प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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DIN: 20250471MN000000B9EC

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-114/ICD-Sachana/O&A/HQ/2020-21
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-114/ICD-Sachana/O&A/HQ/2020-21 dated 29.11.2021
C	मूल आदेश संख्या/ Order-In-Original No.	:	**05/ADC/SRV/O&A/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**17.04.2025**
E	जारी करनेकी तारीख/ Date of Issue	:	**17.04.2025**
F	द्वारापारित/ Passed By	:	**SHREE RAM VISHNOI**, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	(1) **M/S DEVANG NARESH PANDYA HUF** NO. 8, 1STFLOOR, ASHOK CHAMBER, DEVJI-RATANSHI MARG, DANA BUNDER, MASJID (EAST)-MUMBAI– 400009 (2) **M/S. PAREKHS INTERNATIONAL**, 309, 3RD FLOOR, CHITRARATH COMPLEX, NR. HOTEL PRESIDENT, C.G ROAD,AHMEDABAD (3) **SHRI JATIN CHANDULAL PAREKH**, PARTNER OF M/S. PAREKHS INTERNATIONAL, 309, 3RD FLOOR, CHITRARATH COMPLEX, NR. HOTEL PRESIDENT, C.G ROAD, AHMEDABAD
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

M/S. DEVANG NARESH PANDYA HUF, situated at Room No. 8, 1st Floor, Ashok Chamber, Devji Ratanshi Marg, Danabunder, Masjid East, Mumbai, Maharashtra-400 009 and having IEC No. **AAKHD7049E** (herein after referred to as "the importer" or "the noticee no. 1" for the sake of brevity), had imported various Food items from United Arab Emirates under Invoice No. MGT10421867 dated 04.07.2020 issued by M/s Mijwad General Trading LLC, P.O. Box 34529, Deira, Dubai, UAE and filed Bill of Entry No. 8781422 dated 11.09.2020 (herein after referred to as "said Bill of Entry" for the sake of brevity) for home consumption through their Custom House Agent M/s. Parekhs International, Ahmedabad (herein after referred to as "the CHA" ior "noticee no.2" for the sake of brevity) at ICD-Sachana as given in Table-1 below:-

Table-1

Sr. No.	Description of the goods declared	Quantity declared in Kgs.	CTH declared	Unit price declared in USD (conver-ted in Rs.)	Assessable Value declared in Rs.	Basic Cus duty @ 30 %	Soc. Wel. Surcharge @ 10 % of BCD in Rs.	IGST payable in Rs.
1	Maggi Cube	1440	21039040	59.28	86323.54	25897.10	2589.70	13777.20
2	Quaker Oats	1476	19049000	29.64	44240.81	13272.20	1327.20	10591.30
3	Tabsco Sauce	199	21039040	44.46	8947.07	2684.10	268.40	1428.00
4	Instant Coffee Nescafe	1413	21011120	370.50	529406.06	158821.80	15882.20	126739.80
5	Langese Honey	1350	17029030	59.28	80928.32	24278.50	2427.80	19374.20
6	Fruit Chew Candy	1037	17049090	51.87	54394.32	16318.30	1631.80	13022.0
7	Paste Alameera/ Nestle	2856	21039030	44.46	128406.26	38521.90	3852.20	20493.60
8	Wells Oil	151.20	15159099	74.10	11329.96	5098.5 (@45%)	509.80	846.90
9	Instant Coffee Davidoff	180	21011120	444.60	80928.32	24278.50	2427.80	19374.20
					1024904.66			

2. It was observed during the appraisement/assessment that said Bill of Entry contained total quantity and value of each item in a consolidated manner, based on per kilogram basis only compare to details given in Invoice No. MGT10421867 dated 04.07.2020 and its Packing list wherein description of the items, number of cartons, and net weight and Unit price in USD and total value (in C & F) in USD was mentioned. Therefore, the goods were put for examination by the proper officer. Preliminary examination of the cargo, revealed that in the case of items like 'Instant Coffee Nescafe', Langnese Honey, Paste/Alameera/Nestle and Instant Coffee Davidoff (Sl. No. 04, 05, 07 and 09 of said bill of entry, respectively) different type of quantity based packages and number of cartons were found as detailed in Annexure "A" to the panchnama dated 23.10.2020.

3. Therefore, First check for examination of the goods was ordered. The goods in question were de-stuffed from the Container No. BAXU 2668373 for examination by the officers of ICD Sachana on 25.09.2020 in presence of two officers of Ahmedabad Customs

(Prev.), HQ, Ahmedabad and stored in the Warehouse of ICD-Sachana. On examination, it was observed that the importer has not declared specific flavour of above items and mis-declared the item Paste Alameera/Nestle.

4. Accordingly, it appeared that:

(i) The Importer did not properly declare the specific particulars of the goods imported like item description, quantity unit and total quantity of each such item description covered in the Bill of Entry.

(ii) The Importer had declared a single value by combining the items irrespective of its flavor variants in the Bill of Entry even though in case of items like 'Instant Coffee Nescafe', the price/value of the goods varies with the flavour of the Coffee.

5. In view of above, it appeared that the importer has mis-declared and mis-stated the description of the goods imported goods in the Bill of Entry by not mentioning specific particulars of different items of the imported goods like flavor variants and package-wise quantity unit details of different items and thus the truth and accuracy of the description, classification, quantity and value of goods declared by the importer in the Bill of Entry was felt doubtful.

6. On comparing the value of the goods covered under the Bill of Entry in question, with the contemporary imports and the market price of the goods, it was noticed that the value per unit quantity declared by the Importer appeared to be very low. Therefore, in terms of the provisions of Rules 12 of Customs (Determination of Value of Imported goods) Rules, 2007, as amended, the value declared by the Importer was felt required to be rejected.

7. Since, the value and other particulars of the goods imported by the Importer at ICD-Sachana appeared to be mis-declared, mis-stated and under-valued, they were placed under seizure vide seizure memo under Panchnama proceedings both dated 23.10.2020, drawn at ICD-Sachana, in the presence of two independent panchas, Shri Devang Naresh Pandya, who remained present on behalf of the Importer. The seized goods were handed over to the Custodian i.e. Shri Ravi Rathod, Sr. Executive, Warehouse In-charge of CWC (NS) Ltd., ICD-Sachana for safe custody under Supratnama dated 23.10.2020.

