



सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात
OFFICE OF THE COMMISSIONER OF CUSTOMS
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A. File No.	:	GEN/ADJ/COMM/513/2024-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-30-2025-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	17.10.2025 17.10.2025
E. SCN No. & Date	:	GEN/ADJ/COMM/513/2024 dated 29.10.2024
F. Noticee(s) / Party / Importer	:	(i) M/s. Creative Enterprises (ii) M/s. Pushpanjali Logistics (iii) Shri Yunus Dahodwala
G. DIN	:	20251071MO000042474B

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहिरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of

the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

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

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

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

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

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

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

BRIEF FACTS OF THE CASE-

Specific Intelligence developed by the officers of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred as DRI, AZU) indicated that M/s. Creative Enterprises (IEC - BKEPM4246B), Brahmanand Nagar, G Flr. No. 1470, Shyamdhvani Complex, Gala No. 01 & 02, Kamat Ghar, Bhiwandi, Thane, Maharashtra has imported Toys, Tooth Dispenser, Winding Machine and Parts of Measuring Tapes vide Bill of Entry No. 1015029 dated 20.10.2022 (RUD-1) by mis-declaring the description and value of the goods.

2. The details of the consignment as per Bill of Entry No.1015029 dated 20.10.2022 are as under:-

Importer Name	Item Description	Qty	Country of Origin	Container No.
M/s. Creative Enterprises	Refills	13158 Kgs	China	TCNU4577110
	Springs	4177 Kgs		
	Rubber Belt	1207 Kgs		
	Clicks	405 Kgs		
	Winding Machine	10 Pcs		
	Tooth Paste Dispenser	410 Doz		
	Assorted Polycarbonate Mould	1839 Kgs		
	Decorative Interactive show piece	1667 Doz		

3. Examination of the consignment covered under BoE No. 1015029 dated 20.10.2022:

3.1 The consignment was examined by the officers of DRI, Ahmedabad under panchnama dated 02.11.2022 at All Cargo Logistics Limited CFS, Bharat CFS Zone-I, APSEZ Limited, Mundra, Kutch 370421 (RUD-2). On examination, it was found that the importer has imported Tooth Paste Dispenser, Dancing Cactus Toys, Pop-it Toys, Winding Machines and Parts of Measuring Tapes. Comparison of goods found during examination with the goods declared in the Bill of Entry revealed that the importer has imported the above goods by mis- declaring the same. The details of goods found during examination are as per Table-A below:-

Table-A

Sr. No.	Marking on pallet / package	Description of goods	Size	Quantity	Weight (Kgs)
1	JMYA-1	Tooth Paste Dispenser	-	4920 Nos.	-
2	YS	Dancing Cactus Toys	-	20000 Nos.	-
3	YS-3	Pop-it Toys		50000 Nos.	-
4	REFILL	Metal Tape	3 meter	50000 Nos.	2100
5	REFILL	Metal Tape	3 meter	50000 Nos.	2100
6	REFILL	Metal Tape	5 meter	25000 Nos.	1900
7	REFILL	Metal Tape	5 meter	25000 Nos.	1900
8	REFILL	Metal Tape	5 meter	25000 Nos.	1900
9	REFILL	Metal Tape	5 meter	25000 Nos.	1900
10	SPR / BELT	Metal Spring	-	100000 Nos.	1900
11		Rubber Belt	-	40000 Nos.	72
12	SPR / BELT	Metal Spring	-	50000 Nos.	1875
13		Rubber Belt	-	80000 Nos.	144
14	SPR / BELT	Metal Spring	-	50000Nos.	1875
15		Rubber Belt	-	80000 Nos.	144
16	CLICK /	Metal Clip		200000 Nos.	420
17	SCREW	Metal Screw		300 Kgs	306

18	WINDING MACHINE	Winding machine		4 Nos.	216
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3.2 Whereas on examination of the goods it appears that as mentioned at Sr. No. 2 and 3 of the above table, the importer has imported Dancing Cactus Toys and Pop-it Toys. Whereas on examination of the goods, it appears that the importer has imported the toys viz. Dancing Cactus Toys and Pop-it Toys by mis-declaring the same as Decorative Interactive Show Piece and Assorted Polycarbonate Mould, classifying the same under CTH 95059090 and 84807900, respectively. The aforesaid items appear to be toys which are for use in play by children under 14 years of age and hence, appropriately classifiable under Chapter Heading 9503.

3.3 The import of Toys is governed by Import Policy Condition 2 of Chapter 95. DGFT vide Notification No. 26/2015-2020 dated 01.09.2017 has amended the said condition. Further, as provided under Toys (Quality Control) Order dated 25.02.2020, which is applicable to Toys for use in play by children less than 14 years of age enforcing BIS mandatorily certification for toys. Toys shall conform to the Indian Standards for Safety of Toys and shall bear the Standard Mark under a licence from BIS as per Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018. The importer has failed to produce the requisite certificate/licence from the competent authority and the items viz. Dancing Cactus Toys and Pop-it Toys do not bear the Standard Mark under a licence from the Bureau as per Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018.

3.4 Whereas it further appears that the goods mentioned at Sr. No. 4 to 17 of the Table-A above are Parts of Measuring Tapes. The importer has imported the above goods by mis-declaring the same as Refills, Springs, Rubber Belt, Clicks and Screw, classifying the same under CTH 83024200, 83024200, 40169390 and 83024260, respectively. These goods are nothing but Parts of Measuring Tapes and are classifiable under CTH 90179000. The importer has mis-declared the goods viz. parts and accessories of measuring tapes and have wrongly classified them under various headings as mentioned above.

