as detailed at Para 5.1, should not be held liable for confiscation under Section 111(m) of Customs Act, 1962. However, as the goods are not available for confiscation being released provisionally, why redemption fine under Section 125 of Customs Act, 1962, in lieu of confiscation should not be imposed.
- iii. The differential/short paid duty amounting to **Rs. 1,85,00,234/-** on the seized goods as detailed at Para 5.1, should not be demanded from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.
- iv. The differential customs duty of **Rs. 1,74,90,772** (Rupees One Crore Seventy Four Lakhs Ninety Thousand Seven Hundred Seventy two only) already paid on goods by the importer, should not be adjusted and appropriated towards their duty liabilities at (iii) above.
- v. Penalty should not be imposed upon Shri. Rahul Kapoor, proprietor of M/s M-Impex, under Section 112(a)(ii) of the Customs Act, 1962.
- vi. Penalty, fine and any other customs dues should not be appropriated against the Bank Guarantees amounting to **Rs. 87,45,386/-** (Rupees Eighty seven lakhs forty five thousand three hundred eighty six only) & **Rs. 15,15,000/-** (Rupees Fifteen lakhs fifteen thousand only) executed by the importer.

9.2 Further, **Customs Broker, M/s. Sark Enterprises** were also called upon to Show Cause to **the Commissioner of Customs**, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, as to why: -

- i. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962, who has failed to discharge his duties in terms of Sub-clause (d), (e), (m) & (n) of CBLR, 2018.

9.3 Further, **Shri. Narendra Narula, Proprietor of M/s GND Cargo Movers (forwarder)**, was also called upon to Show Cause to **the Commissioner of Customs**, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, as to why: -

- i. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962, who are actively involved & conniving in the undervaluation and mis-declaration of the imports cargo of M/s M-Impex.

10. DEFENCE SUBMISSION

10.1 In reply to the Notice, the noticee M/s M. Impex Trading Company (Noticee No.-1), submitted their reply dated 09.09.2024 against impugned SCN, wherein they inter alia submitted as under:

1. Vide Show Case Notice dated 03.05.2024, M/s M Impex Trading Company....., have been called upon to show cause

2. The noticee firm says and submits that the present cause show notice has arisen due to the facts that the investigation has alleged undervaluation in respect of the goods imported by the noticee firm. However, from the contents of the notice, it is apparent that the investigation has made a case, only to conceal their incorrect intelligence, according to which, the goods imported by the noticee firm were mis-declared, however, on investigation it was observed that there was no mis-declaration at the end of the noticee firm in as much as there was no discrepancy in description of the goods and the value declared by the noticee firm in the Bill of Entry when compared with the purchase invoices and the supporting documents.

3. The noticee firm says and submits that to cover up the lapse on the part of the incorrect intelligence, the investigating officers proceeded to make a case of undervaluation through dubious manner, which is neither permitted to them under the Customs Act, 1962 or the rules framed thereunder without following the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Hereinafter referred to as "CVR, 2007" for the sake of brevity). The investigation has grossly erred in not following the Customs Valuation Rules, 2007 prior to disputing the valuation declared by the noticee firm. Thus, the entire action on the part of the investigation to dispute the value declared by them in imports covered under the present notice is not only arbitrary but also beyond the provisions of law. The noticee firm says and submits that in view of the above submissions the allegations made by the investigation are required to be discarded as the same being illogical and beyond the purview of law.

4. The noticee firm says and submits that the entire investigation undertaken by the officers of the SIIB by blatantly ignoring the provisions of the Customs Act, 1962 and adopting the procedures which are not permitted in law in as much as they have arbitrarily proceeded to investigate the matter, when there was no need to investigate the present matter and the value could have been challenged by the officers at the time of assessment of the Bill of Entry.

5. The noticee firm says and submits that M / s . M Impex Trading Co., Shop No. (New address is a Proprietorship firm) and is inter alia holding IEC No. DNIPK9689B. The noticee firm is primarily engaged in the import of mobile accessories and have been in the business for since 2018-19. The mobile accessories imported by them are sold to dealers trading in wholesale business in Delhi and Mumbai. None of the goods imported by them are branded goods, moreover, there is no restrictions imposed on the goods imported by the noticee firm. The above facts have not been disputed in the Show cause notice, hence, the issue in the present case is related to allegation made on the noticee firm for import of goods covered under the Bills of Entry covered in the show cause notice by adopting under valuation.

6. The noticee firm says and submits that the investigation, to substantiate the allegation has ignored the invoice and purchase documents submitted by the noticee firm, which is contrary to the provisions of Rule 12 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 (hereinafter referred to as "CVR, 2007").

7. The noticee firm further says and submits that as per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods, that is, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

8. The noticee firm further says and submits that Rule 12 of CVR, 2007, contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. The 'reason to doubt' however does not mean 'reason to suspect'. A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. The noticee firm says and submits that the investigation has failed to place on record the material evidence which resulted in reasoning to doubt the imports made by the noticee firm in respect of the Bills of Entries covered in the present show cause notice. The noticee firm says and submits that as the investigation has failed to place on record the material on the basis of which 'reason to doubt' had occurred, the initiation of the investigation itself happens to be based on baseless facts that forced the officers to believe the dubious so called "reason to doubt". The noticee firm therefore says and submits that the source of the initiation of investigation itself is based on baseless inferences and as such the said investigation is required to be considered to be initiated on baseless and in a concocted manner and deserves to be set aside in interest of justice.

9. The noticee firm therefore says and submits that Rule 12 of CVR, 2007 empowers the department to doubt the truth or accuracy of the declared value, and under such circumstances, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods and only in case they have not received such information or documents or that they have received the information which is not satisfying they may proceed to adopt procedure as prescribed under the CVR, 2007 to reject the transaction value. However, the procedure prescribed under the provisions of Rule 12 of the Rules ibid, were not followed by the investigating officers and they in a dubious manner arbitrarily and illogically proceeded to doubt the transaction value declared by the noticee firm.

10. The noticee firms says and submits that they had submitted the following documents at the time of import of goods and made proper declarations while filing the Bills of Entries.

- a. Invoice
- b. Packing list
- c. Bill of Lading
- d. Certificate of Country of Origin
- e. Bank Transaction details.
- f.

(A copy of all the above documents are annexed with the defence submission and marked as Exhibit "A" to this reply.)

11. However, the officers did not examine the said documents submitted by the noticee firm at the time of filing of the Bills of Entries, nor did they call for any further information from the noticee firm, by which the noticee firm would have fully justified the genuineness of the transactions entered by them in respect of the subject eight bills of entries as mentioned in table 1 of the show cause notice.

12. The noticee firm says and submits that the investigation had available with them the payment details made by the noticee firm in respect of the goods imported by the noticee firm in respect of the subject eight bills of entries as mentioned in table 1 of the show cause notice and they had never doubted the payment made by the noticee firm nor have they alleged in the entire show cause notice about any transactions made in addition to the value declared in the Bills of Entries in respect of the subject eight bills of entries as mentioned in table 1 of the show cause notice. Thus, when they have neither disputed the genuineness related to description of the goods, value of the goods, quantity of the goods, country of origin of the goods, invoice and packing list of the goods, then in such case the transaction value can be disputed only after fulfilling the procedure as described under Rule 12 of the CVR, 2007. Thus, the methodology and manner of disputing the value of the goods imported under the subject eight bills of entries as mentioned in table 1 of the show cause notice becomes illogical and beyond the authority of law. The instant notice is therefore required to be set aside on these grounds alone by considering the same as illogical and illegal in interest of justice.

13. The noticee firm says and submits that the transaction value is disputed by the Customs Officers, for various reasons which may fall under one of the below mentioned situations.

- a. Contemporaneous imports taking place at a higher price.
Alert Circulars.
- b. Standing Instructions / Standing Orders
- c. Guidelines issued by DOV (Director General of Customs Valuation)

14. The noticee firm further says and submits that, thus, while the power to reject transaction value based on the above listed reasons may be valid, it has to be exercised sparingly and only in cases where there lies genuine doubts related to the authenticity of the declared value. The said genuine doubt is missing in the instant case, as the investigation has failed to ask and call upon the noticee firm to furnish further information including documents to justify the declared transaction value, thus, resulting in blatant misuse of powers conferred upon the investigating officers in the Customs Act, 1962.

15. The noticee firm says and submit that it is only where the doubt of the proper officer after conducting examination of information including documents or on account of non-furnishing of information exists, that the procedure of further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable.

16. The noticee firm further says and submits that no such facts have been recorded in the subject show cause notice, in as much as the investigation has not placed on record the details of material evidence which has resulted in generation of doubt held by the investigating officer and in absence of any such material evidence being placed on record the doubt held by the officer related to the value of the imported goods becomes baseless, illogical finally resulting in unnecessary harassment to the noticee firm, where they had to pay heavy demurrage charges, deterioration of quality

of goods imported by them and mental harassment due to casual manner of dealing with the investigation in the present matter by the investigating officers.

17. The noticee firm says and submits that in view of the above submissions, it is to submit that it is crystal clear that the investigation has failed to ask and call upon the noticee firm to furnish further information including documents to dispute the declared transaction value, rather the investigation instead of following the provisions of Rule 12 of the Valuation Rules, arbitrarily and without authority of law proceeded to follow the following dubious method to falsely implicate the noticee firm by adopting a procedure which does not authorize the officers to proceed in the manner, in which they were required to investigate the valuation aspect of the goods, however, they proceeded to make false charges against the noticee firm, which are enumerated below in brief for kind consideration at the time of adjudication proceedings.

18. The entire case is based on three different scenarios viz.

a. Firstly, there are four bills of entries that had been filed prior to the date of commencement of investigation i.e. 11.06.2021. All such Bills of entries are mentioned at Sr. No. 1 to 4 of the table enumerated at para 5.1 of the SCN.

b. Secondly, there are four bills of entries that had been filed after the date of commencement of investigation i.e. 11.06.2021. All such Bills of entries are mentioned at Sr. No. 5 to 8 of the table enumerated at para 5.1 of the SCN. There can be no *prima facie* case in respect of these Bills of Entries as the said Bills of Entries were seized prior to filing of Bills of Entries.

C. Thirdly, goods placed under seizure from godown and Truck as mentioned at Sr. No. 9 and 10 of the table enumerated at para 5.1 of the SCN. The investigation have derived duty of Rs. 10,09,462/- However, all the said goods are duty paid and out of charge had already been given and the investigation have stated in the show cause notice at para 2.1 of the impugned show cause notice, that they have failed to ascertain the details of Bills of Entries / Bill of Lading, to which the said goods belong. Thus, the demand of Customs duty on the goods as mentioned at Sr. No. 9 and 10 of the SCN do not have any specific allegation related to misdeclaration or undervaluation, as such the said demand itself is made purely on assumptions and presumptions and as such is not sustainable.

19. The entire case is based on the following evidences, which are not relevant to reject the transaction value as per the Customs Act, 1962 and the rules framed thereunder. The reasons for the same are explained below:

a. Search of premises of Transporter, M / s Citizen Carrier of India, Mumbai under the panchnama dated 17.06.2021. No evidence has been placed in the file, which has been unearthed during the search undertaken at the premises of Transporter, M/s. Citizen Carrier of India, Mumbai under the panchnama dated 17.06.2021, which points out that the allegation made against the noticee firm is correct. Hence, the said part of the notice is not required to be entertained at the time of adjudication proceedings.

b. Search of Customs Broker viz. at the office premises of CB M/s. Sark Enterprises, New Delhi was conducted under panchnama dated 09.07.2021 and statement of the CB was recorded.

C. Searches conducted by Customs Preventive Delhi at the four different premises of the noticee firm as discussed at Para 2.4 of the SCN. No panchnama related to searches have been made a relied upon document in the SCN. Thus,

there is no relevance related to the search undertaken at various premises shown at para 2.4 of the SCN.

d. Statement of Monu, Employee of M/s. Haryana Parivahan Mundra, Transport Contractor and Commission Agent was recorded under Section 108 of the Customs Act, 1962 on 18.06.2021 (RUD-04). From perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Monu, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.3 of the SCN, the facts emerging from the statement of Shri Monu has been discussed. The noticee firm says and submits that on perusal of the facts analysed by the investigation, it is apparent that there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm under Bills of Entries covered under the impugned show cause notice. The entire exercise of placing the statement of Shri Monu, in the instant case is a futile attempt to make baseless allegations against the noticee firm and as such the same deserves to be discarded in interest of justice.

e. Statement of Shri Rajan Arora, one of the partners of M/s. Sark Enterprise was recorded under Section 108 of the Customs Act, 1962 was recorded on 09.07.2021 under Section 108 of the Customs Act, 1962. (RUD 05). From perusal of his statement also, it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Rajan Arora, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.1 of the SCN, the facts emerging from the statement of Shri Rajan Arora has been discussed. The noticee firm says and submits that on perusal of the facts analysed by the investigation, it is apparent that there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm under Bills of Entries covered under the impugned show cause notice. The entire exercise of placing the statement of Shri Rajan Arora, in the instant case is a futile attempt to make baseless allegations against the noticee firm and as such the same deserves to be discarded in interest of justice.

f. Statement of Shri Prince Rana, Employee of M / s GND Cargo was recorded under Section 108 of the Customs Act, 1962 on 01.12.2021 (RUD - 6) From perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Prince Rana, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Prince Rana has been discussed. The noticee firm says and submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm.

g. Statement of Shri Ketan Sood, Employee of M / s GND Cargo was recorded under Section 108 of the Customs Act, 1962 on 19.07.2021. (RUD - 7) From perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Ketan Sood, that there was any irregularity in the goods imported by the noticee firm. However, the investigation has incorporated incorrect facts in the show cause notice at the last para of para 3.4, wherein it

has been mentioned in the show cause notice that on being asked which goods have been found during examination from the containers on hold by SIIB of the noticee firm, he stated that he was informed by Shri Narendra Narula and Shri Prince that Earphones have been declared and Bluetooth earphones / headphones have been found during examination of SIIB".

The noticee says and submits that from the perusal of the impugned SCN and on comparison of the statement of Shri Ketan Sood, it is observed that the investigating agency has placed in correct facts in as much as Shri Sood has in statement nowhere stated that he was informed by Shri Narendra Narula and Shri Prince that Earphones have been declared and Bluetooth earphones / headphones have been found during examination of SIIB. Thus, the investigation has placed incorrect facts in the impugned show cause notice to make a strong case against the noticee firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Ketan Sood has been discussed. The noticee firm says and submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm under Bills of Entries covered under the impugned show cause notice. The entire exercise of placing the statement of Shri Ketan Sood, in the instant case is a futile attempt to make baseless allegations against the noticee firm and as such the same deserves to be discarded in interest of justice.

h. Statement of Shri Narendra Narula, Proprietor, M/s. GND Cargo Movers was recorded under Section 108 of the Customs Act, 1962 on 30.11.2021 (RUD - 8) . From perusal of his statement, it is observed that the said statement primarily relates to facts as to how he had come into touch with the noticee firm and that he was looking after Customs Clearance work and that he had given the Customs Broker work to Shri Rajan Arora of M / s Sark Enterprises as he knew him earlier and on being asked about misdeclaration about the goods, he had stated that they were not having any idea about the same. However, from the entire statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry by the noticee firm nor any facts have been stated by Shri Narendra Narula, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Narendra Narula has been discussed. The noticee firm says and submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm.

i. Statement of Shri Rahul Kapoor, Proprietor of the noticee firm was recorded under Section 108 of the Customs Act, 1962 on 17.08.2021 and 13.10.2021, he had stated that the goods were not mis-declared completely but partially to some extent the supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff. Further, when asked related to undervaluation of items imported at more or less similar prices at other ports in India too; that due to pandemic they had got huge discounts in the present shipment and as such the prices of the goods were at lower side.