8. Thereafter, the seized goods were ordered for provisionally released vide letter F. No. VIII/10-114/ICD-Sachana/O&A/HQ/2020-21 dated 05.11.2020 by the Joint Commissioner of Customs, Ahmedabad as per the request of the Importer on furnishing of Bond for an amount of Rs. 33,60,827/- and Bank Guarantee of Rs. 18,00,000/-, and further directed to draw samples for investigation and to ensure compliance of provisions of Legal Metrology Act. Therefore, the goods were assessed provisionally and as per the above Provisional release order, the importer had submitted a Bond dated 11.11.2020 for Rs. 34,00,000/- and a Bank Guarantee bearing No. 01870000520 dated 09.11.2020 of Rs. 18,00,000/- issued by Punjab National Bank, Mandvi Masjid, Mumbai-400009 with the Assistant Commissioner of Customs, ICD-Sachana, and

accordingly the goods covered under the Bill of Entry No. 8781422 dated 11.09.2020, were provisionally released.

9. Statement of Shri Jatin Chandulal Parekh, Partner of the CHA, who filed said Bill of Entry and carried out the Customs clearing work on behalf of the Importer was recorded on 08.01.2021, wherein he interalia stated that;

(i) He is engaged in the work of Customs Clearance of Imports and Exports at various Customs formations located in Ahmedabad including ICD-Sachana.

(ii) He was working under Customs Broker Licence bearing No. CB/ABD/R/ 25/ 2014-15 (AAQFP6097ACH001) issued by the Customs Ahmedabad, in the name of M/s Parekhs International, a partnership firm. Shri Jatin C. Parekh and Shri Shailesh Gada are partners, since 2016 onwards.

(iii) As regards the work of import clearance of the importer, he stated that the Import documents like Invoice No. MGT0421867 dated 04.07.2020, Packing list and Bill of Lading no. BAXSSS081416 dated 07.07.2020 were presented to him by Shri Devang Pandya, the Karta, of the importer along with the KYC documents like address proof, PAN, IEC details, GST details, the authority letter to carry out the work on behalf of the Importer.

(iv) He has monitored the movement of container carrying the goods from Gateway Port to ICD-Sachana, scrutinized the documents, worked out all the required details to file the Bill of Entry in ICEGATE like arriving at the classification of the items imported, ascertaining the rate of Customs duty leviable, worked out the Assessable value and applicable Customs duty and filed the Bill of Entry no. 8781422 dated 11.09.2020, on behalf of the Importer.

(v) The classification of the goods covered under said Bill of Entry as per Chapter sub-heading given under the Customs Tariff Act were arrived out by him.

(vi) The value of the goods shown in the Bill of Entry No. 8781422 dated 11.09.2020 was worked out on the basis of value of the goods given by the supplier M/s. Mijwad General Trading LLC, Dubai's in the Commercial Invoice No. MGT10421867 dated 04.07.2020.

(vii) He confirmed the facts mentioned in the Panchnama dated 23.10.2020 drawn at ICD-Sachana, wherein the goods covered under the said Bill of Entry were placed under seizure on the basis of undervaluation and mis-declaration of goods. He confirmed that he was present throughout the course of above panchnama proceedings.

10. Statement of Shri Devang Naresh Pandya, the KARTA of the importer was recorded on 12.01.2021, wherein he interalia stated that:

(i) He was the Karta of the importer which is engaged in the Import and Trading of Food Stuff items like Sausages, Coffee Powders of different brand and packages, Nestle Cream, etc. and their office is located at Office No. 8, 1st Floor, Ashok Chamber, RatanshiDevji Marg, Bharuch Street, Masjid Bunder (East), Mumbai - 400009. The firm has been in existence since 2016.

(ii) His firm imported the goods covered under invoice No. MGT10421867 dated 04.07.2020 under 20' ft. Container bearing No. BAXU 2668373 at ICD-Sachana

and filed the Bill of Entry No. 8781422 dated 11.09.2020. The goods were imported with a purpose to develop new trading sales in various areas of Gujarat state.

(iii) He had given the Import documents to Shri Jatin C. Parekh (the CHA) to carry out the Customs clearing work by filing Bill of Entry and carry out all other formalities like coordination and handling of the Container with custodian, examination of the goods, out of charge and clearance of the goods from ICD-Sachana. Accordingly, Shri Jatin C. Parekh had filed Bill of Entry No 8781422 dated 11.09.2020 on behalf of his firm and worked out CIF (i.e. Cost + Insurance + Freight) value of the goods, Classification of the goods, identified the rate and amount of Customs duties payable on the goods covered under the above Bill of Entry.

(iv) He confirmed the facts narrated by Shri Jatin C. Parekh of the CHA in his statement.

(v) He confirmed the facts mentioned in the Panchnama dated 23.10.2020 drawn at ICD-Sachana, wherein the goods imported under Bill of Entry No. 8781422 dated 11.09.2020 were placed under seizure. His firm vide letter dated 28.10.2020, approached the Joint Commissioner of Customs, Ahmedabad for Provisional Release of the goods. Thereafter, as per their request, the Provisional release order was issued on 05.11.2020, from F.No. VI11/10-114/ICD-Sachana/O&A/HQ/2020-21 by the Joint Commissioner (Customs) Ahmedabad informing the Provisional release of the goods placed under seizure under Panchnama dated 23.10.2020. As per the above Provisional release order, his firm had submitted a Bond dated 11.11.2020 for Rs. 34,00,000/- and a Bank Guarantee bearing No. 01870000520 dated 09.11.2020 of Rs. 18,00,000/- issued by Punjab National Bank, Mandvi Masjid, Mumbai with the Assistant Commissioner of Customs, ICD-Sachana, and the goods covered under the Bill of Entry No. 8781422 dated 11.09.2020, were provisionally released.

11. Value of goods covered under said Bill of Entry was compared with the contemporaneous imports and market price of said goods. On comparison, it was observed that the value per quantity unit of different items of imported goods declared by the Importer was very low. Therefore, details of the lowest valuation of the subject goods for each of the flavor available in the contemporaneous imports data from NIDB considered in arriving at the value of the goods declared in the subject Bill of Entry and where the value from contemporaneous imports data was not available, deductive value arrived at after taking into consideration the prevailing market prices after deducting the applicable taxes, expenses and profits. Accordingly, it appeared that the assessable value of Rs. 10,24,905/- declared by the importer was liable to be rejected and re-assessed at an enhanced value of Rs. 58,07,200/- as detailed in Annexure A to the said SCN under the provisions of Rules 4 and 7 of Customs (Determination of Value of Imported goods) Rules, 2007.

12.1 Apart from the valuation aspect, it was further observed that the classification of the items 'Langnese Honey' & 'Nestle Cream' (mentioned at Sr. No. 05 & 7, respectively, of the said Bill of Entry) appeared to be not acceptable on the following grounds.