3.5 Whereas it further appears that anti-dumping duty is leviable on import of "Steel and Fibre Glass Measuring Tapes and their Parts and Components", falling under heading 9017 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from the People's Republic of China as per Notification No. 17/2020-Customs (ADD) dated 08.07.2020. As per above Notification, Steel Measuring Tapes and Parts and Components thereof, originated from the People's Republic of China and exported into India from any country including People's Republic of China attract anti-dumping duty @ 1.83 USD per Kg. Whereas it appears that the importer has mis-declared and mis-classified the goods to escape from the payment of Anti-Dumping Duty.

4. Valuation of goods by Chartered Engineer:

4.1 M/s. Suvikaa Associates was requested to examine the goods and give detailed report including valuation report of the goods. M/s. Suvikaa Associates submitted the report No. DRI/168/22-23 dated 03.11.2022 (RUD- 3). Major observations of the report are as under:

- The cargo contained metal tapes that was found to be unbranded and were packed in the sets of 25. Also 25 kg bags were found each containing torsion coils in loose and rubber hanging belts. Bags of metal clips, screws were also found upon examination.
- In the cargo 4 sets of winding motors were also present with its spare parts, the internals of the machines were clean and well lubricated. A foot peddle was also included with the machine kit. Thus, it can be concluded that these machines were new and semi-automatic.
- Based upon the contents of the cargo, it can be assumed that the goods were imported as spare parts and were meant to be assembled into a more complete measuring tape form.
- The cargo also contained boxes of battery operated, rechargeable dancing cactus toys. Non-battery operated rubber pop-it toys were also found in bulk.
- The cargo consists of parts of measuring tape, toys, tooth paste dispenser.
- Based on the condition of the goods, the market price of the goods imported in container no. TCNU4577110 is as follows:

Sr. No.	Marking pallet / package	Description of goods	Size	Quantity (Pcs)	Market Price Per unit (INR)	Total Market Price
1	JMYA-I	Toothpaste Dispenser	-	4920	₹100	₹4,92,000
2	YS	Dancing Cactus Toy	-	20000	₹650	₹1,30,00,000
3	YS-3	Pop-it Toys	-	50000	₹90	₹45,00,000
4	REFILL	Steel Tape with marking of length	3 Meter	50000	₹100	₹50,00,000
5	REFILL	Steel Tape with marking of length	3 Meter	50000	₹100	₹50,00,000
6	REFILL	Steel Tape with marking of length	5 Meters	25000	₹145	₹36,25,000
7	REFILL	Steel Tape with marking of length	6 Meters	25000	₹145	₹36,25,000
8	REFILL	Steel Tape with marking of length	7 Meters	25000	₹145	₹36,25,000
9	REFILL	Steel Tape with marking of length	8 Meters	25000	₹145	₹36,25,000
10	SPR /BELT	Metal Spring (Flat Spiral Torsion Coil Spring)	-	100000	₹20	₹20,00,000
		Rubber Belt	-	40000	₹5	₹2,00,000
11	SPR /BELT	Metal Spring	-	50000	₹20	₹10,00,000
		Rubber Belt	-	80000	₹5	₹4,00,000
12	SPR /BELT	Metal Spring	-	50000	₹20	₹10,00,000
		Rubber Belt	-	80000	₹5	₹4,00,000
13	CLICK/SCREW	Metal Clip	-	200000	₹20	₹40,00,000
		Metal Screw	-	300 Kgs	140/kg	₹42,000

14	WINDING MACHINE	Winding Machine	-	4	₹55,000	₹2,20,000
Total						₹5,17,54,000

4.2 Whereas from the above it appears that the importer has imported toys and parts of measuring tapes by mis-declaring the description of goods and has wrongly classified the goods imported by them. Further, on comparison of the value declared in the Bill of Entry with the valuation report submitted by the Chartered Engineer, it appears that the importer has grossly undervalued the goods.

4.3 Further, as evident from the Panchnama of dated 02.11.2022, upon examination and comparison of goods found during the said examination with the goods declared in Bill of Entry No.1015029 Dated 20.10.2022 filed by the importer, it was observed that except Tooth Paste Dispenser, Rubber belt and Winding Machine, none of the items were found to be declared. Even the item namely Rubber belt & Winding Machine were also found to be mis-declared in terms of quantity, CTH. Thus the majority of imported items were found to be undeclared and their value were not available in the Bills of Entry, Invoice etc. Hence, in absence of value of the undeclared items, the value of the imported consignments was required to be ascertain. Since the declaration made in Bill of Entry was incorrect and manipulated, truth or accuracy of value of even declared items was doubtful and was required to be rejected in terms of the provision of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

4.4 In view of these facts, the transaction value declared for the imported goods cannot be considered for the purpose of Section 14 of the Customs Act, 1962 and hence declared value is to be rejected under Rule 12 and required to be re-determined by sequentially proceeding in terms of Rule 4 to 9 of CVR, 2007 as provided under Rule 3(4) of CVR, 2007. Further, as the majority of goods were not declared, description of the same in respect of make and model etc. was not available, items were spare parts, unbranded, some were loose in nature. Hence, value could not be determined under Rule 4,5,6,7 & 8 of CVR, 2007. Accordingly, the value shall be determined under the provisions of Rule 9 of CVR, 2007. Accordingly, valuation given by the Govt. Approved Chartered Engineer & Valuer based on market research is required to be consider and the value so arrived is multiplied by respective quantity of goods. As per the valuation report, it comes to Rs. 5,17,54,000/-.

5. Seizure of goods: Whereas it appears that M/s. Creative Enterprises has imported 20,000 Nos. of Dancing Cactus Toys and 50,000 Nos. of Pop-it Toys by mis-declaring the same as Decorative Interactive Show Piece and Assorted Polycarbonate Moulds, respectively. It was also found that the said importer has imported parts of steel measuring tapes viz. 2,00,000 Nos. each of metal tapes, springs, rubber belt, clicks and screw, by mis-declaring the same. The importer has also imported 4920 pcs tooth paste dispenser and 4 Nos. winding machines. The value of the goods declared by the importer is grossly undervalued. As the goods viz. toys were imported in violation of policy conditions, the parts of measuring tapes were mis-declared and mis-classified to escape from the payment of Anti-dumping Duty and the goods were grossly undervalued, the goods imported vide Bill of Entry No. 1015029 dated 20.10.2022, having market

price of Rs.5,17,54,000/- were placed under seizure under Section 110(1) of the Customs Act, 1962 vide Seizure Memo F. No. DRI/AZU/GI- 02/ENQ-55/2022 dated 11.11.2022 (RUD-4).