20. The noticee firm says and submits, that from the statement of the above witnesses, no inference can be drawn that there was any undervaluation of goods imported by the noticee firm. Thus, the statements mentioned in the show cause

notice do not have any relevance in the present case and are as such required to be discarded in interest of justice.

21. The noticee firms says and submits that though the Proprietor of the noticee firm had requested the investigating officers that they were prepared to furnish the details of remittances made to overseas supplier in the past and in the case of these imports too and it could be verified that similar goods are imported at more or less similar prices at other ports in India. The noticee firm says and submits that in view of the above, the noticee firm had themselves came forward to provide the details of remittances and all other documents, which could substantiate their bonafide, however, the same were not called for by the officers, which establishes that the investigating officers had no doubt about the declarations made by the noticee firm at the time of filing of impugned Bills of Entries. Thus, the officers failed to follow the procedure as prescribed under Rule 12 of the Customs Valuation Rules, 2007, though they had opportunity to examine the same, especially when the noticee firm had come forward to provide all the details that could have established their bonafide and the same were at the same time not called for by the investigating officers.

Challenging the Search proceedings undertaken at Hind Terminal Pvt. Ltd., CFS, Mundra on 05.06.2021.

22. The noticee firm further says and submits that on perusal of the show cause notice, it is apparent that the investigation has relied on three panchnamas. The details of the same are enumerated below for the sake of better understanding of the investigation.

22.1 RUD 01: A search was carried out at "Shop No. 06, Near Kinetic KMS gate, opposite Shri Ram Way Bridge, Beside Sardarji Dhaba, Mundra under panchnama dated 11.06.2021 (RUD-01) and a truck having goods of the importer M/s M. Impex while on its way to onward destination was intercepted and brought under panchnama to Hind CFS. The details of which are as under;

1. Goods of Intercepted Truck No. MH46AR0499
2. Goods Found During Search From Shop No. 6, Near Kinetic KMS Gate Opp. Shriram Weigh Bridge.

22.2 During the search, 120 cartons were found from the said premises which appeared to be Mobile Accessories and it appeared that the same had been imported by M/s M Impex Trading Company.

22.3 Thereafter, Sh. Omprakash Godara, who was looking after the goods at that premises informed that 389 cartons were loaded the previous night from the same premises in Truck No. MH46AR0499 which is destined to New Delhi. Accordingly, truck no. MH46AR0499 was intercepted near Maruti Bombay Punjab hotel at NH-41, Chhadavada, Gujarat, 48 Kms away from Gandhidham, Gujarat. The proceeding were recorded under panchnama dated 11/12.06.2021 (RUD-02). Driver confirmed that the goods were loaded a shop near sardar dhaba, Mundra and going to Delhi.

22.4 (RUD-03). Goods imported under BE No. 4104614 dated 27.05.2021 were examined/inspected under panchnama dated 05.06.2022.

23. The noticee firm says and submits that the demand is broadly divided into three parts and the details of the same have been incorporated in table as discussed at para 5.1 of the show cause notice. The same are elaborated below, so as to point out the demand separately and the evidences adduced by the investigation in the present show cause notice.

23.1. Demand at Sr. No. 1 to 8 of the table relates to goods imported by the noticee firm. The demand has been raised on the basis of the Chartered Engineer. The details of the same have also been incorporated at para 5.2 of the show cause notice.

23.2. Demand at Sr. No. 9 & 10 have been elaborated at para 5.2 of the SCN by placing on records that firstly, 120 cartons found from Shop No. 6, Sardar Dhaba, Mundra and secondly goods seized from intercepted truck. RUD 01 and RUD 02)

24. The noticee firms says and submits that on perusal of the contents of the show cause notice, the facts are further incorporated on the basis of the below mentioned facts.

24.1 The details of the examination of goods imported under Bill of entry No. 4104614 dated 27.05.2021 stuffed in container No. BMOU5408620 was undertaken through panchnama dated 05.06.2021. The noticee firm further says and submits that on perusal of the panchnama it is observed that the said panchnama has been undertaken for visual inspection of the goods imported by the noticee firm vide Bill of Entry No. 4104614 dated 27.05.2021.

24.2 However, on close examination of the contents of the show cause notice and the RUDs annexed with the show cause notice, it is noticed that the investigation had not undertaken visual inspection related to the remaining 7 containers, which are mentioned at Sr. No. 2 to 8 of para 1 of the impugned show cause notice.

24.3 The notice firm further says and submits that the show cause notice has at para 2.1 mentioned that the search was conducted at the premises of the importer M/s M Impex Trading Company and CB, M/s Sark Enterprises by the Delhi Preventive (Customs). Accordingly, examination of goods mentioned in Table 1 was done under panchnama. The details of goods found is as under and accordingly, provided the details of all the Bills of Entries as mentioned in Table 1 of the show cause notice. However, on perusal of the RUDs alongwith the impugned notice, it is observed that there is no panchnama in the RUDs, which provide the details of goods mentioned in Table 1 claimed to be done under panchnama.

24.4 Further, the noticee firm says and submits that on perusal of the contents of para 4 of the impugned show cause notice, it has been informed that the goods imported under the eight containers have been placed under seizure under various seizure memos. However, it is noticed that there are no details of seizure memos in the show cause notice nor such seizure memos have been made a relied upon documents.

25. The noticee firm says and submits that a panchnama is the single most important document in the context of search and seizure operations. To bring uniformity related to passing of order under Section 110 of Customs Act, 1962 and Para 1.1 of Chapter 15 of the Customs Manual 2015, CBEC has issued instruction bearing No. 01 dated 8th February 2017, which inter alia prescribes the procedure required to be followed by the officers where goods are being held- up/seized by the field formations only under panchnama and separate orders for seizure of goods are not being passed. The Hon'ble Delhi High Court, in a recent order, has held that a panchnama is a statement by panchas (witnesses) and cannot be taken to be an order passed by the proper officer under Section 110 of the Customs Act, 1962. In view of the above judgment, CBEC had proceeded to issue instruction bearing No. 01 dated 8th February 2017. (Copy of the instruction is annexed with this defence submission and marked as Exhibit "B" to the submission.

26. The noticee firm says and submits that the instructions stipulate adherence to whenever goods are being seized, in addition to panchnama, the proper officer must

● also pass an appropriate order (seizure memo / order / etc.) clearly mentioning the reasons to believe that the goods are liable for confiscation.

27. The noticee firm says and submits that inspite of clear instructions by the CBEC to adhere to process related to seizure of goods, the investigation have neither drawn panchnama showing seizure of goods nor have they have seized the goods or in case, even if it is assumed that the seizure memo was issued the same have not been made a relied upon document in the instant case. Thus, on the basis of the above submissions, it gets substantiated that there was neither a panchnama drawn for verification of the goods imported by the noticee firm nor there have been a document placed on record which substantiate seizure of goods.

28. Considering the above facts, the noticee wishes to submits that from the above facts, it is forthcoming that the examination of the containers was not done by the officers at any time of the investigation, as is apparent from the contents of the impugned show cause notice. Secondly, it is also observed that the goods covered under the show cause notice were never placed under seizure. Thus, the allegations made related to examination of goods and seizure of goods are not sustainable as the same lacks evidence and all the allegations have been made in the show cause notice on assumptions and presumptions.

29. The noticee firm therefore says and submits that in the instant case the verification of the goods imported by the noticee firm as mentioned at table 1 of the show cause notice was never undertaken by the investigation during the entire period of investigation. Hence, the goods imported by the noticee firm cannot be considered to be liable for confiscation and as such the proposal for confiscation of goods imported by the noticee firm in the above mentioned show cause notice is required to be set aside as the same being improper, illogical and contrary to the provisions of law.

Improper method of Revaluation of the cargo undertaken by Shri Varun Chandok, Empaneled Chartered Engineer.

30. The noticee firm says and submits that the valuation of the imported goods in question has been derived by Shri Varun Chandok. However, the methodology of deriving the value of the goods imported by the appellant, does not appear to be proper in view of the following reasons.

a. The worksheet prepared by Shri Varun Chandok, Chartered Engineer, New Delhi to enhance the value has not been provided with the show cause notice and the valuation data given by Shri Varun Chandok, Chartered Engineer, New Delhi have been incorporated in various tables in the show cause notice. Thus, it is not known as to whether the value derived by Shri Varun Chandok, Chartered Engineer and the value mentioned in the show cause notice are same and the said values have been incorporated in the show cause notice properly or otherwise.

b. Secondly, Shri Varun Chandok in his valuation report has stated that market survey was conducted for wholesale price of the products imported by the noticee firm and identical / similar items were found with wholesale dealers and on requests, quotations were obtained. However, copy of the request made to such wholesale dealers by Shri Varun Chandok is not a part of his report. Moreover, he has enclosed few copies of said quotations as "Annexure C " to his report and not the details of all the items involved in the present show cause notice. Thus, it becomes necessary to examine the procedure adopted by him to obtain the quotations and a detailed submission cannot be made by the

noticee firm until all such details have been placed on record either by the Chartered Engineer or the investigating agency.

c. As per his report, he has made best efforts to obtain prices from wholesaler by communicating through WhatsApp and has attached few copies as "Annexure D". However, the details of all such WhatsApp chats are required to be examined during the adjudication proceedings. It therefore becomes imperative to obtain the details of the said chat, for the simple reason that the entire demand of under valuation has been based on the valuation certificate issued by the learned Chartered Engineer.

d. Further, Shri Varun Chandok has certified in his report that the prices were compared with local market survey prices and e-commerce website prices. However, no such price comparison / market survey report has been made a part of his report.

e. Moreover, Shri Varun Chandok or the investigating authority has failed to provide his expertise for issuance of such a valuation certificate for mobile accessories, which can establish his capability to submit valuation certificate of wholesale mobile accessories.

f. Moreover, his appointment for providing valuation, itself is under a shadow of doubt as it has not been placed on record as to why the Chartered Engineer was appointed to provide a valuation certificate for mobile accessories and under what authority did the investigating agency, appoint a Chartered Engineer, when the investigating officers could have easily on their own derived the value by following the procedure as prescribed under Rule 12 of the Customs Valuation Rules, 2007.

31. The noticee firm further says and submits that without accepting the allegations made in the show cause notice, even for the sake of argument, the said allegations of undervaluation of the goods is assumed to be correct, then the investigation has to provide the details of the transactions which according to them appear to be undervalued, for the simple reason, it can never be the case of the investigating officers that all the items imported by the noticee firm are undervalued. The investigation has assumed that all the transactions of purchase and sale are substantially undervalued, without placing on records the facts that the suppliers have on earlier occasions imported similar goods at the same price, but the same have never been compared with the goods covered under the impugned Bills of Entry nor have they rejected the transaction value. This has resulted in violation of principles of natural justice as the noticee firm has failed to understand the procedure adopted by the investigation for making a case of undervaluation, which have been without authority of law and has been arbitrarily undertaken.

32. Thus, as the allegations made in the Show Cause Notice are primarily based on the statements of certain persons and certificate of Chartered Engineer, the same need to be proved in terms of Section 138B of the Customs Act, 1962 and has to pass through the test veracity, so as to rely upon the same during the adjudication proceedings in respect of the above mentioned show cause notice.

33. It is a settled legal position that Cross examination of the Chartered Engineer is mandatory, where the valuation report given by the Chartered Engineer is one of the main evidence. The noticee firm in support of his claims have relied on the judgment of Hon'ble CESTAT, Ahmedabad Bench in the case of Parthiv Vijaykumar Dave vs CC, Jamnagar. (Customs Appeal No. 13000 of 2019.)

34. The noticee firm submits that, the department during the investigations has recorded various statements of Proprietor, Customs Broker, transporters and has relied heavily on the certificate issued by Chartered Engineer but the same are improper in as much as the said statements are not in consonance with the documents submitted by the noticee firm and in all the statements, the persons who have given the statement have remained silent on the allegation of under valuation made by the investigation. The statements of various persons relied upon in the impugned notice and Certificate of Chartered Engineer referred and relied upon in the Show Cause Notice are not in corroboration with the allegations of under valuation made against the noticee firm. This act of department is not in accordance with Charter of Citizens as well as principle of fair trial. The noticee firm wants to rely and refer the said statements and the Certificate issued by the Chartered Engineer in the process of adjudication and therefore, to establish the said statements and Chartered Engineer certificate in terms of Section 138B of the Customs Act, 1962 as evidence, the deponents of statements and the Chartered Engineer who has issued valuation certificate needs to be cross examined before this Hon'ble Authority. The reason for the seeking cross examination has been submitted in detail in respect of Shri Varun Chandok, Chartered Engineer in the foregoing paragraphs and have also been requested through a separate letter and therefore the same are not repeated for the sake of brevity.

35. The noticee firm further submits that the investigating officers had for the reasons best known to them, ignored the procedure prescribed for appointment of Chartered Engineer and in absence of any such instruction from Board, arbitrarily proceeded to appoint a Chartered Engineer to undertake valuation of mobile accessories imported by the applicant, however, the Board has time and again issued guidelines for appointment of a Chartered Engineer only where the issue relates to valuation of a second hand capital goods and not for any other reason. Thus, the noticee firm says and submits that there was no need whatsoever, to appoint a Chartered Engineer, when the valuation could have been undertaken by the appraising group on the basis of further evidences required by them for the assessment of the goods imported by the noticee firm under the subject Bills of Entries.

36. The noticee firm further submits and prays that they have made a separate request for cross examination of witnesses which may be allowed in respect of the following persons, before the subject show cause notice is taken up for adjudication proceedings.

- a. Shri Varun Chandok, Chartered Engineer in view of the reasons submitted in the foregoing paragraphs.
- b. Shri Ketan Sood, Employee of M/s. GND Cargo (RUD 07). The cross examination is required in respect of Shri Ketan Sood, as he has in his statement dated 19.07.2021 stated that he was informed by Shri Narendra Narula and Shri Prince that Earphones have been declared and Bluetooth earphones / headphones have been found that during examination of SIIB and that he did not have any first hand knowledge. However, no such facts are coming out from the statement of Shri Narendra Narula and Shri Prince. Hence, cross examination of Shri Ketan Sood may be allowed.

C. Cross examination of Shri Narendra Narula and Shri Prince may also be allowed, to ascertain as to whether they had provided any such information to Shri Ketan Sood.

37. The noticee firm says and submits that from the above submissions, it is established that all the allegations made against the noticee firm are full of assumptions and presumptions and all the evidences adduced by the investigation

are baseless, which can by no stretch of imagination made applicable to the noticee firm. The noticee firm says and submits that considering the above submissions the entire case made up by the investigation is required to be set aside as the same being against the legal provisions and raised by gross misuse of powers entrusted on the officers for proper implementation of law.

38. The noticee firm says and submits that the investigation has at para 6 of the impugned show cause notice taken support of Section 46, Section 111(f), Section 11(m), Section 112 and Section 117 of the Customs Act, 1962 discussed various legal provisions and an made an attempt to make allegations against the noticee firm and other persons. The noticee firm will be making their submissions related to above provisions at the time of considering the allegation of violation if any, at the time of making submissions against each allegation separately. Hence, a detailed submission is not made at this stage of the submission.

39. The noticee firms says and submits that as per Section 46(4) of the Customs Act, 1962 reads as under:

(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, 1[and such other documents relating to the imported goods as may be prescribed].

2[(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.]

40. The noticee firm says and submits that they had while presenting the impugned Bills of Entry made and subscribed to a declaration as to the truth of the contents of all such bill of entry and in support of such declaration, had produced to the proper officer the invoice and all other documents which have been prescribed to be submitted by any importer. Further, the noticee firm had ensured the accuracy and completeness of the information given therein; the authenticity and validity of any document supporting it; and 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.