(i) The description of product mentioned in the labels affixed on packages revealed that 'Langnese Honey' was a natural form of Honey, without having any artificial edible items or flavours and thereby appeared classifiable under CTH 04090000 attracting Basic Customs Duty @ 60% adv., along with Social Welfare Surcharge @ 10% and IGST @ 5%. The Importer had however, classified the said items under 'Artificial Honey' covered under CTH 17029030 of the Customs Tariff Act, 1975 attracting Basic Customs Duty @30 %, SWS @ 10 % and IGST @ 18 %.

(ii) The details mentioned in the labels affixed on the packages of Nestle, revealed that the said item is a cream, which is a milk product. Thus, considering Supplementary notes No. 5(f) to the Chapter 21 of Customs Tariff Act, 1975, the said item appeared classifiable under O4O2299O, attracting effective rate of Basic Customs Duty @ 3O%, Social Welfare Surcharge @ 10 % and IGST @ 12% and not under CTH No. 21039030 attracting Basic Customs Duty @ 30 %, SWS @ 10% and IGST @12 %, as declared by the Importer in the Bill of Entry in question.

12.2 Therefore, it appeared that the Importer has mis-declared the CTH classification of items declared at Sr. No. 5 and 07 i.e. Langnese Honey and Nestle-Cream, and thus failed to ensure the accuracy and completeness of the information given in the Bill of Entry and thus made a wrong declaration violating the provisions of Section 46 of Customs Act, 1962. It, therefore, appeared that the classification of items declared at Sr. No. 5 and 07 i.e. Langnese Honey and Nestle-Cream was liable for rejection.

13. Accordingly, the total value of various goods covered under the subject Bill of Entry is worked out at Rs. 58,07,200/- and the total amount of Customs Duty payable thereon is worked out at Rs.31,42,206/-. It, therefore, appeared that the total customs duty amounting to Rs.31,42,206/- is liable to be recovered from the importer under the provisions of Section 28 (4) of the Customs Act,l962 along with interest at appropriate rate under the provisions of Section 28AA of the Customs Act,l962. It also appeared that the above-mentioned goods imported by the importer which did not correspond in respect of the value and other particulars with the Bill of Entry No. 8781422 dated 11.O9.2O2O was liable for confiscation under Section 111(m) of the Customs Act, l962. By the above-mentioned acts of omission and commission, the importer also appeared liable for penalty under Section 112 of the Customs Act, 1962.

14. It further appeared that the importer had violated the provisions of Section 46 of the Customs Act, 1962; in as much as the importer while presenting the Bill of Entry No. 8781422 dated 11.09.2O2O made a wrongful declaration regarding the contents mentioned in the Bill of Entry, thus made themselves liable to penalty under Section 114AA of the Customs Act, 1962.

15. Shri Jatin Chandulal Parekh, G card holder and partner of the CHA firm M/s Parekhs International, Ahmedabad also appeared to had not advised the importer to comply with the Act and Rules and failed to exercise due diligence to ascertain the correctness of information imparted to the importer related to the clearance of imported goods. The CHA firm M/s. Parekhs International, Ahmedabad also appeared failed to ensure proper conduct of their G card holder Shri Jatin Chandulal Parekh in the

transaction of business. Thus, both the CHA firm M/s. Parekh International and the G card holder of the CHA, Shri Jatin Chandulal Parekh appeared to had abetted the acts of omission and commission of the importer rendering the subject imported goods liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962. Therefore, CHA firm M/s Parekhs International, Ahmedabad and the partner and G card holder of the CHA Shri Jatin Chandulal Parekh were liable for penalty under Section 112 and Section 114AA of the Customs Act, 1962.

16.1 Accordingly, vide Show Cause Notice bearing F. No. VIII/10-114/ICD-Sachana/O&A/HQ/2020-21 dated 29.11.2021 (herein after referred to as "the said SCN"), M/s. Devang Naresh Pandya, HUF (The importer), No.8, 1st Floor, Ashok Chamber, Dana Bunder Masjid (E), Mumbai (IEC No. AAKHD7049E) were called upon to show cause to the Additional Commissioner of Customs, Ahmedabad as to why:

i. The classification of goods imported and declared at Sr. No. 05 of said Bill of Entry as "Langnese Honey" under CTH 17029030 should not be rejected and re-classified under CTH 04090000 of the Customs Tariff Act, 1975.

ii. The classification of goods imported and declared at Sr. No. 07 of said Bill of Entry as i.e. 'Paste Alameera/Tahina/ out of which 768 Kgs of Nestle cream' classified under CTH 21039030 should not be rejected and re-classified under CTH 04022990 of the Customs Tariff Act, 1975;

iii. The value of goods imported under Bill of Entry No. 8781422 dated 11.09.2O2O, declared by the importer, amounting to Rs.10,24,905/- should not be rejected under the provisions of Rule 12 of Customs (Determination of Value of Imported goods) Rules, 2007, and re-assessed at the enhanced value amounting to Rs.58,O7,2OO/- under the provisions of Rules 4 and 7 of Customs (Determination of Value of Imported goods) Rules, 2007.

iv. Total Customs Duty payable amounting to Rs. 31,42,206/- (details as per Annexure A to the SCN) on the goods imported vide Bill of Entry No. 8781422 dated 11.09.2020, should not be determined and recovered from the importer under the provisions of section 28 (4) of the customs Act, 1962, alongwith appropriate interest at the applicable rate as per the provisions of Section 28 AA of the Customs Act, 1962. Further, the total customs duty of Rs, 5,65,735/-, already paid by the importer should not be appropriated against their total customs duty liability of Rs.31,42,206/-.

v. The goods imported vide Bill of Entry No. 8781422 dated 11.09.2O2O totally re-assessed at Rs. 58,07,2OO/- (declared value Rs. 10,24,905/-) imported at ICD-Sachana and placed under seizure vide seizure Memo under panchnama proceedings both dated 23.10.2O2O, should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962.

vi. The bond for Rs. 34,00,000/- furnished by the importer for provisional release of the seized goods should not be invoked and enforced for the recovery of above said dues and the Bank Guarantee for Rs. 18,00,000/- furnished by the importer for provisional release of seized goods should not be encashed and adjusted for recovery of the above said dues.

16.2 Further, Penalty was proposed upon the importer for the above said contraventions under the provisions of Section 112, 114A and 114AA of the Customs Act, 1962. Penalty was also proposed upon both the CHA, M/s. Parekhs International, and his partner namely, Shri Jatin Chandulal Parekh, Partner of M/s. Parekhs International, Ahmedabad under Section 112 and Section 114AA of the Customs Act, 1962.