6. During the course of investigation, in order to collect the evidence/corroborative evidence statement of persons who were directly/indirectly involved in import of goods were recorded by the DRI under the provisions of Section 108 of Customs Act, 1962. The facts of statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statement of Shri Rahul Bhanushali, Branch Manager, M/s. Pushpanjali was recorded on 15.12.2022.
- Statement of Shri Rajesh Nakhua, was recorded on 27.12.2022.
- Statement of Shri Yunus Dahodwala, residing was recorded on 05.01.2023.
- Statement of Shri Manzoor Ilahi Mohammed Hussain Munshi, Proprietor of M/s. Creative Enterprises, residing was recorded on 25.01.2023 and 02.02.2023.
- Further statement of Shri Rajesh Nakhua, Karta of M/s. Om Logistics, 303, Silver Line Building, Vashi was recorded on 13.01.2023.

From the statements of above persons recorded, it appeared that Shri Yunus Dahodwala (the beneficial owner of the goods), Shri Manzoor Ilahi Mohammed Hussain Munshi, Shri Rajesh Nakhua and Shri Rahul Bhanushali, in connivance with each other attempted to smuggle restricted goods and also other goods by mis-declaring and mis-classifying the same, with intent to escape from the applicable import conditions and from the payment of appropriate Customs Duties.

7. Contravention of Statutory / Legal provisions relating to Import of Toys:

7.1 The import of Toys is governed by Import Policy Condition 2 of Chapter

95. DGFT vide Notification No. 26/2015-2020 dated 01.09.2017 has amended the said condition. The amended Import Policy Condition 2 of Chapter 95 is reproduced below:

Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:

(i) A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS):

- a) IS: 9873 (Part 1) - Safety of toys; Part - 1 Safety aspects related to mechanical and physical properties (Third Revision).
- b) IS: 9873 (Part 2) - Safety of Toys; Part - 2 Flammability (Third Revision)
- c) IS: 9873 (Part 3) - Safety of Toys; Part - 3 Migration of certain elements (Second Revision)
- d) IS: 9873 (Part 4) Safety of Toys; Part - 4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic use.
- e) IS: 9873 (Part 7) - Safety of Toys; Part - 7 Requirements and test methods for finger prints.
- f) IS: 9873 (Part 9) - Safety of Toys; Part - 9 Certain phthalates esters in toys and Children products.
- g) IS: 15644 - Safety of Electric Toys.

(ii) A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part - 1, Part - 2, Part - 3, Part - 4, Part - 7, Part - 9 and 15644:2006.

(iii) A certificate of conformance from the manufacture that the representative samples CUS/SIIB/45/2022-GR 3-O/O PR COMMR-CUS-PORT-KOLKATA I/802474/2022 of the toys being imported haven tested by an independent laboratory which is accredited by NABL, India and found to meet the specifications indicated above. The certificate would also link the toys in the consignment to the period manufacture indicated in the Certificate of Conformity.

7.2 Subsequently, DGFT vide Notification No. 33/2015-2020 dated 02.12.2019 has amended the Policy condition 2 (iii) to Chapter 95 and new para (capital-D) was added to Section 2 (Indian Quality Standards) to the General Notes regarding Import Policy of ITC(HS), 2017 as under:

Existing Policy Condition No. 2(iii)	Revised Policy Condition No. 2 (iii)
A certificate of conformance from the manufacture that the representative samples of the toys being imported haven tested by an independent laboratory which is accredited by NABL, India and found to meet the specifications indicated above. The certificate would also link the toys in the consignment to the period manufacture indicated in the Certificate of Conformity.	Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance may be given by Customs on the condition that the product cannot be sold in the market till successful testing of the sample. Further, if the sample drawn fails to meet the required standards, the consignment will be sent back or will be destroyed at the cost of importer.

2. New para (capital-D) is added to Section 2 (Indian Quality Standards) to the General Notes regarding Import Policy of ITC (HS), 2017 as under:

“2.(D) Import policy for Toys/Dolls etc: Import policy for Toys/Dolls and similar other recreational goods under any chapter will be governed by BIS standards as specified in Policy Conditions 2 of Chapter 95.”

7.3 The Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry issued Toys (Quality Control) Order dated 25.02.2020 read with Toys (Quality Control) Amendment Order dated 15.09.2020, which is applicable to (Toys) Product or material designed or clearly intended, whether or not exclusively, for use in play by children under 14 years of age or any other product as notified by the Central Government from time to time, enforcing BIS mandatorily certification for toys w.e.f. 01.01.2021. The relevant para regarding application of the said Quality Control Order is produced below for reference:

2. Application - In this order, unless the context otherwise requires-

“(a) This Quality Control Order shall apply to (Toys) Product or material designed or clearly intended, whether or not exclusively, for use in play by children under 14 years of age or any other product as notified by the Central Government from time to time;

(b) This order shall apply to Toys as they are initially received by the children and, in addition, this shall apply after a toy is subjected to reasonably foreseeable conditions of normal use and abuse unless specifically noted otherwise.”

7.4 As per Para 3 of the S.O. No. 853(E) dated 25.02.2020/Toys (Quality Control Order) 2020, the toys shall conform to corresponding Indian Standards viz. IS: 9873 (PART 1), (PART 2), (PART 3), (PART 4), (PART 7), (PART 9) and IS: 15644 and shall bear the standard mark under License from the Bureau as per Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018.