41. The noticee firm says and submits that the investigating agency has not disputed any of the documents nor they have raised any objection to the payment made to the foreign supplier against all the impugned imports made by the noticee firm. The noticee firm says and submits that the investigation has at para 8.1 of the impugned notice discussed that as per Section 17(1) of the Act provides that "an importer entering any imported goods under Section 46, shall, save as otherwise provided in Section 85, self assess the duty, if any, leviable on such goods. The noticee firm says and submits that it is on the basis of the above provisions, the investigation has placed on records that the Government has placed huge reliance on the self-assessment made by the importer.

42. The noticee firm says and submits that it is only on the basis of above provisions, the investigation has concluded that the noticee firm has mis-declared the goods in terms of value and quantity and evaded Customs Duty and that the noticee firm by the above act of omission and commission have contravened the provisions of Section 46(4) and 46(4A) of the Act.

43. The noticee firm says and submits that the investigation has at para 7 of the impugned show cause notice, discussed the summary of investigation and the contents of the summary are the statements of various person as discussed at para 7.1 to 7.4 of the impugned show cause notice. The noticee firm says and submits that there is nothing forthcoming from the statements of various persons relied upon by the investigation and discussed by the investigation in the show cause notice which could substantiate that there was any misdeclaration of goods or value in respect of the goods imported by the noticee firm under the impugned Bills of Entries, still the investigating officers in absence of any incriminating evidence arising against the noticee firm, illogically alleged misdeclaration of value of the goods by the noticee firm.

44. The noticee firm further says and submits that as submitted above, even though the investigation did not get any substantial evidence and also did not seek any documents from the noticee firm and also did not investigate the payment details made to the foreign supplier, illogically has at para 8.1 of the impugned show cause notice, placed on records the provisions of Section 17(1) of the Customs Act, 1962, which provides that "an importer entering into imported goods under Section 46, or an exporter entering any imported goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods". Therefore, it has been observed by the investigation that the responsibility to correctly assess duty has been cast on the importer and that the Government has thus, placed huge reliance on the self assessment made by the importer and that it appears that the noticee firm had mis-declared the goods in terms of value and quantity and evaded Customs Duty and that the noticee firm by their aforesaid act of omission and commission had, thus, contravened the provisions of Section 46(4) and 46(4A) of the Act; and that Section 111(m) of the Customs At, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this act, are liable to confiscation as the noticee firm had mis-declared the goods.

45. The noticee says and submits that, if the investigation had a doubt that the value declared by the noticee firm was not proper, the Proper officer, for the purpose of verification, had the power to ask the noticee firm to produce any document or information, whereby the duty leviable on the imported goods or export goods could have been ascertained, as stipulated under section 17(3) of the Customs Act, 1962, which was not done by the officers for the reasons best known to them.

46. The noticee firm further says and submits that the proper officer was required to record reasons for having on truthfulness of declared value and simple doubt alleging misdeclaration value in the instant case was not sufficient. The noticee firm says and submits that the doubt must be reasonable i.e. degree of objectivity and basis / foundation for suspicion must be based on 'certain reasons' and not a simple doubt can be a base for making serious allegations against them. The noticee firm further says and submits that these doubts must arise after preliminary enquiry from importer has been conducted and his explanation is not accepted. The recording of reasons has to be read with Rule 12 of the CVR, 2007, and if the explanation is not accepted, specific grounds of rejection have to be informed to the importer in writing, which has not been done in the instant case, thus making the entire allegation of violation of Section 17(1) and Section 46(4) and 46(4A) of the Act ibid not only illogical but also the officers have ignoring the basic principles of Section 17(3) of the Customs Act, 1962, which casts responsibility on them to undertake further exercise in case they have a doubt related to valuation or classification or to the genuineness of the documents. The investigating officers have ignored the basic principles required to be followed by them for undertaking assessment of imported goods and have thus, undertaken an act which is in excess of powers granted to them or have blindly

ignored the provisions of Section 17(3) of the Act ibid, thus, making the entire investigation not only illogical but also illegal. The noticee firm therefore says and submits that all the allegations made by the investigation are not only illogical and without authority of law and as such requests that all such allegations made by the investigating officers may be set aside considering the same as beyond the purview of law and without any clinching evidences.

47. The noticee firm further says and submits that the investigation has at para 8.1 of the impugned show cause notice alleged that as the noticee firm had mis-declared the goods, with the intention to evade proper Customs duties, the same, are liable for confiscation under Section 111(m) of the Customs Act, 1962. The noticee firm says and submits that it is difficult to understand as to how the investigation has reached to the conclusion that the goods imported by the noticee firm are liable for confiscation under Section 111(m) of the Customs Act, 1962, when especially the investigation has not undertaken the process as stipulated under Section 17(3) of the Customs Act, 1962 and have baselessly relied on the report of the Chartered Engineer to falsely implicate the noticee firm. The noticee firm says and submits that otherwise also proposal of confiscation of goods imported by the noticee firm is required to be discarded as the notice does not have any seizure memo and as such the goods covered under the present cause notice were never seized by the Customs Officer. Thus, the proposal for confiscation of goods that have not been seized cannot be invoked in the present case.

48. The noticee firm therefore says and submits that the proposal for confiscation of goods imported by the appellant under Section 111 (m) of the Customs Act, 1962 is completely baseless, illogical and without any supporting evidence and as such the same is required to be set aside in interest of justice.

49. The noticee firm further says and submits that considering the above submissions, the noticee firm wishes to submit that the impugned show cause notice alleging undervaluation of the goods at para 9.1, redetermining the value at Rs. 5,07,43,266/- and proposing to hold the goods liable to confiscation under Section 111(m) of the Customs Act, 1962 is illogical and improper and has been proposed by blatantly ignoring the provisions of the Customs Act, 1962 and as such the same is required to be set aside in view of the following submissions.

a. The investigating officer has initiated action against the noticee firm on the basis that intelligence was gathered that the goods had been mis-declared by the noticee firm and as such the goods imported under subject Bills of Entry were put on hold by the officer of SIIB Mundra for detailed examination, however, the investigation has nowhere highlighted the details of intelligence which forced them to undertake investigation in a dubious manner only to proceed against the noticee firm to make out a case on the noticee firm without any clinching evidence.

b. The investigation / customs officers was required to follow the provisions of section 17(3) of the Customs Act, 1962, which stipulates that for the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information. The investigation did not follow the provisions of Section 17(3) of the Customs Act, 1962 and accordingly, there was a breach of act on their part, while performing

their duty and accordingly, they should be asked the reason for not following the provisions of Section 17 (3) of the Customs Act, 1962.

c. The competent authority approved the proper valuation of the goods as mentioned at para 5 of the SCN, however, the details of the competent authority and the procedure adopted to hire the Chartered Engineer for appointment to undertake valuation of the goods in question is required to be placed on records which has not been done in the instant case, thus, making his appointment without any authority of law, especially when his technical Expertise and methodology to undertake valuation of imported goods in the instant case. All such facts have been placed on records while issuance of the instant notice.

d. The investigating officers were required to follow the procedure as prescribed under the provisions of Section 17(2) of the Customs Act, 1962 and Rule 12 of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007, however, they arbitrarily first derived a value of 13,35,69,699/- (Para 4 of the SCN), the methodology and the source of which has not been discussed in the SCN.

e. Further, the competent authority proceeded to appoint a Chartered Engineer, however, the reasons for appointing a Chartered Engineer have not been placed on records, especially, where the law does not permit a Chartered Engineer to be appointed for valuation of the imported goods, when all the documents are available with the assessing / investigating officer and the valuation can be done on their own under the provisions of Section 17 itself.

f. The qualification of the Chartered Engineer and his capability to ascertain the value of the mobile accessories have not been placed on record and the value ascertained by him has also not been placed on record and his value has been copied and pasted in the show cause notice. The investigating agency or the Commissioner issuing the show cause notice have not even taken pain to examine the evidences placed by him to reach to the value. A detailed submission have been given in the foregoing paragraphs, which establish that the value derived by him are purely on assumptions and presumptions and cannot be considered as a true and fair value. The noticee firm has sought his cross examination and a separate request has been made with the Hon'ble adjudicating authority.

g. The investigation has inappropriately and without placing on record plausible evidences, have proceeded in an mechanistical manner to observe that the noticee firm had failed to adhere to the provisions of Section 46(4) and 46(4A) of the Customs Acct, 1962, which had resulted in making the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and therefore making the Proprietor of the noticee firm liable to penalty under Section 112(a)(ii) of the Customs Act, 1962.

h. The goods placed under seizure vide panchnama dated 11.06.2023 are duty paid as the same relate to Bills of entries which were duly assessed and out of charge was given in respect of the said goods. The same cannot be considered as a part of the consignment for which investigation was undertaken for the simple reasons that the said goods were never assessed and the goods seized were prior to the assessment of the subject 8 Bills of Entries. Thus, the goods as mentioned at Sr. No. 9 and 10 on which duty has been demanded are already duty paid and the said goods were stored in the godown after out of charge was given in respect of earlier Bills of Entries and as such the demand on such goods is not sustainable and is required to be dropped in interest of justice.

50. The noticee firm says and submits that there is nothing on record to evidence deliberate misdeclaration on part of the noticee firm or the proprietor of the firm, then in absence of any such grounds the invocation of Section 111(m) of the Customs Act, 1962 is not permissible in the eyes of law. Moreover, if such a practice is followed by the investigation, then in such case each import where value is enhanced will fall under the purview of Section 111(m) of the Customs Act, 1962. Thus, only because there was a difference in the quantity of goods which has come to the notice of the officers and the importer is not aware then in such a situation, each case cannot invite invocation of provisions of section 111(m) of the Customs Act, 1962. The notice in support of their submissions wishes to rely on the following case laws, wherein it has been held that where there is nothing on record to evidence deliberate misdeclaration on the part of the importer, then in such case the provisions of section 111(m) of the Customs Act, 1962 cannot be invoked.

50.1 Judgment of Hon'ble CESTAT, Chennai Bench in the case of N.C. John & Sons (P) Ltd. versus Commissioner of Customs & Central Excise as reported at 2009 (242) E.L.T. 281 (Tri. Chennai).

50.2 Judgment of Hon'ble CESTAT, Mumbai Bench in the case of Tetra Pak India Pvt. Ltd. versus Commissioner of Customs (Import), Nhava Sheva as reported at 2019(370) ELT 1289 (Tri. Mumbai.)

50.3 Hon'ble CESTAT, Principal Bench, New Delhi in the case of Kirti Sales Corpn. Versus Commissioner of Customs, Faridabad as reported at 2008 (232) ELT 151 (Tri. Delhi) had held that Misdeclaration cannot be understood as same as wrong declaration made bona fide - Declaration made by appellant on basis of documents supplied by foreign supplier and there was no intentional or deliberate wrong declaration on its part so as to attract mischief of Section 111(m) of the Customs Act, 1962 and accordingly set aside confiscate, fine and penalty.

50.4 The noticee firm says and submits that the position of law is now settled by the Supreme Court in the case of Akbar Badruddin Jiwani - 1990 (47) E.L.T. 161 (SC) wherein it was held that a penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law or is guilty of contumacious or dishonest act and acts in conscious disregard of its obligation.

(Copy of judgments are annexed with this submission and marked as Exhibit "C" to the SCN colly.

51. The noticee firm says and submits that in the instant case, there is nothing to show that the noticee firm or the noticee had acted deliberately in defiance of law or acted in disregard of its obligation. But, in this case, the breach flows from a bona fide belief of the noticee firm that the consignment did not contain extra goods as had been detected by the investigation during the examination of the cargo and for that extra cargo the noticee firm had not made any extra amount of payment to the foreign supplier.

52. The noticee firm in view of the above submissions says and submits that the proposal for confiscation of goods under Section 111(m) of the Customs Act, 1962 is not sustainable in the eyes of law and as such the same is required to be set aside in interest of justice.

53. The noticee firm further says and submits that as there is no misdeclaration so far as the value or description of the goods is concerned and as there is no allegation made by the investigation that the alleged misdeclaration was deliberately done by the noticee firm or the noticee to evade payment of Customs duty, then in such case the goods cannot be held to be liable for confiscation.

54. The noticee firm further says and submits that in view of the above submissions duly supported with judicial precedents, as the goods cannot be held to be liable to confiscation, then in such a case the proposal for imposing redemption fine on the noticee firm is not sustainable and as such the same deserves to be set aside in interest of justice.

55. The noticee firm further says and submits that the present demand is otherwise also not sustainable as the investigation has not challenged the assessment of the Bills of Entries covered in the present show cause notice. The noticee firm says and submits that it is a settled legal position that Demand of differential duty without challenging original assessment of bills of entry is not sustainable. The noticee firm in support of their submission wishes to rely on the judgment of Hon'ble CESTAT, Kolkata Bench in the case of RUMEN DEY Versus COMMISSIONER OF CUSTOMS (PREV.), SHILLONG as reported at (2023) 10 Centax 174 (Tri.-Cal), wherein it was held that Demand of differential duty without challenging original assessment of Bills of entry is not sustainable. (A copy of the judgment is annexed with this submission and marked as Exhibit "D" to this submission.)

56. The noticee firms says and submits that the entire demand of differential duty has been made without challenging original assessment of Bills of Entries and as such the demand is not sustainable on these grounds also.

57. In view of the above submissions, the noticee firm therefore says and submits that considering the above averments, the noticee firm wishes to submit that the impugned show cause notice alleging undervaluation of the goods at para 9.i, redetermining the value at Rs. 5,07,43,266/- and proposing to hold the goods liable to confiscation under Section 111(m) of the Customs Act, 1962 is illogical and improper and has been proposed by blatantly ignoring the provisions of the Customs Act, 1962 and as such the same is required to be set aside alongwith proposal for demanding differential / short paid duty amounting to Rs. 1,85,00,324/- on the seized goods under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

58. The noticee firm further says and submits that in view of the above submissions as the demand of the differential duty of Rs. 1,85,00,234/- itself is not sustainable, the noticee firm says and submits that the proposal of adjustment and appropriation of differential duty is also required to be set aside in interest of justice.

59. Considering, the above submissions, the noticee firm says and submits that as they have correctly declared the value of the goods imported under various Bills of Entries, the proposal of imposition of penalty on the noticee firm is also required to be set aside and therefore prays that the proposal for appropriation of the same against Bank Guarantee amounting to Rs. 87,45,386 and Rs. 15,15,000/- may be set aside, especially when no penalty has been proposed on the noticee firm.

60. The noticee firm says and submits that as the entire investigation is based on baseless allegations and undertaken in an illegal manner without following proper procedure of seizure of goods proposed to be placed under seizure and also placing on records incomplete / incorrect facts to influence the adjudication proceedings, the noticee firm prays that as requested by them cross examination of the following persons may be allowed to them before the matter is undertaken for adjudication proceedings.

- a. Shri Varun Chandok, Empaneled Chartered Engineer in view of the reasons discussed at para 30 of this submission.

b. Shri Monu, Employee of M/s. Haryana Parivahan Mundra, Transport Contractor and Commission Agent, as from his statement is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Monu, that there was any irregularity in the goods imported by the noticee firm.

c. Shri Rajan Arora, one of the partners of M / s Sark Enterprise as from his statements it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Rajan Arora, that there was any irregularity in the goods imported by the noticee firm.

d. Shri Prince Rana, Employee of M / s GND Cargo as from the perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Prince Rana, that there was any irregularity in the goods imported by the noticee firm.

e. Shri Ketan Sood, Employee of M/s. GND Cargo as from perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Ketan Sood, that there was any irregularity in the goods imported by the noticee firm.

f. Shri Narendra Narula, Proprietor, M/s. GND Cargo as on perusal of his statement, it is observed that from the said statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry by the noticee firm nor any facts have been stated by Shri Narendra Narula, that there was any irregularity in the goods imported by the noticee firm.

g. The panchas who had remained present during drawl of panchnama as relied upon in the show cause notice at RUD-1, RUD 2 and RUD 3 to know the genuineness of the panchas and also to ensure whether the panchhnama proceedings had occurred in their presence and they were aware why the panchnama proceedings had been undertaken by the investigation.

h. The officers who had undertaken panchnama proceedings for examination of goods and seizure of the goods imported by the noticee firm and the officer who had recommended the involvement of Empaneled Chartered Engineer to examine the purpose of not examining the goods and not issuing seizure memo and ordering seizure without seizure memo and also to know the reasons the need of recommendation of Chartered Engineer, when the case could have been resolved only by following the procedure as prescribed under Rule 12 of the CVR, 2007.