17. DEFENCE SUBMISSION & PERSONAL HEARING AT ORIGINAL ADJUDICATION PHASE:

17.1 M/s Devang Naresh Pandya, HUF (The importer), No.8, 1st Floor, Ashok Chamber, Dana Bunder Masjid (E), Mumbai (IEC No. AAKHD7049E) Noticee No.1 has submitted reply to the said SCN vide their written submissions dated 27.12.2021 submitted through his Advocate. Details of their reply is given as under:-

At the outset the importer denies all the allegations and charges contained in the notice. The following submissions may kindly be noted:

i. CTH 04090000 covers natural honey. CTH 17029030 covers artificial honey whether or not mixed with natural honey. The notice does not contain any justification for changing the classification. In the case of Garware Nylons Ltd. reported in 1980 (6) E.L.T. 249 (Born.) [Approved by the Supreme Court in 1996 (87) ELT 12(SC)], the Hon'ble Bombay High Court has held that the burden of changing the classification is entirely on the department. In the instant case, the department has miserably failed to discharge this burden.

ii. Para 14.1 of the SCN relies on labels stating that Langese Honey is the natural form of honey without any artificial items or flavours. This overlooks the facts that the honey is processed in the supplier's facility in the originating country to make it fit for retail packaging, transport and for preservation for a long time. The classification cannot be changed arbitrarily and in a superficial manner without analysing the disputed CTHs in depth. The past practice also is in favour of the importer.

iii. As far as Nestle Cream (Paste alameera) is concerned:

   a. CTH 04022990 reads as under:
      "--- Other milk and cream, concentrated or containing added sugar or other sweetening matter."
   b. CTH 21039030 covers Majonnaise and salad dressings.
   c. Reliance on supplementary notes 5(f) to Chapter 21 of the Customs Tariff is misplaced. The said note pertains to heading 2106 which they are not concerned with at all.
   d. On the other hand, alameera paste contains sesame seeds, etc. and cannot be classified under CTH 04022990 by any stretch of imagination. The said heading covers only concentrated milk and cream. The notice does not discuss the difference between Tahinah and Nestle Cream.

iv. As far as the value is concerned, there is no justification for rejecting the declared value under Rule 12 of the CVR. The conditions of Rule 12 are not satisfied by the department. The declared value which is the true and correct transaction value deserved to be accepted.

v. Rule 4 of the CVR refers to Transaction Value of identical goods. Identical goods are defined as goods which are same in quality and reputation, produced in the same country and by the same person. Rule 7 refers to Deductive Value i.e. the value at which imported goods are sold in India at the same time in the greatest aggregate quantity.

vi. The NIDB data annexed with the SCN is illegible. It is not established that the goods are produced by the same person in the same country. Same goods shipped from UAE can belong to different countries of origin.

vii. Likewise, reliance on Amazon prices is bad in law because as per Rule 7 the local selling price shall be the unit price at which imported goods are sold in the greatest aggregate quantity. Amazon prices are retail prices and do not fulfil the condition of Rule 7.

viii. On the other hand the importer craves leave to produce evidence of contemporary imports in the range of prices declared by it.

ix. The declared values are the true and correct transaction values. The remittance was made through proper banking channels. There is no allegation or evidence of any extra remittance over and above the invoice value.

x. Further, the statements of the importer and the Custom Broker are exculpatory. There is no confession or admission of any mis-declaration or undervaluation.

xi. Para 3 of the SCN is completely unintelligible. Before proceeding further, the said para 3 must be corrected to enable the importer to understand the department's case.

xii. Para 5 of the SCN in fact proves that the declared descriptions were accurate. There is no requirement to declare flavours of maggi cubes, etc. Even in the NIDB data cited by the department flavours are not declared. There is no such practice.

xiii. As there is no mis-declaration, the goods are not liable for confiscation under Section 111(m). Consequently the importer is not liable for penalty under Section 112 of the Customs Act.

xiv. In any event, in the case of Northern Plastics Ltd. [1998 (101) ELT 549 (S.C.)] and in the CESTAT Judgement in the case of Lewek Altair Shipping Pvt.Ltd. [2019 (366) ELT 318(T)] upheld by the Supreme Court as reported in 2019 (367) ELT A328 (SC) it was held that mere claim to a particular classification or notification cannot justify a penalty, even if the classification proposed by the importer is ultimately rejected.

xv. This is a case of assessment of live Bill of Entry. The goods are being merely reassessed under Section 17 of the Customs Act. Therefore, provisions of Section 28(4) and Section 114A are not applicable.

xvi. Section 114AA does not apply because neither any wrong declaration was made in the Bill of Entry nor any false document was submitted by the importer.

xvii. In the circumstances, it is prayed that the declared classifications and values kindly be accepted and the proceedings kindly be dropped. The Bond and Bank Guarantee may kindly be cancelled and returned to the importer.

xviii. Lastly, they requested to grant them personal hearing.

17.2 M/s Devang Naresh Pandya, HUF (The importer), Noticee No.1 submitted their further written submission to the said SCN in addition to their earlier written submissions contained in his Reply dated 17.12.2021 vide their letter dated 03.03.2022 submitted through their Advocate. Details of their reply is given as under:-

i. The department erred in relying on labels on the packages of imported Honey to conclude that it was natural honey. Samples of the said honey should have been subjected to test. One tablespoon of honey with 2 Tablespoon of vinegar mixed with little water can foam up to prove that the honey is not pure. Likewise, if honey caramelizes after heating it indicates that it is pure. On the other hand, if it bubbles up, it is not pure. Unfortunately, the goods were not subjected to any test, although the goods were under seizure. Reliance on the claims of the supplier on the label is not sufficient for changing the classification.

ii. In change of classification of Nestle Cream, there is no evasion because the rate of BCD remains the same and in fact the rate of IGST is lower.

iii. It is significant to note that the Bill of Entry has been filed on First Check basis, which proves that there was no deliberate mis-declaration or intention to evade duty.

iv. The declared value is the true and correct Transaction value. There is no admission of any undervaluation by the importer. The statements recorded under Section 108 are exculpatory.

v. The Transaction Value can be rejected only if the conditions mentioned in Rule 12 of the Customs Valuation Rules, 2007 are satisfied. In the instant case there is no justification for rejection of Transaction Value.

vi. The SCN relies on selective NIDB data which is convenient to the department. If the entire data is placed on record, it will be proved that in majority of the cases the department has accepted values which are close to the values declared by the importer.