7.5 As per Section 15 of the BIS Act, 2016, import, sale or distribution of goods without a standard mark and without conformance to specified standard is prohibited. Section 15 of BIS Act, 2016 is reproduced below:

"15. Prohibition to import, sell, exhibit, etc.

(1) No person shall import, distribute, sell, store or exhibit for sale, any goods or article under sub-section (1) of section 14, except under certification from the Bureau."

7.6 Para 2.03(a) of the Foreign Trade Policy 2015-20 stipulates those Domestic Laws/Rules/Orders/Regulations/Technical Specifications/Environmental /Safety and Health Norms applicable to domestically produced goods shall mutatis mutandis apply to the imported goods.

7.7 Whereas it appears that the imported goods viz. Dancing Cactus Toys and Pop-it Toys are for playing for children and fall under the category of "toys" and are classifiable under CTH 9503. In the present case, the importer has failed to produce the requisite certificate/licence from the competent authority. The items viz. Dancing Cactus Toys and Pop-it Toys do not bear the Standard Mark under a licence from the Bureau as per Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018.

7.8 Whereas it appears that Dancing Cactus Toys and Pop-it Toys are classifiable under tariff item 9503 0090 and requires mandatory BIS certification as per Import Policy condition 2 of Chapter 95 read with Toy Quality Control Order, 2020. The importer has deliberately mis-declared and mis-classified the impugned goods under CTH 95059090 and 84807900, respectively with intent to escape from the stringent Import Policy conditions prescribed for import of toys.

7.9 Whereas in view of Section 15 of the BIS Act, 2016 and Para 2.03 of Foreign Trade Policy 2015-20, it appears that the importer has attempted to clear restricted items vide the impugned Bill of Entry and violated the provisions of the BIS Act, 2016 read with S.O. No. 853(E) dated 25.02.2020/Toys (Quality Control Order) 2020, issued by the Department for Promotion of Industry and Internal Trade.

7.10 In view of the contravention of above provisions, the goods viz. Dancing Cactus Toys and Pop-it Toys imported vide Bill of Entry No. 1015029 dated 20.10.2022 appears to be construed as „smuggling“ within the meaning of Section 2 (39) of the Act and the said goods also appears to be termed as "prohibited" within the meaning of Section 2(33) of the Act and hence become liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962. By this act of omission and commission, the importer has rendered himself liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

7.11 Whereas it appears that Shri Yunus Dahodwala (the beneficial owner of the impugned goods), Shri Rajesh Nakhua and Shri Rahul Bhanushali in their voluntary statements recorded under Section 108 of the Customs Act, 1962 have admitted to have imported toys by mis-declaring and mis-classifying the same under different Tariff Headings. Thus, Shri Yunus Dahodwala, Shri Rajesh

Nakhua and Shri Rahul Bhanushali are also liable to penal action under Section 112(a) of the Act, *ibid*.

8. Contraventions regarding Anti-Dumping Duty related to Parts and Accessories of Measuring Tapes:

8.1 Whereas it further appears that anti-dumping duty is leviable on import of “Steel and Fibre Glass Measuring Tapes and their Parts and Components”, falling under heading 9017 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from the People's Republic of China as per Notification No. 17/2020-Customs (ADD) dated 08.07.2020. The details are as under:

S. No.	Tariff Item	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Duty Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
1	9017 80 10 or 9017 90 00	Measuring Tapes	Steel Tapes and parts and components thereof	People's Republic of China	Any country including People's Republic of China	Any	1.83	kg	US\$
2	9017 80 10 or 9017 90 00	Measuring Tapes	Steel Tapes and parts and components thereof	Any country other than People's Republic of China	People's Republic of China	Any	1.83	kg	US\$
3	9017 80 10 or 9017 90 00	Measuring Tapes	Fibre glass Tapes and parts and components thereof	People's Republic of China	Any country including People's Republic of China	Any	2.56	kg	US\$
4	9017 80 10 or 9017 90 00	Measuring Tapes	Fibre glass Tapes and parts and components thereof	Any country other than People's Republic of China	People's Republic of China	Any	2.56	kg	US\$

Table showing anti-dumping duty vide Notification No. 17/2020-Customs (ADD)

Vide the said notification, it is also mentioned that the anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be paid in Indian currency. Thus, Steel Measuring Tapes and Parts and Components thereof, originated from the People's Republic of China and exported into India from any country including People's Republic of China attract anti-dumping duty @ 1.83 USD per Kg.

8.2 Whereas it appears that the importer has imported Parts of Measuring Tapes by mis-declaring and mis-classifying the different goods such as Refills, Springs, Rubber Belt, Clicks and Screw, under CTH 83024200, 83024200, 40169390 and 83024260, respectively. The said goods are the Parts of Measuring Tapes which should be classifiable under CTH 90179000. Thus, the importer has mis-declared the goods viz. parts and accessories of measuring tapes and have wrongly classified them under various headings as mentioned above. The correct classification of Parts of measuring tapes under CTH 90179000 and thus the goods attracts Anti -Dumping under provisions of Customs Act, 1962.

8.3 Whereas it appears that the importer, in order to evade the payment of Anti-Dumping Duty, has deliberately mis-declared and mis-classified the goods.

The above act on the part of the importer has rendered the goods viz. parts of measuring tapes liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962. By this act of omission and commission, the importer has rendered himself liable for penal action under Section 112(a) and 112(b) of the Customs Act, 1962.

8.4 Whereas it appears that Shri Yunus Dahodwala (the beneficial owner of the impugned goods), Shri Manzoor Ilahi Mohammed Hussain Munshi (IEC Holder), Shri Rajesh Nakhua and Shri Rahul Bhanushali in their voluntary statements recorded under Section 108 of the Customs Act, 1962 have admitted to have imported parts of measuring tapes by mis-declaring and mis-classifying the same under different Tariff Headings. Thus, Shri Yunus Dahodwala, Shri Rajesh Nakhua and Shri Rahul Bhanushali are also liable to penal action under Section 112(a) and 112(b) of the Act, *ibid*.