61. The noticee firm says and submits that this submission may be considered as interim reply as the noticee firm has requested for cross examination of witnesses and will be submitting their final reply once the cross examination of the witnesses is allowed to the noticee firm."

10.2 Shri Rahul Kapoor vide his letter dated 19.12.2023 submitted his defence reply as under:

1. I, Rahul Kapoor, Proprietor of M/s. M Impex Trading Co., Shop No. H No. - 2, KH No. 20/6, Tek Chand Colony, Nilothi Extn., West Delhi - 110041 (hereinafter referred to as the "noticee" for the sake of brevity) have been called upon to show

cause as to why Penalty should not be imposed upon me as a Proprietor of M/s. M Impex under Section 112(a)(ii) of the Customs Act, 1962.

2. The noticee says and submits that penalty has been proposed on him due to the reason that a show cause notice has been issued to M/s. M Impex Trading Co., New Delhi (herein after referred to as "the noticee firm") proposing seizure of goods valued at Rs. 71,93,814/- (Rupees Seventy One Lakhs Ninety Three Thousand Eight Hundred Fourteen only) as detailed at Para 5.1 of the show cause notice on the basis of certain baseless allegations that the goods imported under various Bills of Entries covered under the impugned show cause notice were grossly undervalued as well as mis-declared, and accordingly the value of the said goods was required to be rejected under Rule 12 of CVR, 2007 and redetermined to Rs. 5,07,43,226/- under Rule 3 of CVR, 2017 and confiscation of the said goods as the said goods were liable for confiscation under Section 111(m) of the Customs Act, 1962 and proposal for imposition of redemption fine under Section 125 of the Act ibid, in lieu of confiscation should not be imposed. In addition to the same a proposal for recovery of differential / short paid duty under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962 has also been made on the Proprietorship firm.

3. The noticee further says and submits that as the importer firm had deposited the differential Customs duty of Rs. 1,74,90,772 already paid on goods at the time of clearance of goods, a proposal for adjustment of the same by way of appropriation has also been proposed in the notice besides appropriation of penalty, fine and any other Customs dues against the Bank Guarantees amounting to Rs.87,45,386/- and Rs.15,15,000/- executed by the noticee firm at the time of clearance of goods.

4. The noticee says and submits that the present cause show notice has arisen due to the facts that the investigation has alleged undervaluation in respect of the goods imported by the noticee firm. However, from the contents of the notice, it is apparent that the investigation has made a case, only to conceal their incorrect intelligence, according to which, the goods imported by the noticee firm were mis-declared, however, on investigation it was observed that there was no mis-declaration at the end of the noticee firm in as much as there was no discrepancy in description of the goods and the value declared by the noticee firm in the Bill of Entry when compared with the purchase invoices and the supporting documents.

5. The noticee says and submits that to cover up the lapse on the part of the incorrect intelligence, the investigating officers proceeded to make a case of undervaluation against the noticee firm by adopting dubious methods, which is neither permitted to them under the Customs Act, 1962 or the rules framed thereunder as the said action on the part of the investigation is without following the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as "CVR, 2007" for the sake of brevity).

6. The noticee further says and submits that the investigation has grossly erred in not following the Customs Valuation Rules, 2007 prior to disputing the valuation declared by the noticee firm. Thus, the entire action on the part of the investigation to dispute the value declared by them in imports covered under the present notice is not only arbitrary but also beyond the provisions of law.

7. The noticee says and submits that in view of the above submissions the allegations made by the investigation are required to be discarded as the same being illogical and beyond the purview of law.

8. The noticee says and submits that the entire investigation has been undertaken by the officers of the SIIB by blatantly ignoring the provisions of the Customs Act, 1962 and adopting the procedures which are not permitted in law in as much as they have arbitrarily proceeded to investigate the matter, when there was no need to investigate the present matter and the value could have been challenged by the officers at the time of assessment of the Bill of Entry.

9. The noticee says and submits that M/s. M Impex Trading Co., Shop No. _____ (New address is a Proprietorship firm) and is inter alia holding IEC No. DNIPK9689B. The noticee firm is primarily engaged in the import of mobile accessories and have been in the business for since 2018-19. The mobile accessories imported by them are sold to dealers trading in wholesale business in Delhi and Mumbai. None of the goods imported by them are branded goods, moreover, there is no restrictions imposed on the goods imported by the noticee firm. The above facts have not been disputed in the Show cause notice, hence, the issue in the present case is related to allegation made on the noticee firm for import of goods covered under the Bills of Entry covered in the show cause notice by adopting under valuation.

10. The noticee says and submits that the investigation, to substantiate the allegation has ignored the invoice and purchase documents submitted by the noticee firm, which is contrary to the provisions of Rule 12 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 (hereinafter referred to as "CVR, 2007".).

11. The noticee further says and submits that as per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods, that is, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

12. The noticee further says and submits that Rule 12 of CVR, 2007, contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. The 'reason to doubt' however does not mean 'reason to suspect'. A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. The noticee says and submits that the investigation has failed to place on record the material evidence which resulted in reasoning to doubt the imports made by the noticee firm in respect of the Bills of Entries covered in the present show cause notice. The noticee says and submits that as the investigation has failed to place on record the material on the basis of which 'reason to doubt' had occurred, the initiation of the investigation itself happens to be based on baseless facts that forced the officers to believe the dubious so called "reason to doubt". The noticee therefore says and submits that the source of the initiation of investigation itself is based on baseless inferences and as such the said investigation is required to be considered to be initiated on baseless and in a concocted manner and deserves to be set aside in interest of justice.

13. The noticee therefore says and submits that Rule 12 of CVR, 2007 empowers the department to doubt the truth or accuracy of the declared value, and

under such circumstances, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods and only in case they have not received such information or documents or that they have received the information which is not satisfying they may proceed to adopt procedure as prescribed under the CVR, 2007 to reject the transaction value. However, the procedure prescribed under the provisions of Rule 12 of the Rules ibid, were not followed by the investigating officers and they in a dubious manner arbitrarily and illogically proceeded to doubt the transaction value declared by the noticee firm.

14. The noticee says and submits that they had submitted all the documents required to be furnished by the importer at the time of import of goods and made proper declarations while filing the Bills of Entries.

15. The noticee says and submits that the officers did not dispute the said documents submitted by the noticee firm at the time of filing of the Bills of Entries, nor did they call for any further information from the noticee firm, by which the noticee firm would have fully justified the genuineness of the transactions entered by them in respect of the subject eight bills of entries as mentioned in table 1 of the show cause notice.

16. The noticee says and submits that, the investigation had available with them the payment details made by the noticee firm in respect of the goods imported by the noticee firm in respect of the subject eight bills of entries as mentioned in table 1 of the show cause notice and they had never doubted the payment made by the noticee firm nor have they alleged in the entire show cause notice about any transactions made in addition to the value declared in the Bills of Entries in respect of the subject eight bills of entries as mentioned in table 1 of the show cause notice. Thus, when the Revenue officers have neither disputed the genuineness related to description of the goods, value of the goods, quantity of the goods, country of origin of the goods, invoice and packing list of the goods, then in such case the transaction value can be disputed only after fulfilling the procedure as described under Rule 12 of the CVR, 2007.

17. The noticee therefore says and submits that the methodology and manner of disputing the value of the goods imported under the subject eight bills of entries as mentioned in table 1 of the show cause notice becomes illogical and beyond the authority of law. The instant notice is therefore required to be set aside on these grounds alone by considering the same as illogical and illegal in interest of justice.

18. The noticee further says and submits that, thus, while the power to reject transaction value based on the above listed reasons may be valid, it has to be exercised sparingly and only in cases where there lies genuine doubts related to the authenticity of the declared value. The said genuine doubt is missing in the instant case, as the investigation has failed to ask and call upon the noticee firm to furnish further information including documents to justify the declared transaction value, thus, resulting in blatant misuse of powers conferred upon the investigating officers in the Customs Act, 1962.

19. The noticee says and submit that it is only where the doubt of the proper officer after conducting examination of information including documents or on account of non- furnishing of information exists, that the procedure of further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable.

20. The noticee further says and submits that no such facts have been recorded in the subject show cause notice, in as much as the investigation has not placed on record the details of material evidence which has resulted in generation of doubt held by the investigating officer and in absence of any such material evidence being placed on record the doubt held by the officer related to the value of the imported goods becomes baseless, illogical finally resulting in unnecessary harassment to the noticee firm, where they had to pay heavy demurrage charges, deterioration of quality of goods imported by them and mental harassment due to casual manner of dealing with the investigation in the present matter by the investigating officers.

21. The noticee says and submits that in view of the above submissions, it is to submit that it is crystal clear that the investigation has failed to ask and call upon the noticee firm to furnish further information including documents to dispute the declared transaction value, rather the investigation instead of following the provisions of Rule 12 of the Valuation Rules, arbitrarily and without authority of law proceeded adopt the following dubious method to falsely implicate the noticee firm by adopting a procedure which does not authorize the officers to proceed in the manner, in which they were required to investigate the valuation aspect of the goods, however, they proceeded to make false charges against the noticee firm, which are enumerated below in brief for kind consideration at the time of adjudication proceedings.

22. The entire case is based on the following evidences, which are not relevant to reject the transaction value as per the Customs Act, 1962 and the rules framed thereunder. The reasons for the same are explained below:

- a. Search of premises of Transporter, M/s. Citizen Carrier of India, Mumbai under the panchnama dated 17.06.2021. No evidence has been placed in the file, which has been unearthed during the search undertaken at the premises of Transporter, M/s. Citizen Carrier of India, Mumbai under the panchnama dated 17.06.2021, which points out that the allegation made against the noticee firm is correct. Hence, the said part of the notice is not required to be entertained at the time of adjudication proceedings.
- b. Search of Customs Broker viz. at the office premises of CB M/s. Sark Enterprises, New Delhi was conducted under panchnama dated 09.07.2021 and statement of the CB was recorded.
- c. Searches conducted by Customs Preventive Delhi at the four different premises of the noticee firm as discussed at Para 2.4 of the SCN. No panchnama related to searches have been made a relied upon document in the SCN. Thus, there is no relevance related to the search undertaken at various premises shown at para 2.4 of the SCN.
- d. Statement of Monu, Employee of M/s. Haryana Parivahan Mundra, Transport Contractor and Commission Agent was recorded under Section 108 of the Customs Act, 1962 on 18.06.2021 (RUD - 04). From perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Monu, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.3 of the SCN, the facts emerging from the statement of Shri Monu has been discussed. The noticee says and submits that on perusal of the facts analysed by the investigation, it is apparent that there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm under Bills of Entries covered under the impugned show cause notice. The entire exercise

of placing the statement of Shri Monu, in the instant case is a futile attempt to make baseless allegations against the noticee firm and as such the same deserves to be discarded in interest of justice.

e. Statement of Shri Rajan Arora, one of the partners of M/s. Sark Enterprise was recorded under Section 108 of the Customs Act, 1962 was recorded on 09.07.2021 under Section 108 of the Customs Act, 1962. (RUD-05). From perusal of his statement also, it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Rajan Arora, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.1 of the SCN, the facts emerging from the statement of Shri Rajan Arora has been discussed. The noticee says and submits that on perusal of the facts analysed by the investigation, it is apparent that there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm under Bills of Entries covered under the impugned show cause notice. The entire exercise of placing the statement of Shri Rajan Arora, in the instant case is a futile attempt to make baseless allegations against the noticee firm and as such the same deserves to be discarded in interest of justice.

f. Statement of Shri Prince Rana, Employee of M/s. GND Cargo was recorded under Section 108 of the Customs Act, 1962 on 01.12.2021 (RUD-06). From perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Prince Rana, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Prince Rana has been discussed. The noticee says and submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm.

g. Statement of Shri Ketan Sood, Employee of M/s. GND Cargo was recorded under Section 108 of the Customs Act, 1962 on 19.07.2021. (RUD-07). From perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Ketan Sood, that there was any irregularity in the goods imported by the noticee firm. However, the investigation has incorporated incorrect facts in the show cause notice at the last para of para 3.4, wherein it has been mentioned in the show cause notice that on being asked which goods have been found during examination from the containers on hold by SIIB of the noticee firm, he stated that he was informed by Shri Narendra Narula and Shri Prince that Earphones have been declared and Bluetooth earphones / headphones have been found during examination of SIIB.....". The noticee says and submits that from the perusal of the impugned SCN and on comparison of the statement of Shri Ketan Sood, it is observed that the investigating agency has placed in correct facts in as much as Shri Sood has in statement nowhere stated that he was informed by Shri Narendra Narula and Shri Prince that Earphones have been declared and Bluetooth earphones / headphones have been found during examination of SIIB. Thus, the investigation has placed incorrect facts in the impugned show cause notice to make a strong case against the noticee firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Ketan Sood has been discussed. The noticee says and

submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm under Bills of Entries covered under the impugned show cause notice. The entire exercise of placing the statement of Shri Ketan Sood, in the instant case is a futile attempt to make baseless allegations against the noticee firm and as such the same deserves to be discarded in interest of justice.

h. Statement of Shri Narendra Narula, Proprietor, M/s. GND Cargo was recorded under Section 108 of the Customs Act, 1962 on 30.11.2021 (RUD-08). From perusal of his statement, it is observed that the said statement primarily relates to facts as to how he had come into touch with the noticee firm and that he was looking after Customs Clearance work and that he had given the Customs Broker work to Shri Rajan Arora of M/s. Sark Enterprises as he knew him earlier and on being asked about misdeclaration about the goods, he had stated that they were not having any idea about the same. However, from the entire statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry by the noticee firm nor any acts have been stated by Shri Narendra Narula, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Narendra Narula has been discussed. The noticee says and submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm.

(i) Statement of Shri Rahul Kapoor, Proprietor of the noticee firm was recorded under Section 108 of the Customs Act, 1962 on 17.08.2021 and 13.10.2021, he had stated that the goods were not mis- declared completely but partially to some extent the supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff. Further, when asked related to undervaluation of items imported by them, he had stated that they were ready to furnish the details of remittances made to overseas supplier in the past and in the case of these imports too and it could be verified that similar goods are imported at more or less similar prices at other ports in India too; that due to pandemic they had got huge discounts in the present shipment and as such the prices of the goods were at lower side.

23. The noticee says and submits, that from the statement of the above witnesses, no inference can be drawn that there was any undervaluation of goods imported by the noticee firm. Thus, the statements mentioned in the show cause notice do not have any relevance in the present case and are as such required to be discarded in interest of justice.

24. The noticee says and submits that though he had requested the investigating officers that they were prepared to furnish the details of remittances made to overseas supplier in the past and in the case of these imports too and it could be verified that similar goods are imported at more or less similar prices at other ports in India. The noticee says and submits that in view of the above, he had himself come forward to provide the details of remittances and all other documents, which could substantiate their bonafide, however, the same were not called for by the officers, which establishes that the investigating officers had no doubt about the declarations made by the noticee firm at the time of filing of impugned Bills of Entries. Thus, the officers failed to follow the procedure as prescribed under Rule 12 of the Customs

● Valuation Rules, 2007, though they had opportunity to examine the same, especially when the noticee had come forward to provide all the details that could have established their bonafide and the same were at the same time not called for by the investigating officers.