vii. Annexure-A to the Notice states that for items at Sr.Nos.3, 4, 6 & 7 values are taken from Amazon. For items at Sr.Nos.1, 2, 5, 8 & 9 values are taken from NIDB data. Items at Sr.Nos.3, 4, 6 & 7 are Tabsco Sauce, Nescafe, Frutella Candy and Alameera Paste. These items are commonly imported at all ports in India. Therefore, it is obvious that NIDB data, though available, is being suppressed. The department must be directed to place NIDB data for these items.

viii. Rule 7 of the Customs Valuation Rules states that value shall be based on the price at which imported goods are sold in the greatest aggregate quantity in India. Retail sales on Amazon are not sales in the greatest aggregate quantity.

ix. Further, as per the said Rule, deductions have to be made for commission/profits, general expenses on sale, transport, insurance, Customs Duties and Taxes. However, there is no worksheet to demonstrate how the Assessable Values were deduced by the department.

x. In the Data annexed to the Notice, NIDB data for Davidoff Coffee (Sr.No.9), Well' Oil (S.No.8), Langnese Honey (S.No.5), Nescafe (S.No.4), Oats (S.No.2) and Maggie Cube (S.No.1) is supplied. However, there are contradictions and glaring discrepancies. As per Annexure-A, the prices proposed by the department for

Nescafe are Rs.1530 (for classic) and Rs.2131 (for Gold) per Kg. However, as per the data supplied with the SCN, the lowest price for classic is Rs.437. For Nescafe Gold the price as per the NIDB data is Rs.1348 per kg. It is significant to note that as per Annexure-A, the price of Nescafe is Rs.1530 per kg while the price of Davidoff Coffee is Rs.571 per kg. It is common knowledge that Davidoff Coffee is a premium brand and is much costlier than Nescafe. Therefore, the data relied upon in the SCN does not inspire confidence.

xi. Without prejudice to the above, in the case of Agarwal Foundries (P) Ltd. [2020 (371) ELT 859 (Tri.-Hyd.) the Hon'ble CESTAT has held that enhancement of value solely on the basis of NIDB data is not permissible when there is no evidence to show that the invoice value does not reflect the actual transaction value. This CESTAT Judgment was upheld by the Hon'ble Apex Court as reported in 2020 (371) ELT A295(SC).

xii. As there is no misdeclaration, the goods are not liable for confiscation. Consequently, the importer is not liable for penalty under Section 112.

xiii. Section 114A is not applicable because it is a case of re-assessment of live Bill of Entry under Section 17 of the Customs Act before clearance of the goods. In an identical case of Amit Rajkumar Singhania (2019 (368) ELT A348 (Tri.-Mum.) the CESTAT has held that penalty under Section 114A is not imposable in such cases.

xiv. Without prejudice to the above, Section 112 and Section 114A are mutually exclusive and cannot be invoked simultaneously.

xv. Further, Section 114AA is not applicable for the following reasons:

(A)The importer has not knowingly made or use any false /incorrect declaration, statement or document.

(B)As per the following judgements, the said section is applicable only to the cases of fraudulent exports:-

(a) INTERGLOBE Aviation Ltd. - 2022 (379) ELT 235 (T)
(b) Access World Wide Cargo - 2022 (379) ELT 120 (T)
(c) Bosch Chassis Esystems India Ltd - 2015 (325) ELT 372 (T)
(d) Sri Krishna Sounds and Lighting - 2019 (370) ELT 594 (T)

(C)Lastly, as per the following judgements, separate penalties cannot be imposed under Section 112 Section 114A and Section 114AA for the same alleged mis-declaration :-

(a) Dharmendra Kumar - 2019 (370) ELT 1199 (Tri.-All.)
(b) Arya International - 2022 (332) ELT 726 (Tri.-Ahmd.)
(c) Gujarat High Court Judgement dated 11.12.2020 in the case of Abdul Hussain Saifuddin Hamid.

In the circumstances, they prayed that the proceedings be dropped and the Bank Guanrantee be cancelled and returned to the importer.

17.3 M/s Shri Jatin Chandulal Parekh, Partner of M/s. Parekhs International, Ahmedabad (CHA Firm) Noticee No.3 has submitted reply to the said SCN vide their written submission dated 30.12.2021. M/s. Parekhs International, Ahmedabad (CHA Firm) Noticee No.2 has not filed his written submission separately. Details of the written

submission dated 30.12.2021 filed by Shri Jatin Chandulal Parekh, Partner of M/s. Parekhs International is given as under:-

17.4 Personal Hearing in the matter was held on 12.05.2022 and the same was attended by Shri Anil Balani, Advocate representing all the three noticees i.e. the importer Shri Devang Naresh Pandya HUF, M/s. Parekhs International (CHA) and Shri Jatin Chandulal Parekh, Partner of M/s. Parekhs International, in virtual mode. He re-iterated their written submissions made vide reply dated 27.12.2021 and 03.03.2022 of Shri Devang Naresh Pandya HUF & reply dated 30.12.2021 of Shri Jatin Chandulal Parekh to the show cause notice and requested to decide the case on merit.

ORIGINAL ADJUDICATION ORDER, APPEAL AGAINST THE OIO AND ORDER-IN-APPEAL:

18. The adjudicating authority vide Order-in-Original (OIO) No. 47/ADC/VM/ O&A/2022-23 dated 25.11.2022 passed the following order:-

(i) Rejected the classification of goods imported and declared at Sr. No. 5 of Bill of Entry No. 8781422 dated 11.09.2020 as "Langese Honey" under C.T.H. 17029030 of the Customs Tariff Act, 1975 and confirmed the classification of imported goods, i.e. "Langese Honey" under C.T.H. No. 04090000 of the Customs Tariff Act, 1975 and ordered that Langese Honey should be assessed to duty @ Basic Customs Duty @ 60% adv, along with Social Welfare Surcharge @ 10% on Basic Custom Duty and IGST @ 5% under C.T.H. No. 04090000.

(ii) Rejected the classification of 768 kgs. of "Nestle"' imported and declared at Sr. No.7 of Bill of Entry No. 8781422 dated 11.09.2020 under C.T.H. 21039030 of the Customs Tariff Act, 1975 and confirmed the classification of 768 Kgs of imported goods, i.e. "Nestle(Cream)" under C.T.H. No. 04090000 of the Customs Tariff Act, 1975 and also ordered that Nestle Cream should be assessed to duty @ Basic Customs Duty @ 30%, Social Welfare Surcharge @,10 % and IGST@ 12% under C.T.H. No. 04022990.