9. STATUTORY LEGAL/PENAL PROVISIONS UNDER CUSTOMS ACT, 1962:

9.1 SECTION 111: Confiscation of improperly imported goods etc.:

The relevant clauses of Section 111 are reproduced below:

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

(d) any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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

9.2 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 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.

(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 not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

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

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

9.3 SECTION 114AA: Penalty for use of false and incorrect material:-

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

9.4 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.

10. Role Played By Various Persons Involved:

10.1 Role of Shri Yunus Dahodwala: Whereas it appears that Shri Yunus Dahodwala was the actual beneficial owner of the consignment imported in the name of M/s Creative Enterprises. He approached Shri Rajesh Nakhua for clearance of the consignment imported in the name of M/s. Creative Enterprises. He confirmed vide his statement dated 05.01.2023 that M/s. Creative Enterprises had filed warehousing BE no. 1015029 dated 20.10.2022 for clearance of various goods by mis-declaring and mis-classifying the same before the Customs. The acts of omission and commission on the part of Shri Yunus

Dahodwala rendered the goods liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and rendered himself liable to penalty under Section 112(a), 112(b) and 114AA of the Customs Act, 1962.

10.2 ROLE OF SHRI RAJESH NAKHUA: Whereas it appears that Shri Rajesh Nakhua, Karta of M/s. Om Logistics managed and provided IECs that were lying dormant and based around Mumbai and facilitated the importers to clear the consignments. He had purchased dummy IEC of M/s. Creative Enterprise from the market on payment of cash. He facilitated Shri Yunus for clearance of the mis-declared goods. He approached Shri Rahul Bhanushali and influenced him to file Bill of Entry for goods by the mis-declaring and mis-classifying the same. The acts of omission and commission on the part of Shri Rajesh Nakhua rendered the goods liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and rendered himself liable to penalty under Section 112(a), 112(b) and 114AA of the Customs Act, 1962.

10.3 ROLE OF M/S. PUSHPANJALI LOGISTICS: Whereas it appears that Customs Broker M/s. Pushpanjali Logistics, have failed to discharge their duties by not verifying the KYC of the importers and were careless in filing of Bills of Entry without the verification of antecedents and whereabouts of the importer and verifying the documents furnished to them. They miserably failed to exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business. Therefore, by such an act they have failed to fulfill their obligations and duties under Regulation 10(n) of the CBLR, 2018 and rendered the subject goods liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and rendered themselves liable for penalty under Section 112(a), 114AA and 117 of the Customs Act, 1962.

10.4 ROLE OF SHRI RAHUL BHANUSHALI, BRANCH MANAGER, M/S. PUSHPANJALI LOGISTICS: Whereas it appears that Shri Rahul Bhanushali, Branch Manager, M/s. Pushpanjali Logistics on the directions of Shri Rajesh Nakhua filed the Bill of Entry for clearance of mis-declared goods. He admitted in his statement dated 15.12.2022 that the goods imported were grossly mis-declared and the goods found during examination were different than the goods declared in the Bill of Entry. Further, he deliberately mis-declared and mis-classified the goods as desired by Shri Rajesh Nakhua. Shri Rahul Bhanushali had utilized the name of the CHA firm M/s. Pushpanjali Logistics for the purpose of filing of the Bill of Entry and clearance of the imported mis-declared goods. The acts of omission and commission on the part of Shri Rajesh Nakhua rendered the goods liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and rendered himself liable to penalty under Section 112(a), 112(b) and 114AA of the Customs Act, 1962.

10.5 ROLE OF SHRI MANZOOR ILAHI MOHAMMED HUSSAIN MUNSHI, PROPRIETOR OF M/S. CREATIVE ENTERPRISES: Whereas it appears that Shri Manzoor Ilahi Mohammed Hussain Munshi, Proprietor of M/s. Creative Enterprises, residing at Room No. 503, Shams Tower, Behind Tuba Hotel, Kausa, Thane Mumbra, Maharashtra - 400612 in his statement dated 25.01.2023 and 02.02.2023 has confirmed his Pan card BKEPM4246B and his Aadhaar Card bearing number 6296 8953 9720 but the signatures appearing in the documents were not his and appear to be forged one; that his original signature is as per the PAN Card. He further stated that as he was jobless, he went to Bhiwandi and there he submitted his KYC documents for obtaining a sim card for job purpose

and he was unaware that his documents were used for obtaining the IEC of M/s Creative Enterprises. Further, he never signed any documents related to M/s Creative Enterprises and have not known Shri Rajesh Tulsidas Nakhua, Rahul Bhanushali and Irfan Memon. But in statement dated 31.10.2023 of Shri Yunus Dahodwala, he stated that Shri Manzoor Ilahi Mohammed Hussain Munshi provided his KYC documents to Shri Rajesh Nakhua as he was in urgent need of money at that time. Thereby, by such act he had allowed his KYC documents and IEC license to be used to import goods which are restricted goods and also other goods by mis-declaring and mis-classifying the same, with intent to escape from the applicable import conditions and from the payment of appropriate Customs Duties. Thus, he has concerned himself in an attempt to import of the subject consignment thus rendering himself for penalty under Section 112(a), 112(b) and 117 of the Customs Act, 1962.

11. Duty Calculation: Whereas it appears that that Shri Yunus Dahodwala (the beneficial owner of the goods), Shri Manzoor Ilahi Mohammed Hussain Munshi (IEC Holder), Shri Rajesh Nakhua and Shri Rahul Bhanushali, in connivance with each other attempted to smuggle restricted goods and also other goods by mis-declaring and mis-classifying the same, with intent to escape from the applicable import conditions and from the payment of appropriate Customs Duties including the Anti-Dumping Duties. In view of above, the duty recoverable appears to be Rs. 1,39,36,877/- by importing the goods by way of mis-classification as mentioned in Annexure-B to this Show Cause Notice.