25. The noticee says and submits that the noticee firm had in response to the notice issued to the firm had made a detail submission related to:

25.1 Challenging the Search proceedings undertaken at Hind Terminal Pvt. Ltd., CFS, Mundra on 05.06.2021;

25.2 Improper method of Revaluation of the cargo undertaken by Shri Varun Chandok, Empaneled Chartered Engineer.

25.3 Sought cross examination of various witnesses as the entire investigation is based on baseless allegations and undertaken in an illegal manner without following proper procedure of seizure of goods proposed to be placed under seizure and also placing on records incomplete / incorrect facts to influence the adjudication proceedings.

26. The noticee says and submits that in view of the above factual position, the noticee is not making any submissions on the rejection of the value declared by the noticee firm and instead the investigation has resorted to certain baseless and dubious methods to arrive at a higher value on the basis of baseless evidences and as such the said submissions are not repeated for the sake of brevity.

27. The noticee says and submits that the investigation has at para 7.4 of the impugned show cause notice discussed the facts emerging from the Statement of the Proprietor in the noticee company. The noticee says and submits that on perusal of the facts emerging from the statement of the noticee, it is noticed that the investigation has concluded on the following observations:

► that the importing firm deals with Import and trading of glassware and mobile accessories;

► that they are selling goods on-line E-commerce site through M/s Amazon Merchant Id-6183154812;

► that they had imported 47 containers of mobile accessories so far;

► that M/s Sark Enterprises Mundra had been appointed as the CHA or Customs Broker;

► that the licence is held by Shri Rajan Arora C.B no. ACUFS0835MCH002;

► that he accepted that the goods are mis-declared partially to some extent and cited the reason that the supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff; (How these facts have come to the knowledge of the investigation has not been placed on record.)

► that regarding undervaluation of items he stated that similar goods are imported at more or less similar prices at other ports in India too; (This portion of the statement points out that there is no undervaluation)

► that due to Corona Pandemic, they had got huge discount in this shipment hence the goods are priced on the lower side;

► that the proprietor i.e. the noticee viz. Shri Rahul Kapoor has an established mechanism for import of goods namely "mobile accessories" from China;

► that they have been importing since long and are not new to this trade;

► that Shri Rahul Kapoor has accepted to the mis-declaration of quantity and in his Statement citing shortage of staff during Covid as the reason; (Factually incorrect as the noticee has in his statement dated 13.10.2021 stated at answer no. 5, that the goods are not mis-declared completely but partially to some extent the

● supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff and had accordingly stated that they were ready to produce the letter from supplier to that effect.

► that the revaluation of the goods was done by an empaneled Chartered Engineer and the value of the goods after revaluation has been accepted by the importer, which implies that the importer has accepted that the goods were undervalued by them and the import price of the goods was not the fair price. (Factually incorrect as there is no statement of the noticee after the receipt of report from CE).

28. The noticee says and sub submits that from his statement itself, it is apparent that the noticee himself has in the past been importing the goods and the said facts were to the knowledge of the investigation, still, they failed to call for the details of the past imports and the transaction details of the noticee firm evidencing the payment made to the foreign suppliers.

29. The noticee further says and submits that though the noticee had submitted that the goods found in excess have been on account of lapse on the part of the foreign supplier and the investigation had also not disapproved the said facts, thus, it can never be alleged that there was any misdeclaration on the part of the noticee firm or the noticee for the simple reason that the noticee will never know that there are certain goods that have been through mistake shipped in the container, especially when the container consists of goods which are of various types and are similar to each other and if there is any excess goods, then the portion of the goods is marginal.

30. The noticee further says and submits that the investigating agency has also nowhere been able to provide the description of the goods that are in excess, what is the proportion of the excess goods, when compared to the declared quantity and in absence of any such findings or observation made in the show cause notice the allegation related to misdeclaration on account of alleged excess quantity of goods purely on assumptions and presumptions and as such the said allegation is required to be set aside by considering the allegation as baseless and based purely on assumptions and presumptions.

31. The noticee further says and submits that as per Section 14 of the Customs Act, 1962, 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. The noticee says and submits that without accepting the allegations of excess goods received by the noticee firm and the said act on their part of import of excess goods has resulted in misdeclaration, for the sake of argument, even if it is considered that there were certain extra goods shipped by the exporter, then in such case also the same can by no stretch of imagination considered as misdeclaration with an intent to evade payment of Customs duty.

32. The noticee further says and submits that the investigation has at para 8.1 of the impugned show cause notice alleged that as the noticee firm had mis-declared the goods, with the intention to evade proper Customs duties, the same, are liable for confiscation under Section 111(m) of the Customs Act, 1962. The noticee says and submits that it is difficult to understand as to how the investigation has reached to the conclusion that the goods imported by the noticee firm are liable for confiscation under Section 111(m) of the Customs Act, 1962, when especially the investigation has not undertaken the process as stipulated under Section 17(3) of the Customs Act, 1962 and have baselessly relied on the report of the Chartered Engineer to falsely implicate the noticee firm. The noticee further says and submits that otherwise also proposal of confiscation of goods imported by the noticee firm is required to be discarded as the notice does not have any seizure memo and as such the goods

● covered under the present cause notice were never seized by the Customs Officer. Thus, the proposal for confiscation of goods that have not been seized cannot be invoked in the present case.

33. The noticee firm therefore says and submits that the proposal for confiscation of goods imported by the appellant under Section 111(m) of the Customs Act, 1962 is completely baseless, illogical and without any supporting evidence and as such the same is required to be set aside in interest of justice.

34. The noticee further says and submits that considering the above submissions, the impugned show cause notice alleging undervaluation of the goods at para 9.1, redetermining the value at Rs. 5,07,43,266/- and proposing to hold the goods liable to confiscation under Section 111(m) of the Customs Act, 1962 is illogical and improper and has been proposed by blatantly ignoring the provisions of the Customs Act, 1962 and as such the same is required to be set aside in view of the following submissions.

35. The investigating officer has initiated action against the noticee firm on the basis that intelligence was gathered that the goods had been mis-declared by the noticee firm and as such the goods imported under subject Bills of Entry were put on hold by the officer of SIIB Mundra for detailed examination, however, the investigation has nowhere highlighted the details of intelligence which forced them to undertake investigation in a dubious manner only to proceed against the noticee firm to make out a case on the noticee firm without any clinching evidence.

36. The investigation / customs officers was required to follow the procedure as prescribed under the provisions of section 17(3) of the Customs Act, 1962, which stipulates that for the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leivable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information. The investigation did not follow the provisions of Section 17(3) of the Customs Act, 1962 and accordingly, there was a breach of act on their part, while performing their duty and accordingly, they should be asked the reason for not following the provisions of Section 17(3) of the Customs Act, 1962.

37. The competent authority approved the proper valuation of the goods as mentioned at para 5 of the SCN, however, the details of the competent authority and the procedure adopted to hire the Chartered Engineer for appointment to undertake valuation of the goods in question is required to be placed on records which has not been done in the instant case, thus, making his appointment without any authority of law, especially when his technical Expertise and methodology to undertake valuation of imported goods in the instant case has not been enumerated in the notice.

38. The investigating officers were required to follow the procedure as prescribed under the provisions of Section 17(2) of the Customs Act, 1962 and Rule 12 of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007, however, they arbitrarily first derived a value of 13,35,69,699/- (Para 4 of the SCN), the methodology and the source of which has not been discussed in the SCN.

39. The noticee further says and submits that the submission related to irregularity in appointment of a Chartered Engineer in the instant case has already been pointed out in the submissions made by the noticee firm and as such the same are not repeated in this submission for the sake of brevity.

40. The noticee says and submits that the investigation has inappropriately and without placing on record plausible evidences, proceeded in a mechanistical manner to observe that the noticee firm had failed to adhere to the provisions of Section 46(4) and 40. and 46(4A) of the Customs Acct, 1962, which had resulted in making the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and therefore making the Proprietor of the noticee firm liable to penalty under Section 112(a)(ii) of the Customs Act, 1962.

41. The noticee in view of the above allegations wishes to submit that the goods placed under seizure vide panchnama dated 11.06.2023 are duty paid as the same relate to Bills of entries which were duly assessed and out of charge was given in respect of the said goods. The same cannot be considered as a part of the consignment for which investigation was undertaken for the simple reasons that the said goods were never assessed and the goods seized were prior to the assessment of the subject 8 Bills of Entries. Thus, the goods as mentioned at Sr. No. 9 and 10 on which duty has been demanded are already duty paid and the said goods were stored in the godown after out of charge was given in respect of earlier Bills of Entries and as such the demand on such goods is not sustainable and as such there is no misdeclaration on part of the noticee in relevance to the said portion of the demand.

42. The noticee says and submits that there is nothing on record to evidence deliberate misdeclaration on part of the noticee firm or the proprietor of the firm. The noticee further says and submits that in absence of any such grounds the invocation of Section 111(m) of the Customs Act, 1962 is not permissible in the eyes of law.

43. The noticee further says and submits that in case such a practice is followed by the investigation or the assessing officers, then in such case each import where value is enhanced during the assessment of Bill of Entry will be considered as misdeclaration under the purview of Section 111(m) of the Customs Act, 1962. Thus, only because there was a difference in the quantity of goods which has come to the notice of the officers and the importer is not aware then in such a situation, each case cannot invite invocation of provisions of section 111(m) of the Customs Act, 1962. The notice in support of their submissions wishes to rely on the following case laws, wherein it has been held that where there is nothing on record to evidence deliberate misdeclaration on the part of the importer, then in such case the provisions of section 111(m) of the Customs Act, 1962 cannot be invoked.

- (a) Judgment of Hon'ble CESTAT, Chennai Bench in the case of N.C. John & Sons (P) Ltd. versus Commissioner of Customs & Central Excise as reported at 2009 (242) E.L.T. 281 (Tri. Chennai).
- (b) Judgment of Hon'ble CESTAT, Mumbai Bench in the case of Tetra Pak India Pvt. Ltd. versus Commissioner of Customs (Import), Nhava Sheva as reported at 2019(370) ELT 1289 (Tri. Mumbai.)
- (c) Hon'ble CESTAT, Principal Bench, New Delhi in the case of Kirti Sales Corpn. Versus Commissioner of Customs, Faridabad as reported at 2008 (232) ELT 151 (Tri. Delhi) had held that Misdeclaration cannot be understood as same as wrong declaration made bona fide Declaration made by appellant on basis of documents supplied by foreign supplier and there was no intentional or deliberate wrong declaration on its part so as to attract mischief of Section 111(m) of the Customs Act, 1962 and accordingly set aside confiscate, fine and penalty.
- (d) The noticee firm says and submits that the position of law is now settled by the Supreme Court in the case of Akbar Badruddin Jiwani - 1990 (47) E.L.T. 161 (SC) wherein it was held that a penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law or is guilty of contumacious or dishonest act and acts in conscious disregard of its obligation.

44. The noticee firm says and submits that in the instant case, there is no evidence adduced by the investigation to allege that the noticee firm or the noticee had acted deliberately in defiance of law or acted in disregard of its obligation. But, in this case, the breach flows from a bona fide belief of the noticee firm that the consignment did not contain extra goods as had been detected by the investigation during the examination of the cargo and for that extra cargo the noticee firm had not made any extra amount of payment to the foreign supplier. The noticee further says...

112. 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 17[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 per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:

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

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 19[not exceeding the difference between the declared value and the value thereof or five thousand rupees), whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 20[not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 21[not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees), whichever is the highest.

47. The noticee says and submits that considering the above provisions of Section 112(a)(ii) of the Customs Act, 1962, the provisions of Section 112(a)(ii) of the Act ibid can be made applicable in cases where a person, 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.

48. The noticee says and submits that the only allegation that has been made by the investigation in the instant case that there are excess goods and the goods imported by the noticee firm are undervalued, however, the investigation has nowhere provided the details of excess goods imported by the noticee firm nor have they made any allegation related to undervaluation by not following the procedure required to be followed by them under Rule 12 and the entire allegation has been made by discarding the facts and documents furnished by the noticee firm at the time of import of goods and statement of the Proprietor.

49. The noticee further says and submits that from the above facts it can be observed that there is no allegation in the impugned notice that point out that there has been any observation or allegation that there has been any act or omission done by the noticee in relation to the imported goods, which would render the goods imported by the noticee firm liable to confiscation under section 111, nor there has been any allegation that there has been abetment of doing or omission of such an act and in absence of any such findings or allegation the provisions of Section 112(a)(ii) can be made applicable to the noticee.

50. The noticee further says and submits that he had declared the value of the goods and the description of the goods as per the documents received by him from the foreign buyer and whatever alleged excess goods have been detected at the time of examination have been on account of the mistake of the supplier side and due to deficiency of staff on account of COVID 19 and as such it can never be alleged that there was an act or omission on the part of the noticee or the noticee firm, where the allegation has been made by the investigation for misdeclaration.

51. The noticee further says and submits that from the contents of the show cause notice it is observed that there is only bare quoting of Section 112 of the Act in the SCN, however, the investigation has failed to point out the details of the act or omission on the part of the noticee that could invite invocation of Section 112(a)(ii) in the instant case.

52. The noticee therefore says and submits that in absence of any allegation that there has been any act or omission on the part of the noticee or the noticee firm, the proposal for imposition of penalty on the noticee being proprietor of the noticee firm is not sustainable and as such the said allegation is required to be set aside in interest of justice.

53. The noticee therefore says and submits that in view of the above submissions proposal of imposition of penalty on the noticee is therefore not sustainable and as such the same is required to be set aside by treating the proposal as illogical and without any substantial allegation.

**10.3 Shri. Narendra Narula, Proprietor of M/s GND Cargo Movers (forwarder),
vide his letter dated 25.08.2023 submitted his defence reply as under:**

1. M/s. GND Cargo Movers, Flat No. 217, Peepal Apartment, Sector 17E, Dwarka, 75 is a Proprietor firm, inter alia engaged in the business of acting as a forwarder, wherein their prime activity of business is to arrange CHA for importers and assist in various activities to smoothen documentation process of the importer. Shri Narender Kumar Narula is Proprietor of M/s. GND Cargo Movers.

2. In normal course of business they had been in business as a forwarder to M/s. M Impex Trading Co., Shop No. H No. 2, KH No. 20/6, Tek Chand Colony, Nilo thi Extn., West Delhi 110041 (hereinafter referred to as the "importer firm" for the sake of brevity), wherein they used to contact Shri Rahul Kapoor, Proprietor of M/s. M Impex through Shri Narendra Narula and any other Customs related work they used to call Rahul Kapoor or their employees.

3. In normal course of business, the importer firm imported mobile accessories in total 8 containers under various B/L all dated 03.05.2021 and 10.05.2021. Intelligence was gathered that goods had been mis-declared by the importer firm and accordingly the goods imported by M/s. M Impex Tading Co., New Delhi was put on hold by the officer of SIIB, Mundra for detailed examination.

4. During the investigation, search was undertaken at the premises of the transporters, Customs broker M/s. Sark Enterprises besides searches conducted by

● Customs Preventive Delhi at the premises of the importer firm in different locations in Delhi.

5. In the furtherance of investigation, statements of the following persons were recorded "

- a. Shri Rajan Arora, one of the partners in M/s. Sark Enterprise recorded on 09.07.2021.
- b. Shri Prince Rana, employee in the noticee firm recorded on 01.12.2021.
- c. Shri Ketan Sood, employee in the noticee firm recorded on 01.12.2021.
- d. Shri Narender Kumar Narula, Proprietor of M/s. GND Cargo Movers recorded on 03.11.2021.
- e. Statement of Shri Rahul Kapoor, Proprietor of M/s. M Impex Trading Co recorded on 07.08.2021 and 13.10.2021.

6. During the investigation, *prima facie*, upon examination, the goods imported by the importer firm appeared to be under valued, on the basis of the NIDB data and DRI alert and 40% of the value of goods showing in e-commerce website, the goods valued at Rs. 13,35,69,699/- were put under seizure. (para 4 of the SCN).