(iii) Rejected the value of the goods declared in the Bill of Entry No. 8781422 dated 11.09.2020 filed by the importer under Rule 12 of Customs (Determination of Value of Imported goods) Rules, 2OO7 and re-determine the value of the goods which worked out to Rs. Rs.58,07,200/- (Rupees Fifty Eight Lakhs Seven Thousand and Two Hundred only) under Rule 4 and Rule 7 of Customs (Determination of Value of Imported goods) Rules, 2007.

(iv) Confiscated the impugned goods, valued at Rs. 58,07,200/- (Rupees Fifty Eight Lakhs Seven Thousand and Two Hundred only) declared value Rs. 10,24,905/- (Rupees Ten Lakhs Twenty Four Thousand Nine Hundred and Five only), imported at ICD-Sachana under BE No. 8781422 dated 11.09.2020 and placed under seizure under Panchnama dated 23.10.2020, in terms of the provisions of Section 111(m) of the

Customs Act, 1962 and gave an option to the importer to redeem the above imported goods on payment of Redemption Fine of Rs. 5,00,000/- (Rs. Five Lakhs only) in addition to the duty chargeable and other charges payable in respect of the impugned imported goods under Section 125 (1) and (2) of the Customs Act 1962.

(v) Confirmed the demand of Customs Duty amounting to Rs. 31,42,206/- (Rupees Thirty One Lakhs Forty Two Thousand Two Hundred and Six Only) as detailed in Annexure A to the said Show Cause Notice on the goods imported vide Bill of Entry No. 8781422 dated 11.09.2020 and ordered to recover the same under the provisions of Section 28(4) of the Custom Act, 1962 and ordered to appropriate the duty Rs. 5,65,735/- (Rupees Five Lakh Sixty Five Thousand Seven Hundred and Thirty Five Only) already paid by the importer against their total customs duty liability of Rs. 31,42,206/-.

(vi) Ordered to recover the interest at an appropriate rate as applicable, on the Customs duty confirmed at (v) above to be recovered from M/s Devang Naresh Pandya, HUF under Section 28AA of the Customs Act, 1962.

(vii) Ordered that the Bonds executed by them and relevant Bank Guarantee referred above, should be invoked for recovery of duty and interest.

(viii) Imposed a penalty of Rs. 31,42,206/ - (Rupees Thirty One Lakhs Forty Two Thousand Two Hundred and Six Only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s Devang Naresh Pandya, HUF, No. 8, Ist Floor, Ashok Chamber, Devji-Ratanshi Marg, Dana Bunder, Masjid (East)-Mumbai- 400 OO9 under Section 114 of the Customs Act,1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

(ix) Refrained from imposing any penalty on M/s. Devang Naresh Pandya, HUF, No.8, Ist Floor, Ashok Chamber, Devji-Ratalshi Marg, Dana Bunder, Masjid (East)-Mumbai- 400 009 under Section 112 of the Customs Act.

(x) Imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on M/s. Devang Naresh Pandya HUF in terms of the provisions of Section 114 AA of the Customs Act, 1962.

(xi) Imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the Custom Broker, M/s. Parekhs International in terms of the provisions of Section 112 (a)(ii) of the Customs Act, 1962.

(xii) Imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the Custom Broker, M/s. Parekhs International in terms of the provisions of Section 114AA of the Customs Act, 1962.

(xiii) Imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on Shri Jatin Chandulal Parekh, G-card holder and Partner of M/s. Parekhs International in terms of the provisions of Section 112 (a)(ii) of the Customs Act, 1962.

(xiv) Imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on Shri Jatin Chandulal Parekh, G-card holder and Partner of M/s. Parekhs International in terms of the provisions of Section 114AA of the Customs Act, 1962.

19. Being aggrieved by the above said order, the noticees filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad against the said OIO, who vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-59–to-61-24-25 dated 23.04.2024 passed the following order:

(i) Upheld the classification of 'Langnese Honey' and 'Nestle Cream' by the original adjudicating authority

(ii) Remanded the matter back to adjudicating authority for providing the Contemporaneous data to the noticee and for re-quantification of the duty and for passing fresh orders

(iii) Upheld the confiscation, but remanded for re-determination of redemption fine

(iv) Remanded the matter for reasoning regarding invocation of extended period and deciding on penalties under Section 114A and 114AA of the Customs Act, 1962 on noticee no. 1

(v) Remanded the matter for deciding on penalties under Section 112(a)(ii) and 114AA of the Customs Act, 1962 on noticee no. 2 and 3.

SUBMISSION AND PERSONAL HEARING BEFORE THE DENOVO ADJUDICATION AUTHORITY:

20. The noticee submitted a written reply vide letter dated 06.02.2025 wherein they submitted that:

- In the above Order-in-Appeal, the submissions of the Appellants on the issue of valuation are summarised in para 6.3.
- In para 6.10 the learned Commissioner (Appeals) has inter alia held as under:

  "the contentions on valuation aspect have been recorded in the impugned order but not been considered/addressed by the adjudicating authority. ..... the adjudicating authority in the impugned order has not described the methodology under which Rules the assessable value of the respective goods imported under Bill of Entry No.8781422 dated 11.09.2020 was revised/enhanced. The impugned order enhancing the assessable value of the goods imported vide Bill of Entry No.8781422 dated 11.09.2020 is not legally tenable and suffers from legal infirmity inasmuch as not being in

accordance with the Valuations Rules, 2007. In view of the above, I am of the considered view that the data/information/price relied upon, formula adopted or any other information relevant to arrive at the revised/enhanced values, as mentioned in the Annexure-A to the Show Cause Notice, under Rule 4 & 7 of the Customs Valuation (Determination of Value of Imported gods) Rules, 2007, should be described and provided to the Appellant No.1, so as to give them an opportunity to defend their case/present their point of view on the issue."