12. SHOW CAUSE IN RESPECT OF SEIZURE UNDER SECTION 124 OF THE CUSTOMS ACT, 1962.

12.1 In the instant case, the Show cause notice for seizure portion was issued by Additional Commissioner, Customs House Mundra on 01.05.2023 to M/s. Creative Enterprises, (IEC -BKEPM4246B), Brahmanand Nagar, G Flr. No. 1470, Shyamdhvani Complex, Gala No. 01 & 02, Kamat Ghar, Bhiwandi, Thane, Maharashtra, proposing:-

- i. Confiscation of the goods as mentioned in Annexure-A to this notice, having total value of Rs. 5,17,54,000/- (Rupees Five Crores Seventeen Lakhs Fifty Four Thousand Only) Section 111(d) and 111(m) and 111(o) of the Customs Act, 1962;
- ii. Penalties under Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962 to M/s Creative Enterprises.
- iii. Penalties under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 to Shri Yunus Dahodwala, 22, Sarang Street, 4th Floor, Khokha Bazar, Zainab Manzil, Mumbai - 400003.
- iv. Penalties under Section 112 (a), 112 (b) and 114AA of the Customs Act, 1962 to Shri Rajesh Nakhua, 312, Flat No. 102, Pantnagar, Ghatkopar East, Mumbai-400078.
- v. Penalties under Section 112 (a), 112 (b) and 114AA of the Customs Act, 1962 to Shri Rahul Bhanushali, Branch Manager, M/s. Pushpanjali Logistics, Office No. 205, 2nd Floor, Golden Arcade, Zero Point, Mundra, Kutch, 370421.

12.2 Further, Addendum to the Seizure SCN was also issued on 22.04.2024

proposing the penalty under Section 112 (a), 112 (b) and 114AA of the Customs Act, 1962 to Shri Manzor Ilahi Mohammed Hussain Munshi (IEC Holder).

12.3 Further, M/s. Creative Enterprises, (IEC -BKEPM4246B), Brahmanand Nagar, G Flr. No. 1470, Shyamdhvani Complex, Gala No. 01 & 02, Kamat Ghar, Bhiwandi, Thane, Maharashtra and Shri Yunus Dahodwala (beneficial owner of the goods), resident of 22, Sarang Street, 4th Floor, Khokha Bazar, Zainab Manzil, Mumbai-400003 were also called upon to show cause, vide the instant Show cause notice F.No. GEN/ADJ/COMM/513/2024-Adjn dated 29.10.2024, as to why:

- i) The transaction value (in respect of the seized goods as per Annexure-A) declared at the time of filing of Bill of Entry No. 1015029 dated 02.11.2022 i.e. Rs.1184793.31 should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as there is a gross Mis-declaration and should not be re-determined to Rs. 5,17,54,000/- (Rupees Five Crore Seventeen Lakh Fifty Four Thousand only) under Section 14(1) of the Customs Act, 1962 read with the Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- ii) The Customs duties amounting to Rs. 1,39,36,877/- (One Crore Thirty Nine Lakhs Thirty Six Thousand Eight Hundred and seventy seven only) should not be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962 alongwith applicable interest under section 28AA of the Customs Act, 1962 jointly and severally from M/s Creative Enterprises and Shri Yunus Dahodwala (beneficial owner of the goods) on account of mis-declaration and mis-classification of the goods as per **Annexure-B**.

12.4 M/s. Pushpanjali Logistics, 205, 2nd Floor, Golden Arcade, Zero Point, Mundra, Kutch - 370421 were also called upon to show cause to the Pr. Commissioner of Customs, Cutom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421, vide the subject show cause notice dated 29.10.2024 as to why :-

- (i) Penalty should not be imposed upon them under Section 112(a), 114AA and 117 of the Customs Act, 1962.

13. RECORD OF PERSONAL HEARING-

- i. Opportunities of personal hearing were provided to all the noticees on 04.09.2025, 24.09.2025 and 06.10.2025 vide this office letters dated 25.08.2025, 09.09.2025 and 24.09.2025 respectively. However, neither the noticees nor their any authorized representative appeared for personal hearing on the scheduled dates.
- ii. Further, it is observed that none of the noticees submitted any written reply, despite the specific and categorical direction contained in Para 16 of the SCN requiring them to file a written submission within 30 days of its receipt.
- iii. I find that all the noticees were afforded sufficient opportunities to submit their written reply as well as to appear for personal hearings. However, neither any reply was filed nor was any of the hearings attended by the noticees. Accordingly, I hold that the requirement of compliance with the Principles of Natural Justice, as envisaged under Section 122A of the Customs Act, 1962, stands duly satisfied.
- iv. Further, I note that adjudication proceedings cannot be unduly prolonged

and are required to be completed within a reasonable period, in accordance with the principles of natural justice and the statutory mandate. In view of the foregoing, and to ensure compliance with the provisions of law, I proceed to adjudicate the matter ex parte, based on the evidence and material available on record.

DISCUSSION AND FINDINGS

14. I have carefully gone through the case records, the contents of the present Show Cause Notice issued under F. No. GEN/ADJ/COMM/513/2024-Adjn dated 29.10.2024, the earlier Order-in-Original No. MCH/ADC/AKM/184/2024-25 dated 06.11.2024 (issued on 07.11.2024) in respect of the SCN F.No. GEN/ADJ/ADC/899/2023-ADJN Dated 01.05.2023, and all other relevant documents on record.