7. As the importer firm did not agree to the valuation and contested the seizure value of the cargo, they had vide their letter dated 26.10.2021 requested for proper valuation of the cargo, which was approved by the competent authority. Accordingly, the value of goods was redetermined on the basis of NIDB data wherein identical goods were available on NIDB data. However, in most of the cases prices of identical goods was not available and therefore in absence of identical references, for the purpose of revaluation of the cargo, an empanelled Chartered Engineer namely Shri Varun Chandok was appointed to ascertain the value of the goods bases on Customs Valuation Rules, 2007 to arrive at the Fair Market Value and Assessable value. The CE submitted his report dated 18.12.2021. It was based on the valuation report given by the CE and the NIDB data, the goods were revalued at Rs. 5,07,43,266/-. The details of the value determined Bill of Entry wise is discussed at para 5.1 of the SCN and hence the same is not repeated for the sake of brevity.

8. On the basis of above investigation, the importer company was called upon to show cause as to why:

- i. The declared value amounting to Rs. 71,93,814/- (Rupees Seventy One Lakhs Ninety Three Thousand Eight Hundred Fourteen only) of seized goods as detailed at Para 5.1 which are grossly undervalued as well as mis-declared, should not be rejected under Rule 12 of CVR, 2007 and redetermined to Rs. 5,07,43,226/- under Rule 3 of CVR, 2017.
- ii. The seized goods totally redetermined valued at Rs. 5,07,43,226/- as detailed at Para 5.1, should not be held to be liable for confiscation under Section 111(m) of the Customs Act, 1962, however, as the goods are not available for confiscation being released provisionally, why redemption fine under Section 125 of the Customs Act, 1962, in lieu of confiscation should not be imposed.
- (iii) The differential / short paid duty a should not be demanded from the importer under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962.
- iv. The differential Customs duty of Rs. 1,74,90,772 already paid on goods by the noticee firm should not be adjusted and appropriated towards their duty liabilities at (iii) above;

V. Penalty should not be imposed upon Shri Rahul Kapoor, Proprietor of M/s. M Impex under Section 112(a)(ii) of the Customs Act, 1962

vi. Penalty, fine and any other Customs dues should not be appropriated against the Bank Guarantees amounting to Rs. 87,45,386/- and Rs. 15,15,000/- executed by the noticee firm.

vii. A penalty was also proposed on Shri Narendra Narula, Proprietor (hereinafter referred to as the noticee) under Section 117 of the Customs Act, 1962 of the Customs Act, 1962 on the basis of allegations that he was actively involved and conniving in the under valuation and mis- declaration of the imports cargo of the importer Firm.

9. The noticee says and submits that the present cause show notice has arisen as the investigation has alleged undervaluation in respect of the goods imported by the importer firm. However, from the contents of the notice, it is apparent that the investigation has made a case, only to conceal their incorrect intelligence, according to which, the goods imported by the importer firm were mis-declared and under valued, however, on investigation it was observed that there was no mis-declaration at the end of the importer firm in as much as there was no discrepancy in description of the goods and the value declared by the noticee firm in the Bill of Entry when compared with the purchase invoices and the supporting documents.

10. The noticee says and submits that to cover up the lapse on the part of the incorrect intelligence, the investigating officers proceeded to make a case of undervaluation through dubious manner on the importer firm, which is neither permitted to them under the Customs Act, 1962 or the rules framed thereunder.

11. The noticee says and submits that the entire investigation undertaken by the officers of the SIIB has been undertaken by ignoring the provisions of the Customs Act, 1962 and adopting the procedures which is not permitted in law.

12. The noticee says and submits that the investigation, to substantiate the allegation has ignored the invoice and purchase documents submitted by the importer firm, which is contrary to the provisions of Rule 12 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 (hereinafter referred to as "CVR").

13. The noticee firm says and submits that as per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods, that is, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

14. The noticee firm further says and submits that Rule 12 of CVR, 2007, contemplates that where the department has a reason to doubt the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. The reason to doubt' however does not mean 'reason to suspect'. A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation.

15. The noticee firm therefore says and submits that Rule 12 of CVR, 2007 empowers the department to doubt the truth or accuracy of the declared value, and under such circumstances, it may ask the importer to provide further explanation to

the effect that the declared value represents the total amount actually paid or payable for the imported goods and only in case they have not received the information or they have received the information which is not satisfying they may proceed to adopt procedure as [prescribed under the CVR, 2007 to reject the transaction value. However, the procedure prescribed under the provisions of Rule 12 of the Rules ibid, were not followed by the investigating officers and they in a dubious manner arbitrarily and illogically proceeded to doubt the transaction value declared by the importer firm.

16. The noticee says and submits that in the case of alleged undervaluation of the cargo imported by the importer firm the investigation had recorded statement that Statement of Shri Ketan Sood, Employee of M/s. GND Cargo Movers under Section 108 of the Customs Act, 1962 on 19.07.2021. (RUD 07). From perusal of his statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry nor any facts have been stated by Shri Ketan Sood, that there was any irregularity in the goods imported by the importer firm. However, the investigation has incorporated incorrect facts in the show cause notice at the last para of para 3.4 of the SCN, wherein it has been mentioned in the show cause notice that on being asked which goods have been found during examination from the containers on hold by SIIB of the noticee firm, he stated that he was informed by Shri Narendra Narula that Earphones have been declared and Bluetooth earphones / headphones have been found during examination of SIIB".

17. The noticee says and submits that from the perusal of the impugned SCN and on comparison of the statement of Shri Ketan Sood, it is observed that the investigating agency has placed incorrect facts in as much as Shri Sood has in statement nowhere stated that he was informed by Shri Narendra Narula and Shri Prince that Earphones have been declared and Bluetooth earphones / headphones have been found during examination of SIIB. Thus, the investigation has placed incorrect facts in the impugned show cause notice to make a strong case against the importer firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Ketan Sood has been discussed. The noticee firm says and submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation, which can point out that there was any undervaluation or irregularity on imports made by the noticee firm under Bills of Entries covered under the impugned show cause notice. The entire exercise of placing the statement of Shri Ketan Sood, in the instant case is a futile attempt to make baseless allegations against the importer firm and as such the same deserves to be discarded in interest of justice.

18. Statement of Shri Narendra Narula, Proprietor, M/s. GND Cargo Movers (the noticee) was recorded under Section 108 of the Customs Act, 1962 on 30.11.2021 (RUD08). From perusal of his statement, it is observed that the said statement primarily relates to facts as to how he had come into touch with the importer firm and that he was looking after Customs Clearance work and that he had given the Customs Broker work to Shri Rajan Arora of M/s. Sark Enterprises as he knew him earlier and on being asked about misdeclaration about the goods, he had stated that they were not having any idea about the same. However, from the entire statement it is not forthcoming that there was any undervaluation of value of the goods imported under the captioned Bill of Entry by the noticee firm nor any facts have been stated by Shri Narendra Narula, that there was any irregularity in the goods imported by the noticee firm. Further, at para 7.2 of the SCN, the facts emerging from the statement of Shri Narendra Narula has been discussed. The noticee says and submits that on perusal of the facts analysed by the investigation, it is apparent that the statement consists of process of Customs clearing and there is no evidence adduced by the investigation,

● which can point out that there was any undervaluation or irregularity on imports made by the importer firm.

19. Statement of Shri Rahul Kapoor, Proprietor of the importer firm was recorded under Section 108 of the Customs Act, 1962 on 17.08.2021 and 13.10.2021, he had stated that the goods were not mis-declared completely but partially to some extent the supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff. It is pertinent to mention that the above facts were also revealed at the time of examination of the imported cargo and the importer firm was never aware about this fact till the examination of cargo by the customs officers. Further, when asked related to undervaluation of items imported in 3 Bills of Entries, he had stated that they were ready to furnish the details of remittances made to overseas supplier in the past and in the case of these imports too and it could be verified that similar goods are imported at more or less similar prices at other ports in India too; that due to pandemic they had got huge discounts in the present shipment and as such the prices of the goods were at lower side.

20. The noticee says and submits that though the Proprietor of the importer firm had requested the investigating officers that they were prepared to furnish the details of remittances made to overseas supplier in the past and in the case of these imports too and it could be verified that similar goods are imported at more or less similar prices at other ports in India, however, the same were not called for by the officers, which establishes that the investigating officers had no doubt about the genuineness of the declarations made by the importer firm at the time of filing of impugned Bills of Entries. Thus, the officers failed to follow the procedure as prescribed under Rule 12 of the Customs Valuation Rules, 2007, though they had opportunity to examine the same, especially when the importer firm had come forward to provide all the details that could have established their bonafide and the same were at the same time not called for by the investigating officers.

21. The noticee further says and submits that without accepting the allegations made in the show cause notice, even for the sake of argument, the said allegations of undervaluation of the goods is assumed to be correct, then the investigation has to provide the details of the transactions which according to them appear to be undervalued, for the simple reason, it can never be the case of the investigating officers that all the items imported by the noticee firm are undervalued. The investigation has assumed that all the transactions of purchase and sale are substantially undervalued, without placing on records the facts that the suppliers have on earlier occasions imported similar goods at the same price, but the same have never been compared with the goods covered under the impugned Bills of Entry nor have they rejected the transaction value.

22. The notice says and submits that the penalty has been proposed on him under Section 117 of The Customs Act, 1962 which reads as under:

Penalties for contravention, etc., not expressly mentioned:

117. Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [Four Lakh Rupees].

23. The Noticee says and submits that the penalty under section 117 can be imposed on any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was

his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding (Four Lakh Rupees).

24. The noticee says and submits that the SCN does not satisfy the criteria laid down under law for imposing penalty under Section 117 of Customs Act, 1962. The noticee says and submits that the provisions of Section 117 of Customs Act, 1962 are comprised of three limbs, viz:

- 1) Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply (and)
- 2) where no express penalty is elsewhere provided for such contravention or failure (then)
- 3) Such a person shall be liable to a penalty not exceeding four lakh rupees.

25. Thus, liability to penal action would arise only after the criteria of first two limbs are duly satisfied. The expression "any provision of this Act" appearing in Section 117 would make it mandatory on the part of alleging authority to pinpoint the provision of Customs Act, 1962 or the act of the noticee in this transaction which has resulted into the alleged misdeclaration that was contravened in the manner specified in Section 117 and the noticee was aware about such, then move to the second limb and eventually to give "rise to the liability of such a person to penalty under Section 117 of the act ibid.

26. The Noticee says and submits that the learned adjudicating authority has failed to point out the provisions of the act ibid which have been contravened by the Noticee and noticee was aware about the contravention on his part in the entire transaction, nor the investigation has pointed out the provisions of the act wherein the Noticee had failed to comply which was his duty to comply and in absence of any such allegation or finding, the imposition of penalty under section 117 becomes vague and as such the imposition of penalty is required to be set aside on these grounds also.

27. The noticee says and submits that from the above submissions, it is established that all the allegations made against the noticee are full of assumptions and presumptions and all the evidences adduced by the investigation are baseless, which can by no stretch of imagination made applicable on the noticee. The noticee says and submits that considering the above submissions the entire case made up by the investigation is required to be set aside as the same being against the legal provisions and raised by gross misuse of powers entrusted on the officers for proper implementation of law.

10.4 Shri Rajan Arora, Partner of M/s Sark Enterprise, did not submit any defence submission nor sought any further adjournment for submission of his defence submission after 3 mandatory personal Hearings given.

11. RECORD OF PERSONAL HEARING:-

I observe that '*Audi alteram partem*', is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to all the noticees on 02.08.2023, 06.09.2023, 21.02.2024, 03.04.2024, Details of the PH are as under:

- (1) **First PH:** - First PH was conducted on 22.02.2024 and Shri Anil Gidwani, Advocate, the authorised representative of M/s M Impex and Shree Rahul Kapoor appeared before the adjudicating authority and at the time of

personal hearing, they have requested for cross examination of certain individuals.

(2) Second PH- 2nd was conducted on 03.04.2024 and Shri Anil Gidwani, Advocate, the authorised representative of M/s M Impex and Shree Rahul Kapoor appeared before the adjudicating authority for scheduled cross examination. Shri Varun Chandok, CE, did not appear for cross examination, therefore, the cross examination was not conducted at the time of second hearing. Shri Anil Gidwani during the hearing submitted that the noticee will bear the expenses of Air fare to and fro to Mundra and one day boarding charges in Mundra. Further, Shri Anil Gidwani requested that another day for cross-examination of Varun Chandok, CE may be re-fixed and he will submit the final submissions after cross-examination on the same date.

11. Issues to be decided

11.1 I have carefully gone through the Show Cause Notice bearing F.No. GEN/ADJ/COMM/124/2023-Adjn dated 03.05.2023 issued by the Pr. Commissioner of Customs, Custom House, Mundra, imposition of penalty/fine etc; facts of the case, the relied upon documents; submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

- i. Whether, the declared value amounting to Rs. 71,93,814/- (Rupees Seventy One Lakhs Ninety Three Thousand Eight hundred and Fourteen only) of seized goods as detailed at Para 5.1 which are alleged to be grossly undervalued as well as mis-declared, is liable to be rejected under Rule 12 of CVR, 2007 and re-determined to Rs. 5,07,43,266/- (Rupees Five Crores Seven Lakhs Forty Three Thousand Two Hundred Sixty Six Only) under Rule 3 of CVR, 2007.
- ii. Whether, the seized goods at re-determined value totaling at Rs. 5,07,43,266/- (Rupees Five Crores Seven Lakhs Forty Three Thousand Two Hundred Sixty Six Only) as detailed at Para 5.1, is liable for confiscation under Section 111(m) of Customs Act, 1962. Further, as the goods are not available for confiscation, being released provisionally, can redemption fine under Section 125 of Customs Act, 1962, in lieu of confiscation is liable to be imposed.
- iii. Whether, the differential/short paid duty amounting to Rs. 1,85,00,234/- (One Crore eighty five Lakhs Two hundred and thirty four Only) on the seized goods as detailed at Para 5.1, is liable to be demanded from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.
- iv. Whether, the differential customs duty of Rs. 1,74,90,772 (Rupees One Crore Seventy Four Lakhs Ninety Thousand Seven Hundred Seventy two only) already paid on goods by the importer, is liable to be adjusted and appropriated towards their duty liabilities at (iii) above.
- v. Whether, the penalty is liable to be imposed upon Shri Rahul Kapoor, proprietor of M/s M-Impex, under Section 112(a)(ii) of the Customs Act, 1962.

- vi. Whether, Penalty, fine and any other customs dues are liable to be appropriated against the Bank Guarantees amounting to Rs. 87,45,386/- (Rupees Eighty seven lakhs forty five thousand three hundred eighty six only) & Rs. 15,15,000/- (Rupees Fifteen lakhs fifteen thousand only) executed by the importer.
- vii. Whether, Penalty is liable to be imposed upon CB, M/s. Sark Enterprises under Section 117 of the Customs Act, 1962, who has allegedly failed to discharge his duties in terms of Sub-clause (d), (e), (m) & (n) of CBLR, 2018.
- viii. Whether, Penalty is liable to be imposed upon Shri. Narendra Narula, Proprietor of M/s GND Cargo (forwarder), under Section 117 of the Customs Act, 1962, who are actively involved & conniving in the undervaluation and mis-declaration of the imported cargo of M/s M-Impex.

12. Discussion and Findings

12.1 In this connection, from the records available before me I find that none the aforementioned persons have retracted their respective statement. Further, the instant case is related to mis-declaration of goods in respect of Description and valuation by **M/s. M Impex Trading Co.**, which is based on documentary evidences and corroborated by voluntary statements recorded under Section 108 of the Customs Act, 1962. Besides, all the relied upon documents have already been supplied to the noticees, and the submissions made by them have been taken on record. I find that the statements recorded under Section 108 of the Customs Act, 1962, also make for substantive evidences.