- In spite of the above Order, the data, information and price relied upon, the formula adopted or any other information to arrive at the enhanced values under Rules 4 and 7 have not been described and provided to their clients.
- During the first Adjudication itself it was inter alia submitted that:-
  (a) The data annexed to the SCN is illegible;
  (b) Country of Origin was not disclosed;
  (c) Enhanced prices do not satisfy the conditions of Rule 7 of the CVR;
  (d) Worksheet for Deductive Value was not supplied;
  (e) The entire NIDB data was not placed on record;
  (f) For Tabasco Sauce, Nestle Café, Fruit Candy and Alameera Paste NIDB data was suppressed, though available.
- As these requisitions are not fulfilled till date and as the enhancement of value is set aside, it is prayed that the declared values be accepted.
- On the issue of quantum of Redemption Fine, it is submitted that losses were incurred due to the storage charges during investigations, the fine and penalty, etc. As per the settled law redemption fine is for wiping out the MOP. Since there is no profit, it is prayed that redemption fine need not be imposed.
- In para 9 the learned Commissioner (Appeals) has held that there are no findings for invocation of extended period under Section 28(4) as the Bill of Entry was filed on first check basis. In the following judgments on the issue of first check assessment the proceedings were dropped:
  (a) Sahil International – 2019 (369) ELT 1397 (Tri.-Mum.)
  (b) Dessert Exim – 2019 (369) ELT 1333 (Tri.-Mum.)
  (c) Rudra Vyaparchem Pvt. Ltd. - 2019 (370) ELT 412 (Tri.-Kol.)
  (d) Kapila Knit Fabrics Pvt. Ltd. – 2019 (23) G.S.T.L. 274 (Tri.-Mum)
  In the circumstances, it is prayed that the penalty under Section 114A be dropped.
- Penalty under Section 114AA deserves to be dropped for the following reasons:
  (I) their clients have not knowingly made or used any false/incorrect declaration, statement or document.
  (II) As per the following judgments, Section 114AA is applicable only to cases of fraudulent exports:-
  i. *A.V.Global Corporation P.Ltd.-2024 (10) TMI 159-CESTAT New Delhi*
  ii. Suresh Kumar Aggarwal -2024 (6) TMI 779 -CESTAT Mumbai

iii. Interglobe Aviation Ltd. - 2022 (379) ELT 235 (Tri.-)

iv. Access World Wide Cargo -2022 (379) ELT 120 (Tri.)

v. Bosch Chassis Esystems India Ltd.- 2015 (325) ELT 372(T)

vi. Sri Krishna Sounds and Lightings - 2019 (370) ELT 594(T)

(III) Lastly, as per the following judgments separate penalties cannot be imposed under Sections 112, 114A and 114AA for the same alleged mis-declaration:-

(a) Dharmendra Kumar – 2019 (370) ELT 1199 (Tri.-All.)

(b) Arya International– 2016 (332) ELT 726 (Tri.-Ahmd.)

(c) Gujarat High Court Judgement dated 11.12.2020 in the case of Abdul Hussain Saifuddin Hamid.

- As far as Customs Broker M/s. Parekhs International and its Partner Shri Jatin Chandulal Parekh (Noticee No.2 & 3) are concerned, they rely on para 10.1 of the above Order-in-Appeal and pray that the proceedings be dropped on the basis of the findings in the said para.

21. Personal Hearing in the matter was held on 21.02.2025 and the same was attended by Shri Anil Balani, advocate of the noticee. He re-iterated their written submission dated 06.02.2025 and requested to drop the SCN in view of the submissions and the appellate order.

22. In compliance to the decision of the Commissioner of Customs (Appeals), Ahmedabad, NIDB data relied upon was provided to the noticee vide letter dated 11.03.2025, in response to which the noticee submitted the following:

- In their letter dated 06.02.2025 it was inter alia requested that the NIDB data should not be used selectively. The department is only supplying the Data which favours the revenue. Rule 4(3) of the CVR states that if more than one value is found, the lowest of such value shall be used to determine the assessable value. The entire NIDB Data must be placed on record instead of only disclosing imports at higher values. The Data supplied is still illegible and unintelligible.

DISCUSSION & FINDINGS:

23. I have carefully gone through the facts of the case, defense submissions made by the noticee, oral submission made during Personal hearing, Order-in-Appeal and evidence available on the records.

23.1 I find that the Commissioner of Customs (Appeals) vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-59–to-61-24-25 dated 23.04.2024, upheld the classification of '**Langnese Honey**' and '**Nestle Cream'** and remanded the matter back to adjudicating authority for providing the Contemporaneous data to the noticee and for passing fresh adjudication order after re-quantification of the values.

23.2 In view of the above, I will not discuss on the classification issue as it is already settled at the appellate stage and hold that the declared classification in respect of '**Langnese Honey**' and '**Nestle Cream'** by the noticee is not proper and the said items to be re-assessed under the classification as proposed by the show cause notice.

23.3 Now, the issues to be decided before me are:

a) Whether the declared value of the imported goods amounting to Rs. 10,24,905/- are liable for rejection under the provisions of Rules 12 of Customs (Determination of Value of Imported goods) Rules, 2007 and re-quantification of the value of the imported goods thereof?
b) Whether extended period under section 28(4) is invocable in respect of imported goods?
c) Whether Customs duty amounting to Rs. 31,42,206/- leviable on the goods imported vide Bill of Entry No. 8781422 dated 11.09.2020, is to be re-determined and recovered from the importer under the provisions of Section 28 (4) of the Customs Act, 1962, and whether interest under Section 28AA of the Customs Act, 1962 is recoverable ?
d) Whether the goods imported at ICD-Sachana and having declared value Rs.10,24,905/- placed under seizure under Panchnama dated 23.10.2020 are liable to confiscation under Section 111 (m) of the Customs Act, 1962 and whether redemption fine is imposable on the said goods?
e) Whether the importer is liable to penalty under Section 112, 114A and 114AA of the Customs Act, 1962?
f) Whether M/s. Parekhs International, Ahmedabad and Shri Jatin Chandulal Parekh, Partner of M/s. Parekhs International, Ahmedabad are liable to penalty under Section 112 and 1 14AA of the Customs Act, 1962?

23.4 Now I proceed to decide whether the declared value of the imported goods amounting to Rs. 10,24,905/- are liable for rejection under the provisions of Rules 12 of Customs (Determination of Value of Imported goods) Rules, 2007 and re-quantification of the value of the imported goods thereof.

23.4.1 I find that during assessment/appraisement of the Bill of Entry No. 8781422 dated 11.09.2020, it was observed from the documents like Invoice and Packing list no. MGT10421867 dated 04.07.2020 that invoice / packing list mentioned item wise details such as different quantity based package details, the number of cartons and total weight of cartons of each package type etc., however in the Bill of Entry, total quantity and value of each item in a consolidated manner was declared based on per kilogram basis only. I find that the importer had declared a low value for each item when compared to the prevailing market rates, on ascertaining the values of the goods covered under the said Bill of Entry, with the contemporary imports and value

of the goods normally available in the market. I find that the Commissioner of Customs (Appeals), Ahmedabad in Para 6.9 of the said OIA stated that:

> 6.9 I am of the considered view that the ratio of the above judgment of the Hon'ble Supreme Court is applicable in the facts of the present case, as the fact is not under dispute that the Appellant No. 1 had not provided the flavour variants, package wise, and quantity unit details of different items. Therefore, the department was left with no option but to determine the assessable value by following the Customs Valuation Rules, 2007.