15. In the subject Show Cause Notice dated 29.10.2024, the issues before me to decide are the following:-

- (i) Whether the transaction value (in respect of the seized goods as per Annexure-A) declared at the time of filing of Bill of Entry No. 1015029 dated 02.11.2022 i.e. Rs.1184793.31 is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and be re-determined to Rs. 5,17,54,000/- (Rupees Five Crore Seventeen Lakh Fifty Four Thousand only) under Section 14(1) of the Customs Act, 1962 read with the Rule 9 of the Customs Valuation(Determination of Value of Imported Goods)Rules, 2007.
- (ii) Whether the Customs duties amounting to Rs. 1,39,36,877/-(One Crore Thirty Nine Lakhs Thirty Six Thousand Eight Hundred and seventy seven only) is liable to be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962 alongwith applicable interest under section 28AA of the Customs Act, 1962.
- (iii) Whether Penalty is liable to be imposed upon M/s. Pushpanjali Logistics under Section 112(a), 114AA and 117 of the Customs Act, 1962.

16. In this regard, it is pertinent to note that the earlier Show Cause Notice bearing F. No. GEN/ADJ/ADC/899/2023-Adjn dated 01.05.2023, covering the same Bill of Entry No. 1015029 dated 20.10.2022, has already been adjudicated vide the aforesaid Order-in-Original dated 07.11.2024 issued by the Additional Commissioner, Custom House Mundra. In that order, the Adjudicating Authority has conclusively determined the classification, valuation, and import policy status of the goods imported by M/s. *Creative Enterprises*, and has held the goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, while imposing penalty under Section 112(a) and 114AA of the said Act. The findings therein also covered the aspect of undervaluation and re-determination of assessable value in terms of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The order portion of the said Order dated 07.11.2024 is reproduced verbatim.

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

ORDER

- 26.1** *I reject the declared assessable value of Rs. 15,96,144/- (Rupees Fifteen Lakhs Ninety Six Thousand One Hundred Forty Four Only) for the goods mentioned in Table-A, under Rule 12 of CVR, 2007 and order to re-determine the same as Rs. 5,17,54,000/- (Rupees Five Crore Seventeen Lakhs Fifty Four Thousand Only) in terms of Rule 9 of the CVR, 2007 read with section 14 of Customs Act, 1962.*

26.2 I order for absolute confiscation of **total 70,000 pcs of Toys** mentioned at sr. no. 2 & 3 of Table-2 under Section 111 (d) & 111(m) of the Customs Act, 1962 of value Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakhs only). Unless an appeal against such order is pending, the said impugned goods i.e. 70000 pcs of Toys would be liable for Disposal as per instructions and guidelines in CBIC disposal manual, 2019.

26.3 I order to confiscate the impugned goods imported vide Bill of Entry No. 1015029 dated 20.10.2022 (mentioned in Table-2 except item at sr. no. 2 & 3) having re-determined value of Rs. 3,42,54,000/- (Rupees Three Crore Forty Two Lakhs Fifty Four Thousand Only) under Section 111(m) of the Customs Act 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 34,00,000/- (Rs. Thirty Four Lakhs Only)** under Section 125 of Customs Act, 1962 for re- export purpose as the Importer has expressed his willingness to re-export the goods. The re-export to be made to the same supplier within 120 days from the date of receipt of this order.

26.4 PENALTY IN RESPECT OF OFFENDING GOODS I.E. TOYS, IMPORTED WITHOUT MANDATORY BIS

- i. I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** on **M/s. Creative Enterprise** under Section 112(a)(i) of the Customs Act, 1962.
- ii. I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** on **Shri Yunus Dahodwala** (actual beneficial owner/importer of M/s. Creative Enterprises) under Section 112(a)(i) of the Customs Act, 1962.
- iii. I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** on **Shri Rajesh Nakhua** under Section 112(a)(i) of the Customs Act, 1962.
- iv. I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** on **Shri Rahul Bhanushali**, Branch Manager, M/s. Pushpanjali Logistics under Section 112(a)(i) of the Customs Act, 1962.

26.5 PENALTY IN RESPECT OF DUTIABLE GOODS:

- i. I impose a Penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** on **M/s. Creative Enterprises**, under Section 112(a)(ii) of the Customs Act, 1962 in respect of dutiable goods i.e. other than toys.
- ii. I impose a Penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** on **Shri Yunus Dahodwala** (actual beneficial owner/importer of M/s. Creative Enterprises) under Section 112(a)(ii) of the Customs Act, 1962.
- iii. I impose a Penalty of **15,00,000/- (Rupees Fifteen Lakhs only)** on **Shri Rajesh Nakhua** under Section 112(a)(ii) of the Customs Act, 1962.
- iv. I impose a Penalty of **15,00,000/- (Rupees Fifteen Lakhs only)** on **Shri Rahul Bhanushali**, Branch Manager, M/s. Pushpanjali Logistics under Section 112(a)(ii) of the Customs Act, 1962.

26.6 IMPOSITION OF PENALTY UNDER SECTION 114(AA) OF THE CUSTOMS ACT, 1962:

- i. I impose a Penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only)** on **Shri Yunus Dahodwala** (beneficial owner/importer of M/s. Creative Enterprises) under Section 114AA of the Customs Act, 1962.
- ii. I impose a Penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** on **Shri Rajesh Nakhua** under Section 114AA of the Customs Act, 1962.
- iii. I impose a Penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** on **Shri Rahul Bhanushali**, Branch Manager under Section 114AA of the Customs Act, 1962.

26.7 I do not impose penalty on M/s. Creative Enterprises, Shri Shri Yunus Dahodwala, Rajesh Nakhua, Rahul Bhanushali and Shri Manzoor Ilahi Mohammed Hussain Munshi under Section 112(b) of the Customs Act, 1962

26.8 I do not impose penalty on Shri Manzoor Ilahi Mohammed Hussain Munshi under Section 112(a), 112 (b) and 117 of the Customs Act, 1962.

26.9 I do not impose penalty on M/s. Creative Enterprises under Section 114A and 114AA of the Customs Act, 1962 for the reasons stated in foregoing paras."