12.2 I find that during the course of investigation carried out by the SIIB, Mundra the statements of various persons have been recorded under Section 108 of the Customs Act, 1962 which have sufficient evidentiary value to prove the fact that the importer has improperly imported the impugned goods by way of mis-declaration and undervaluation of the same. I place reliance on the following relevant judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

- The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull- 1983(13)ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.

● Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement-and was not influenced by threat, duress or inducement etc. is a true one.

12.3 I find that instant case arises out of the examination of cargo imported by M/s M Impex Trading Company, and detailed examined by the officers of SIIB, Mundra and subsequently found mis-declared imported goods by the importer whereby they have allegedly evaded the duties of Customs.

12.4 I find that prima facie, upon examination, the goods appeared to be undervalued. The CB, Importer or their authorized did not present themselves at the time of examination even later on despite being informed. In the absence of the CB, Importer or their authorized representatives, the goods were valued on the basis NIDB data and DRI alert and 40% of the value of goods shown in e-commerce website. The goods were totally valued at **Rs.13,35,69,699/-.**

12.5 I find that the importer M/s M. Impex trading Co. contested the seizure value of the cargo and vide letter dated 26.10.2021 requested for proper valuation of the cargo, which was approved by the competent Authority. Accordingly, the value of goods was re-determined on the basis of NIDB data wherein identical goods were available on NIDB data. However, in most other cases prices of identical goods was not available and therefore in absence of identical references, for the purpose of revaluation of the cargo, an empanelled Chartered Engineer namely Shri Varun Chandok was appointed to ascertain the value of the goods as per the Customs Valuation Rules 2007, to arrive at the Fair Market Value and Assessable Value. The CE submitted his report dated 18.12.2021. Based on the Valuation report given by the CE and the NIDB data, the goods are re-valued at **Rs. 5,07,43,266/-.** I find that the re-determined assessable value was accepted by the importer vide letter dated 20.12.2021. From these facts, I find that the actual value and the imported cargo of the notice was undervalued. The aforementioned fact is corroborated by the fact that after re-determination of assessable value the goods were provisionally released with re-assessment of Bills of Entry mentioned at serial no. 1 to 8 of the above table, for which importer was asked to pay the differential duty of Rs.1,74,90,772/- and to provide bank guarantee of 50% of the differential duty along with bond of full value of goods. In compliance thereof, the importer has paid the entire amount of differential duty and the goods were released provisionally.

13. I find that the noticee in their written submission dated 09.09.2024, has contended that the investigation section, to substantiate the allegation of undervaluation has ignored the invoice and purchase documents submitted by the noticee firm, which is contrary to the provisions of Rule 12 of the Customs Valuation. As per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods, that is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

13.1 In this regard, I find that the proprietor of the importer firm and the other related persons had, in their respective statements, inter alia admitted that the goods are not mis-declared completely but 'partially to some extent', that the 'supplier has by mistake loaded excess goods and also different goods', due to the pandemic and also due to shortage of staff. Further, the valuation report was submitted by the CE and the same valuation was agreed upon by the Noticee vide letter dated 20.12.2021. Thus,

● from the above, I find that, the goods were undervalued and misdeclared as to quantity and description by the importer at the time of import.

13.2 Further, from the statement of Shri Rahul Kapoor, Proprietor of M/s M Impex Trading Co., I find that the Importer has admitted that due to Corona Pandemic, they had got huge discount in this shipment, hence, the goods are priced on the lower side. I find that Shri Rahul Kapoor has accepted to the misdeclaration of quantity in his Statement, citing shortage of staff during Covid as the reason. The revaluation of the goods was done by an empanelled CE and the value of the goods after revaluation has been accepted by the importer, which implies that the importer has accepted that the goods were undervalued by them and the import price of the cargo was also undervalued. Hence “transaction value” as declared in import documents cannot be considered to be true and correct as per the contention of the importer / noticee in their written submission. Considering all these factors it is reasonable to believe that the value of the goods reflected in the invoice does not reflect the true and accurate “transaction value” for the purposes of **Section 14 of Customs Act, 1962** and thus I find that the same was rightly rejected by the investigating Section in terms of the CVR, 2007.

13.3 The services of a Govt. approved Chartered Engineer/Valuer Shri Varun Chandok, Proprietor of M/s Varun Chandok and Associates was sought for valuation of impugned goods. Accordingly, they submitted Valuation Report bearing Ref. No. VC/APSEZ/SIIB/ndpap%432*/122021-22 dated 18.12.2021, whereby the market value of mobile accessories was reported Rs.5,07,43,266/- (Rs. Five Crores Seven Lakhs forty Three Thousand Two Hundred and sixty Six only). The said report was enclosed with the Show Cause Notice as RUD.

13.4. I find that on the facts and evidences discussed above and keeping in view the related statutory provisions of Customs Act, 1962 and other regulations, as regards valuation aspect of the matter, I find that the importer has suppressed the assessable values and declared lower values of the above-mentioned import consignments with an intention to evade payment of correct Customs Duties. Further, it transpires as per valuation report of the expert Chartered Engineer that the actual value of goods is Rs. 5,07,43,266/-; which is much higher than the value of cargo as shown in invoices/bill of entries shown above. In view of the above facts, the actual value of impugned goods is rightly taken as Rs.5,07,43,266/- for the purpose of arriving at fair value for assessment.

13.5 I find the noticee M/s M Impex has in their written submission dated 09.09.2024 has repeatedly emphasized that the goods were not misdeclared, not undervalued and the investigating officers have not taken the value declared by them as per Section 14 of the Customs Valuation Rules, 2007 and under the provisions of self assessment under Section 46 of the Customs Act, 1962 and also not followed the Customs Valuation Rules, 2007, in redetermining the assessable value. I find that the proprietor of the noticee firm during his statement has admitted that the goods were misdeclared as to quantity and description and also having lesser/discounted value citing reasons of epidemic. In his statement he accepted that the ‘goods are mis-declared partially to some extent and cited the reason that the supplier has by mistake loaded excess goods and also different goods, due to pandemic and shortage of staff’. He further admitted that ‘due to Corona Pandemic, they had got huge discount in this shipment hence the goods are priced on the lower side’. Hence, I find that the investigating officers had every reason to suspect mala fide intention in the imported consignments. Further, during examination proceedings of goods, none of the noticee or the CHA was present despite repeated communication to attend. During investigation proceedings and recording of statements of various persons,

● misdeclaration regarding description, quantity and valuation of goods emerges. Hence, the contention of the noticee, "that to cover up the lapse on the part of the incorrect intelligence, the investigating officers proceeded to make a case of undervaluation through dubious manner", is not sustainable and is discarded.

13.6 The noticee has also challenged the valuation aspect of the goods through the chartered engineer and the NIDB data, claiming that the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) are not followed, prior to disputing the valuation declared by the noticee firm. I find that, in the first instance, in the absence of the CB, Importer or their authorized representatives, the goods were valued on the basis NIDB data and DRI alert and 40% of the value of goods shown in e-commerce website. The goods having totally valued at Rs.13,35,69,699/- were put under seizure on respective dates. However, the importer M/s M. Impex trading Co. contested the seizure value of the cargo and vide letter dated 26.10.2021 requested for proper valuation of the cargo, which was approved by the competent Authority. Accordingly, the value of goods was re-determined on the basis of NIDB data wherein identical goods were available on NIDB data. However, in most other cases prices of identical goods was not available and therefore, for the purpose of revaluation of the cargo, an empanelled Chartered Engineer namely Shri. Varun Chandok was appointed to ascertain the value of the goods based on Customs Valuation Rules, 2007, to arrive at the Fair Market Value and Assessable Value. The CE submitted his report dated 18.12.2021. Based on the Valuation report given by the CE and the NIDB data, the goods were re-valued at Rs.5,07,43,266/- (Rs. Five Crores Seven Lakhs forty Three Thousand Two Hundred and sixty Six only). I find that the re-determined assessable value was accepted by the importer vide letter dated 20.12.2021. Now, the importer is challenging the same valuation, to which he agreed and sought to get his goods released at that time on the basis of the same valuation. Further, the importer did not raise any issue of not following the CVR, 2007, by the department, during that time, even though it was clearly communicated to him and he agreed to get his goods released on the basis of the same. Further, I find that the all procedure of revaluation was done within the knowledge of the Importer / noticee. During the examination of goods by the Chartered engineer also the Importer's representative were present. Further, I find that, even though the same was not expressly mentioned in the Show Cause Notice, the procedure of valuation of imported goods was followed as per the established procedure laid down in customs valuation rules, 2007. The rejection of value was communicated to the importer during the seizure of goods and grounds thereof were also communicated to them during seizure and panchnama proceedings, as per Rule 12 of the CVR, 2007. Further, revaluation of imported goods was also done by trying to determine correct value of goods as per CVR, 2007.

13.6.1 Further, on inquiring from SIIB (Investigating section), the Deputy Commissioner (SIIB) vide his letter F.no. S/43-02/Inv-M.Impex/SIIB-C/CHM/21-22 dated 05.03.2024 clarified, that "as per records available with this office, total value of the goods involved in the present case is Rs.5,07,43,266/- (Rs. Five Crores Seven Lakhs forty Three Thousand Two Hundred and sixty Six only).. whereas, in respect of only four items where identical references were found on NIDB and those four items were valued on the basis of NIDB data under the provisions of Rule-4 of the CVR, 2007.. In all other cases as the value could not be determined by rule-4 (identical goods), rule-5 (similar goods), rule-6, rule-7 (deductive value) as well as rule-8 (computed value), the same was required to be determined as per rule-9 of the CVR-2007. Therefore, an empanelled Chartered Engineer Shri Varun Chandok was engaged, who submitted his report dated 18.12.2021 (RUD-11 of the SCN; pdf

● attached also herewith). The valuation of all those remaining items has been taken on the basis of that CE report under the provisions of rule-9 of the CVR-2007.”

13.6.2 Hence, I find that the CVR, 2007 were duly followed even though not expressly mentioned in the Notice, and therefore, the contention of the Importer/noticee, that the investigating officers have not followed the Customs Valuation Rules, 2007, is not sustainable.

13.7 Further, I find that at every stage the proceedings were communicated to the Importer / noticee, starting from the first examination of imported goods, wherein the noticee or any of his CB/agents failed to appear, despite communicating the same to them. For each and every goods mentioned in the table at Para 5.1 of the Notice, the Importer / noticee has accepted the value and paid appropriate duty before the goods were provisionally released. Further, the valuation has been done on the basis on NIDB data and the report dated 18.12.2021, submitted by the empanelled C.E., who has given detailed analysis of arriving at valuation of the imported goods. Further, all panchnamas and seizure memos are already available with the noticee as copy of the same is provided during the preparation of the panchnama and seizure proceedings. Further, as per Para 4 of the Notice, seizure of goods was made on respective dates as per table in Para -4 of notice. As per established procedure copy of the seizure memos are provided to the pwner of goods, in this case the noticee / importer. The noticee has also not denied this fact in their written submission. Therefore, I hold that conditions as stipulated under instruction No. 01 dated 8th February 2017 of CBEC have been followed and whether the seizure memos have been made part of RUDs or not, does not have any bearing on the validity of the Show Cause Notice. The contention of the noticee is thus not sustainable.

13.8 Further, in their written submission, the importer has challenged the valuation report submitted by the Chartered Engineer, Shri Varun Chandok, having qualifications like B.E., MIE, FIV.

Some excerpts from the report of the Chartered engineer are reproduced below –

- Undersigned (i.e. Chartered engineer) visited SIIB Office at Mundra Custom House and then to CFS M/S Seabird Marine Services (Gujarat) Pvt. Ltd., APSEZ, Mundra Port, Kutch & CFS M/S Hind Terminals Pvt. Ltd., APSEZ, Mundra Port, Kutch along with SIIB officials. Samples of items produced from consignment (covered under Seizure Memos & Panchnamas) in presence of Importer representative & Custom officials.
- During random examination of blue tooth devices having batteries, it is noticed on random examination that some of batteries are weak/discharged, which also effects selling price, which is also considered during market survey and valuation.
- Conclusions for valuation purpose as mentioned and suggested above are suggestive values without local taxes & duties, keeping in view that goods are valued without quality tests, international market price fluctuations, considering change in technology of fast moving consumer goods, shelf life of products (like glue of screen protector etc.), damages caused due to long storage period in varying climatic conditions, quantity, volume of goods traded, browsing information from internet & local market enquiry conducted from same trade.
- This opinion is issued after visual examination of the goods & is given in good faith.

13.8.1 On perusal of the said report, it is noticed that the report is extensive in nature and various factors of market fluctuation which affect value of goods have been

● considered by the Chartered Engineer, who is a highly qualified person. Further, annexures enclosed with the report give details of all enquiries conducted by the C.E. from open market also. Further, the examination by the Chartered Engineer was done in the presence of representative of the importer also. Further, I note that items such as wireless Bluetooth neckband are valued at Rs.27 to Rs.45 per piece, Mobile back cover are valued at Rs. 45 to Rs.6 per piece, Tampered glass / screen protector are valued at Rs. 7.8 to Rs. 9 per piece.

On plain perusal of the above values, it can be seen that even after enhancing the value of the impugned imported goods, they are valued very reasonably by the chartered engineer considering that the importer will further sell the goods to wholesaler, who will further sell them to the retailer. Therefore, I find that the chartered engineer has exercised due diligence in valuation of the impugned imported goods, which even after revaluation are very low priced and I find no reason to disallow the same. Hence, contention of the Noticee / importer challenging the valuation of the C.E. and his report is not sustainable.

14. CROSS EXAMINATION OF CERTAIN INDIVIDUALS

14.1 Shri Anil Gidwani, Advocate, authorized representative of M/s M Impex, requested for cross examination of certain individuals during the PH conducted on 22.02.2024. The request for cross-examination in the instant matter was taken on record by the Adjudicating Authority. Accordingly, a letter was written to CE, Shri Varun Chandok to remain present on 03.04.2024 before the adjudicating authority for cross examination.

Shri Varun Chandok, CE, vide his letter dated 19.03.2024 informed that he is ready to remain present for cross examination, however, he has to relinquish his professional tasks for at least three days at considerable loss & expenses for making himself available at the desired place, date and time for the deemed purpose. He requested for reimbursement of his Costs / expenses for three days from the importer. The same was communicated to the Noticee vide email dated 12.09.2024 and letter dated 03.10.2024 and 14.10.2024. However, despite following up telephonically by Adjudication section, no satisfactory reply could be obtained from the Noticee/ importer M/s M Impex regarding bearing the expenses / costs of appearance of the CE, Shri Varun Chandok for his cross examination.

14.2 Further, on examination of request for cross examination of the C.E. Shri Varun Chandok, the Custom Brokers, I find that despite being informed neither the importer nor his representative nor their Customs Broker were present at the time of examination of goods by the investigating section. In the absence of the CB, Importer or their authorized representatives, the goods were valued on the basis NIDB data and DRI alert and 40% of the value of goods shown in e-commerce website. However, vide letter dated 26.10.2021, the above method of valuation adopted by the department was contested by the importer/noticee and it was requested for proper valuation of the cargo, which was approved by the competent Authority. Accordingly, the value of goods was re-determined on the basis of NIDB data wherein identical goods were available on NIDB data. However, in most other cases prices of identical goods was not available and therefore in absence of identical references, for the purpose of revaluation of the cargo, an empanelled Chartered Engineer namely Shri. Varun Chandok was appointed to ascertain the value of the goods based on Customs Valuation Rules 2007 to arrive at the Fair Market Value and Assessable Value. The CE submitted his report dated 18.12.2021. Based on the Valuation report given by the CE and the NIDB data, the goods are re-valued at Rs.5,07,43,266/- (Rs. Five Crores Seven Lakhs forty Three Thousand Two Hundred and sixty Six only) and I find that the same was accepted by the noticee vide letter dated 20.12.2021.

● **14.3** Further, I find that as far as the contention of the noticee towards valuation done by Shri Varun Chandok, CE is concerned, Shri Varun Chandok in his letter dated 18.12.2021 has made amply clear regarding the methodology adopted by him before computing valuation of goods which has already been provided to the Noticee.

14.4 As regard legal provisions, I find that as per Section 124 of the Customs Act, 1962, read with Section 28(8) of customs Act, deals with Principal of Natural Justice, but it has no such condition which state that only after cross examination, final reply can be filed. The Section 122 of the Act, 1962 deals with adjudication and Section 122(A) of the Act deals with adjudication procedure thereof; however neither of the Section stipulates that final reply can be filed only after Cross Examination.

14.5 It is observed that no purpose would be served to allow cross examination of such persons as the same would only unnecessarily protract the proceedings. In this case as was explained earlier, the Importer refused to be part of initial panchnama proceedings. Even then when he asked for re-determination of value, the same was agreed to and was done upon which the Importer has accepted the re-determined value, sought provisional release and in fact got the goods provisionally released as well. Now, it is only for the first time, at the time of personal hearing, he has sought cross-examination of CE for a valuation which was accepted by him in writing. Even when this was finally acceded to, he went incommunicado towards the end of the time-limit laid down for completing the adjudication proceedings which clearly brings out his intent which was simply to delay proceedings. Therefore, the denial of Cross-examination under the circumstances of the case does not amount to violation of principles of natural justice in every case. Reliance is placed upon the following case laws which expressly define the right to cross examination -

(i) In the case of Kanungo & Co. Vs. Collector of Customs, Calcutta & Others, as reported at 1993(13) E.L.T. 1486 (S.C.), wherein it was unequivocally held that for proceedings under Customs Act, the right to compliance to the principles of natural justice does not cover the right to cross examination witnesses. Relevant Para is reproduced wherein the Hon'ble Supreme Court observed as follows:

"We must first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the materials on which the Customs Authorities have relied was set out and it has then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant."

(ii) In the case of M/s. Suman Silk Mills M. Ltd. Vs. Commissioner of Customs & C. Ex., Baroda, as reported at 2002 (421) E.L.T. 640 (Tri.-Mumbai), Tribunal observed at Para 17 that-

"Natural Justice - Cross-examination - Confessional statements - No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional."

(iii) In the case of Commissioner of Customs, Hyderabad V. Tallaja Impex, as reported at 2012 (279) ELT 433 (Tri.), it was held that-

"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."

(iv) In the case of M/s. Patel Engg. Ltd. vs UOI, as reported at 2014 (307) ELT 862 (Bom.), Hon'ble Bombay High Court has held that;

"Adjudication - Cross-examination - Denial of held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances - Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors - Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]

(v) Hon'ble Punjab and Haryana High Court in its decision in the case of M/s. Azad Engg Works v/s Commissioner of Customs and Central Excise, as reported at 2006 (2002) ELT 423, held that;

"... It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble the Supreme Court in K.L. Tripathi v. State Bank of India and others, AIR 1984 SC 273"

(vi) Hon'ble Tribunal in the case of P Pratap Rao Sait v/s Commissioner of Customs, as reported at 1988 (33) ELT (Tri) has held in Para 5 that:

"... The plea of the learned counsel that the appellant has not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable.

(vii) Similarly in A. L Jalauddia v/s Enforcement Director, as reported at 2010 (261) ELT 84 (Mad HC), the Hon'ble High Court held that;

"... Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons. We may refer to the paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (5.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)"

(viii) Hon'ble Madras High Court, in the case of K. Balan Vs, Govt. of India, reported in 1982 ELT (386) Madras, had held that the *right to cross examine is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case.*

14.6 In view of above, I find that non examination of Witnesses does not amount to violation of the principles of natural justice as per the provisions of customs law. Grounds for cross-examination of C.E. has carefully examined by the Adjudicating Authority and as the Importer / Noticee failed to fulfil condition of bearing expenses of C.E. to appear for Cross examination, I find that demand of Cross examination of C.E. by the Noticee / importer is not sustainable.

15. Shri Rahul Kapoor, Proprietor of M/s M Impex Trading Co., has also submitted his defence submission dated 19.12.2023, wherein he has reiterated and repeated the defence submissions of his proprietorship firm, M/s M. Impex Trading Co., which have already been discussed in foregoing paras.

16. Shri Narendra Narula, Proprietor of M/s GND Cargo Movers (forwarder), vide his letter dated 25.08.2023 submitted his defence reply which on examination was repeating the submissions in above defence replies of M/s M Impex Trading Co. and its Proprietor Shri Rahul Kapoor. In the Show Cause Notice penalty has been proposed upon him under Section 117 of the Customs Act, 1962, which deals with penalty leviable when no penalty has been expressly provided in the Act. In his written

● submission, Shri Narendra Narula has challenged the imposition of penalty under Section 117 upon him.

16.1 In the present case, I find that Shri Narendra Narula was in touch with the Proprietor of the Importer firm for clearance of their cargo. Shri. Narendra Narula was the contact person between the importer and the C.B. Their firm M/s GND Cargo was handling the import & Customs clearance work related to mobile accessories work related to M/s Impex and Narendra Narula had given the Customs Broker work to Shri Rajan Arora of M/s Sark Enterprises as their own licence was suspended. They were in regular touch with the importer and the CB for all clearance related work. They were raising invoices for the services rendered from M/s M-Impex. They were preparing customs documents and invoices and were well aware that the goods being imported are undervalued.

16.2 As per the relevant Rules of the CBLR, it was their duty to advise their client, i.e. M/s M Impex to import goods with proper valuation to avoid confiscation of goods and imposition of penalty liability under the Customs Act, 1962, which they failed to do so. Not only that, as their own licence was suspended, it was unethical and wrong on their part to carry out custom clearance work using another CB as a proxy. Their involvement in the imports in question clearly brings out the wrongdoing on their part in not desisting from carrying out custom clearance related work despite their licence being under suspension. Hence, I find that Shri Narendra Narula is liable to penalty under Section 117 of the Customs Act, 1962.

17. No defence submission was submitted by CB M/s Sark Enterprises, not any adjournment was sought by them. The Show Cause Notice proposes penalty upon them under Section 117 of the Customs Act, 1962. From the facts emerging from the Show Cause Notice and investigation conducted, I find that Shri. Rajan Arora, Proprietor of M/s Sark Enterprise, was actively involved in preparation of papers and filing of import documents. All the work of import clearance was given to him by Shri. Narendra Narula who had been clearing the imports of M/s M-Impex since last two years and were directly in touch with the importer M/s M-Impex - Rahul Kapoor and his father Shri Raju Kapoor.

The fact that they chose not to respond to the allegations in the notice depicts acceptance of the allegations made against them. Further, the fact also emerges that they were effectively functioning as a proxy for a suspended Custom Broker which is also a grave violation. Hence, I find that Custom Broker M/s Sark Enterprise are liable to penalty under Section 117 of the Customs Act, 1962.

18. From the foregoing paras, it is apparent that the transaction value of various goods imported in the name of M/s M Impex Trading Co., as declared in the Bill of Entries mentioned in table in the Notice and in the supporting invoice produced at the time of import into India did not reflect the correct transaction value. Further, as discussed herein above, there were mis-declaration with respect to quantity, description and other material particulars of import goods in the said Documents. In this case as was explained earlier, the Importer refused to be part of initial panchnama proceedings. Even then when he asked for re-determination of value, the same was agreed to and was done upon which the Importer has accepted the re-determined value, sought provisional release and in fact got the goods provisionally released as well. Only at the time of adjudication, for the time, at the time of personal hearing, he has sought cross-examination of CE for a valuation which was accepted by him in writing. Even when this was finally acceded to, he went incommunicado towards the end of the time-limit laid down for completing the adjudication proceedings which clearly brings out his intent which was simply to delay proceedings. The notice clearly has not put forth any credible defence for the allegations made in the show cause

● notice. Accordingly, the mis-declarations in respect of value made by the importer with an intent to evade payment of appropriate Customs duty and other material particulars has made the said goods liable for confiscation under Section 111(m) of Customs Act, 1962.

18.1 From the facts, as discussed above, I find that M/s M. Impex Trading Co. and Shri Rahul Kapoor were directly involved in misdeclaration of quantity and description as well as undervaluation of imported goods. Such acts of omissions and commission on part of M/s M Impex and its Proprietor Shri Rahul Kapoor, have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Shri Rahul Kapoor has knowingly dealt with the goods which were undervalued and misdeclared and were liable for confiscation. Therefore, I find that penalty under 112(a)(ii) is imposable on Shri Rahul Kapoor, proprietor of M/s M Impex Trading.

19. The calculation of the applicable Customs Duty based on the valuation report of the Empanelled Chartered Engineer is summarised hereunder: -

Table

<u>Sr. No.</u>	<u>Bill of Entry No. & Date</u>	<u>Containment No.</u>	<u>Value as per Bill of Entry</u>	<u>Present Value</u>	<u>Duty payable</u>	<u>Duty paid</u>	<u>Differential Duty</u>
1	4104614 Dtd 27.05.2021	BMOU - 5408620	1043380	6972485	2833954	400630	2433324
2	4079901 Dtd 25.05.21	HALU- 5632480	853776	6419543	2626153	329591	2296562
3	4018348 Dtd 20.05.21	TCNU- 7619456	1010770	6630530	2575050	382898	2192152
4	4080134 Dtd 25.05.21	SKHU- 9309421	653749	5571920	2087798	244960	1842838
5	6376673 Dtd 23.11.21	DFSU- 6077343	806768	5069306	1949151	0	1949151
6	6376661 Dtd 23.11.21	BMOU- 6136228	885885	6366532	2513444	0	2513444
7	6377658 Dtd 23.11.21	BMOU- 5403171	1071492	5227023	1999037	0	1999037
8	6376610 Dtd 23.11.21	TGHU- 9874914	867994	5854327 (Total of sr. no. 1 to 8 is 4,81,11,666)	2264264	0	2264264 (Total of sr. no. 1 to 8 is 1,74,90,772)
9	Cannot be ascertained	GODOW N	-	-	-	-	-
10	Cannot be ascertained	TRUCK	-	-	-	-	-
		Both 9 & 10 of one BE		2631600	1009462		1009462
			7193814	50743266	19858313	1358079	18500234

19.1. Thus, I find that Customs duty totally amounting to **Rs. 1,85,00,234/- (Rs. One Crore Eighty Five Lakhs Two Hundred and Thirty Four Only)** is imposable upon the importer under **Section 28(4)** of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962.

20. IMPOSITION OF REDEMPTION FINE IN LIEU OF CONFISCATION OF THE GOODS UNDER SECTION SECTION 111 (m) OF THE CUSTOMS ACT, 1962:

(i). I find that it is alleged in the SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines

- the confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are 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 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

(ii). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that the impugned goods have been improperly imported to the extent that such goods were grossly undervalued and misdeclared as to Quantity and description, and therefore liable to confiscation. As discussed in the foregoing paras, it is evident the Importer has deliberately misdeclared and undervalued the imported goods with a malafide intention to evade duty. Therefore, I hold that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as proposed vide impugned SCNs. The Section 125 ibid reads as under: -

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that in the instant case option to pay the redemption fine can be given to the noticee for goods where there is no policy restriction. As the goods already released provisionally under Bond by the department, therefore, I find that the importer is liable to pay the redemption fine under Section 125 of Customs Act, 1962. In this regard I rely on the judgment of the Madras High Court in the case of C.M.A. No. 2857 of 2011, in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)], has laid down as under -

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Further, **order of the Hon'ble Supreme Court in the case of Weston Components Ltd.**, is quoted below for ready reference:

"It is contended by the Learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these

- circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed would not take away the power of the customs authorities to levy redemption fine.”

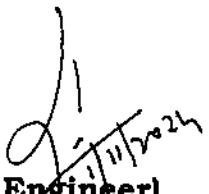
23. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

ORDER

- i. I order to reject the declared value amounting to **Rs. 71,93,814/- (Rupees Seventy One Lakhs Ninety Three Thousand Eight hundred and Fourteen only)** of seized goods as detailed at Para 5.1 which are grossly undervalued as well as mis-declared, under Rule 12 of CVR, 2007 and order the same to be redetermined to **Rs. 5,07,43,266/- (Rupees Five Crores Seven Lakhs Forty Three Thousand Two Hundred Sixty Six Only)** under CVR, 2007.
- ii. I order to confiscate seized goods under Section 111(m) of Customs Act, 1962 totally redetermined valued at **Rs.5,07,43,266/- (Rupees Five Crores Seven Lakhs forty Three Thousand Two Hundred and sixty Six only)** as detailed at Para 5.1 of the Notice, however, as the goods are not physically available for confiscation being released provisionally under bond, therefore, I order to impose redemption fine of **Rs.50,00,000/- (Rupees Fifty Lakhs Only)** under Section 125 of Customs Act, 1962, in lieu of confiscation of imported goods of M/s M Impex Trading Co.
- iii. I order to demand and recover the differential/short paid duty amounting to **Rs. 1,85,00,234/- (Rupees One Crore Eighty Five Lakhs Two hundred Thirty four only)** on the seized goods as detailed at Para 5.1, from the importer under Section 28(4) of the Customs Act, 1962.
- iv. I order to demand and recover the applicable interest on the amount at Sr. No. (iii) under Section 28AA of Customs Act, 1962.
- v. I order to adjust and appropriate the differential customs duty of **Rs.1,74,90,772 (Rupees One Crore Seventy Four Lakhs Ninety Thousand Seven Hundred Seventy two only)** already paid on goods by the importer towards their duty liabilities at (iii) above.
- vi. I order to impose penalty of **Rs.15,00,000/- (Rupees Fifteen Lakhs Only)** on Shri Rahul Kapoor, proprietor of M/s M-Impex, under Section 112(a)(ii) of the Customs Act, 1962.
- vii. I order to adjust and appropriate penalty, fine and any other customs dues against the Bank Guarantees / Bond amounting to **Rs. 87,45,386/- (Rupees Eighty Seven lakhs forty five thousand three hundred eighty six only) & Rs.15,15,000/- (Rupees Fifteen lakhs fifteen thousand only)** executed by the importer.
- viii. I order to impose penalty of **Rs. 2,00,000/- (Rupees Two lakhs Only)** upon Customs Broker, M/s. Sark Enterprises under Section 117 of the Customs Act, 1962, for reasons as discussed above.

viii I order to impose penalty of **Rs.3,00,000/- (Rupees Three Lakhs Only)** upon Shri Narendra Narula, Proprietor of M/s G & D Cargo (forwarder), under Section 117 of the Customs Act, 1962, for reasons as discussed above.

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



(K. Engineer)
Pr. Commissioner of Customs,
Custom House, Mundra.

F.No. GEN/ADJ/COMM/124/2023-Adjn

Date: - 01.11.2024

To **(The Noticees)**,

1. M/s M Impex Trading Co., Shop No. H. No.-2, KH No. 20/6, Tek Chand Colony, Nilo thi Extn. West Delhi-110041 (email: mimpextrading099@gmail.com).
2. Shri Rahul Kapoor, Proprietor of M/s. M Impex Trading Co., H No.2, Kh No. 20/6, Tekchand Colony, Nilo thi Extn., Nr. Glass Factory, Delhi-110 041.
3. CB M/s Sark Enterprises, B-38, Flat No. 5, 1st Floor, Vishwakarma Colony, New Delhi-110 044(email: rajanaroraji21@yahoo.co.in).
4. Shri. Narendra Narula, Proprietor of M/s GND Cargo Movers, Flat no.1874, Upper Ground Floor, Sector 7, Ramphal Chowk, Dwarka-110075.

Copy to:

1. The Dy. Commissioner of Customs, SIIB, Mundra.
2. The Dy. Commissioner of Customs, Import Assessment Group-5, Mundra Customs.
3. Office Copy.