Issues of Valuation and demand of duty in respect of goods imported vide BoE No. 1015029 dated 20.10.2022

17. In view of the above, it is noted that the issues of classification, valuation, and re-assessment of the goods imported under the impugned Bill of Entry No. 1015029 dated 20.10.2022 have already been decided by the proper officer through a speaking and reasoned order. The principle of finality of adjudication dictates that once an assessment or re-assessment is concluded by a quasi-judicial order, the same cannot be reopened or adjudicated upon through a separate proceeding on identical facts and cause of action. Any subsequent demand of duty on the same import transaction, on grounds already examined and decided, would therefore be legally untenable and amount to double adjudication, which is impermissible under law.

18. Applying these principles to the present case, it is noted that the issues of demand of differential duty and valuation of the imported goods in the present Show Cause Notice, have already been decided vide OIO dated 07.11.2024. The re-assessment and valuation having already been settled, no further demand can be raised in respect of the same transaction.

19. Penalty upon M/s. Pushpanjali Logistics, Custom Broker-

(i) I find that the present Show Cause Notice dated 29.10.2024 has proposed imposition of penalties under Sections 112(a), 114AA, and 117 of the Customs Act, 1962. Since the said penal provisions were not invoked in the earlier Show Cause Notice dated 01.05.2023, the proposed penalties warrant independent examination and adjudication in the present proceedings.

(ii) The Show cause notice dated 29.10.2024, in Para 10.3, has outlined the role of M/s. Pushpanjali Logistics, Custom Broker in the instant case for invoking the said penalties. The said Paragraph is reproduced below:-

10.3 ROLE OF M/S. PUSHPANJALI LOGISTICS-

Whereas it appears that Customs Broker M/s. Pushpanjali Logistics, have failed to discharge their duties by not verifying the KYC of the importers and were careless in filing of Bills of Entry without the verification of antecedents and whereabouts of the importer and verifying the documents furnished to them. They miserably failed to exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business. Therefore, by such an act they have failed to fulfill their obligations and duties under Regulation 10(n) of the CBLR, 2018 and rendered the subject goods liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and rendered themselves liable for penalty under Section 112(a), 114AA and 117 of the Customs Act, 1962.

(iii) With respect to the proposed penal action under Section 112(a) of the Customs Act, 1962, it is observed that the said provision is attracted only in cases where goods become liable to confiscation under Section 111 of the Customs Act, 1962. In the present case, the Show Cause Notice does not propose confiscation of any goods under Section 111. **However, there is no proposal before me for confiscation of the goods, and unless I independently return a finding on whether or not the goods are liable for confiscation, I have no authority under the law to impose a penalty under Section 112(a) of the Customs Act, 1962, as Section 112(a) is contingent upon the goods being held liable for confiscation by the adjudicating authority.** Consequently, in

the absence of such a foundational act of confiscation, the consequential penal action under Section 112(a) cannot be sustained.

(iv) With respect to the proposed penal action under Section 114AA of the Customs Act, 1962, I find that there is no role discussed in the notice which could establish that they have knowingly or intentionally made, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. Further, the only allegation in the show cause notice is that they did not verify the KYC of the importers and were careless in filing of Bills of Entry without the verification and whereabouts of the importer and verifying the documents furnished to them. However, such negligence, though serious, does not amount to knowingly making, signing, or using any document that is false or incorrect in any material particular so as to attract penal liability under Section 114AA of the Customs Act, 1962. It is a different matter that this may amount to violation of obligation of Customs Broker under CBLR, 2018, but for that a separate procedure for adjudging penalty has been prescribed under CBLR, 2018. Thus, penal action under Section 114AA is not warranted. However, the Customs Broker is liable for penal action under the provision of Section 117 of the Customs Act, 1962, in as much as the importer and Custom Broker while presenting Bill of Entry failed to ensure accuracy and completeness of the details given concerning existence of the importer at the declared address and thereby violated the provisions of Section 46 (4A)(a) of the Customs Act, 1962.

20. In view of the above discussion and findings, I hereby pass the following order:-

ORDER

- i. I drop the proceedings initiated against M/s. Creative Enterprises (IEC: BKEPM4246B) and Shri Yunus Dahodwala vide SCN F. No. GEN/ADJ/COMM/513/2024-Adjn dated 29.10.2024.
- ii. I do not impose penalty upon M/s. Pushpanjali Logistics under Section 112(a) and 114AA of the Customs Act, 1962 for the reasons elaborated above.
- iii. I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) upon M/s. Pushpanjali Logistics under Section 117 of the Customs Act, 1962.

21. 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.

22. The Show Cause Notice bearing No. GEN/ADJ/COMM/513/2024-Adjn dated 29.10.2024 stands disposed in above terms.

(Nitin Saini)

Commissioner of Customs, Mundra

F.No. GEN/ADJ/COMM/513/2024-Adjn
DIN-20251071MO000042474B

To:-

- 1) M/s. Creative Enterprises, (IEC - BKEPM4246B), Brahmanand Nagar, G Flr. No. 1470, Shyamdhvani Complex, Gala No. 01 & 02, Kamat Ghar, Bhiwandi, Thane, Maharashtra
- 2) M/s. Pushpanjali Logistics, 205, 2nd Floor, Golden Arcade, Zero Point, Mundra, Kutch - 370421
- 3) Shri Yunus Dahodwala, resident of 22, Sarang Street, 4th Floor, Khokha Bazar, Zainab Manzil, Mumbai- 400003

Copy for necessary action to: -

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 2) The Additional Director, Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit Zonal Unit 15, Magnet Corporate Park, Off S.G. Highway, Near Sola Over Bridge, Thaltej, Ahmedabad-380054.
- 3) The Deputy/Assistant Commissioner (Legal/EDI/Recovery/CBLR), Customs House, Mundra.
- 4) Guard file/Office Copy