Therefore, I find that as per the provisions of Section 14 of the Customs Act, 1962 read with the Rule 12 of Customs (Determination of Value of Imported goods) Rules, 2007, as amended, the value declared by the Importer was required to be rejected and to be re-determined under the provisions of Customs Valuation (Determination of Price of imported Goods) Rules, 2007.

23.4.2 Section 14 is reproduced below:-

> *"**14. Valuation of goods.** -*
> *"(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, **the value of the imported goods and export goods shall be the transaction value of such goods**, that is to say, **the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation**, or as the case may be,*
> *...*
> *(iii) **the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section**:*
> *2[(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]*
> *Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50."*

23.4.3 Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007.

> *"**12. Rejection of declared value**. — (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further*

information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

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

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

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

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

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents."

23.4.4 I further rely on the Judgment of Hon'ble Tribunal, in the case of ***M/S. SAMRAT ENTERPRISES V/S CC (IMPORT), MUMBAI REPORTED AT 2000 (122) E.L.T. 423 (TRIBUNAL) IN THE CEGAT COURT NO.1, NEW DELHI***, wherein Hon'ble Tribunal held that "*Rejection of invoice value and the assessment of the goods at the value of comparable goods was justified when the value declared is very low to hide from Customs authorities the full details about the brand name quality etc."* I also find support for my findings from the Judgment of Hon'ble Tribunal, in the case of ***JAISINGH JHAVERI V/S CC,COCHIN REPORTED AT 2005 (181) E.L.T. 56 (TRI-BANG)***, wherein Hon'ble

Tribunal held that *"Declared price was abnormally reduced as compared to ordinary competitive price and department not bound to accept the same.*" I also find relevant the judgment of the Hon'ble Tribunal, Ahmedabad in the matter of ***KUMAR IMPEX VS. CC JAMNAGAR (PREV.) vide Order No. A/11108/2023 DATED 03.05.2023*** wherein it was held that:

> *"4.4 Clause iii (a) of the said explanation clearly prescribes that wherever a significantly higher value of identical or similar goods is noticed in comparable transactions at roughly the same time the declared value can be rejected. In the instant case it is notice that the declared assessable value was USD 1.2/-kg and contemporaneous imports were noticed that USD 2.1 to 2.85 USD kg. As can be seen from the tables in para 2.4 above.*
>
> *4.5 It is also notice that the products has been described as Polyester Knitted Fabrics in all these entries in table in para 2.4. The quantity imported by the appellant is 21540 kgs.,and the quantity imported against bill of entries No. 2198984 dated 1.01.2021 and 2198928 dated 01.01.2021 is 23905 kg.,and 24265 kg., is comparable. All the imports were made from China. In this background, we find that the imports are comparable in all respects.*
>
> *5. In the above factual scenario, we do not find any error in the impugned order rejecting the declared value and accepting the lowest of the contemporaneous import value of identically described goods falling under the identical heading imported at roughly the same time. The appeal is consequently dismissed."*

23.4.5 I find that the value declared by the importer are highly undervalued and are not the true transaction value and therefore, it is required to rejected under the Provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported goods) Rules. 2007, as amended read with under Section 14 of the Customs Act, 1962 and is needed to be re-determined under Rule 4, 5 & 7 of the Customs Valuation (Determination of Value of Imported goods) Rules, 2007, as amended.. Therefore comparable value of the goods available in the contemporary imports data was explored to arrive at correct valuation of the goods imported under the said Bill of Entry. The details of the lowest valuation of the subject goods found as per each flavour available in the contemporary imports data has been considered in arriving at the value of the goods declared in the said Bill of Entry. In case of items where the value from contemporary imports data was not available, approximate value was arrived at after considering the market rates and allowing the deduction from the market rate, as applicable taxes, expenses and profits.

23.4.6 I find that the assessing officer have investigated through the NIDB Data for item no. 1, 2, 5, 8 and 9 and found value declared by the importer was much lower than the contemporary NIDB data. I also find that in respect of item no. 3, 4, 6 and 7,

NIDB data could not be found and prices were arrives at based on market research/survey data as given in Table-2 below:

Table-2

S. NO.	ITEM DESCRIPTION (including the Flavours noticed)	VALUE DECLARED BY THE IMPORTER IN THE BoE In $	In Rs.	QUANTITY AS PER THE DETAILED PACKING LIST	VALUE WORKED OUT ON THE BASIS OF NIDB DATA /MARKET RATE IN **Rs.**
1	MAGGI CUBE	0.8	59.28	1440	**68.57**
2	QUAKER OATS	0.4	29.64	1476	**41.86**
3	TABSCO SAUCE	0.6	44.46	199	**1690**
4	INSTANT COFFEE NESCAFE	5	370.5		
	NESCAFE GOLD - 12 X 47.5			399	**2131**
	NESCAFE CLASSIC - 24 X 50			120	**1530**
	NESCAFE CLASSIC - 24 X 100			480	**1530**
	NESCAFE CLASSIC - 12 X 230			414	**1530**
5	LANGNESE HONEY	0.8	59.28	1350	**295**
6	FRUIT CHEW CANDY - FRUTELLA	0.7	51.87	1037	**865**
7	PASTE ALAMEERA/TAHINAH/NESTLE	0.6	44.46		
	12 x 400 GM			480	**300**
	12 X 600 GM			360	**300**
	6 x1 KG			1248	**300**
	NESTLE (cream)			768	**1121**
8	WELLS' OIL	1	74.1	151.2	**153**
9	INSTANT COFFEE DAVIDOFF	6	444.6	180	**571.99**

23.4.7 Now, I discuss the price of each item and contentions of the noticee. I find that the contemporaneous data i.e. NIDB Data and market data was provided to the noticee along with the SCN and the noticee has contended that the data annexed to the SCN is illegible and Country of Origin was not disclosed, however I reject both contentions as the country is disclosed at column no. 4 and data is quite legible.

23.4.8 I find that the noticee has contended that data provided to them in respect of item no. 1 – 'Maggi Cube' does not support the price proposed by the department, I find from the NIDB data for the identical item imported during the contemporary period, the contemporaneous import from UAE under the BoE No. 8044199 dated 30.06.2020 has the minimum value as Rs. 68.57 per kg, which is already provided in the SCN. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 59.28 per kg and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 1 to be Rs. **68.57** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

23.4.9 I find that the noticee has contended that data provided to them in respect of Item No. 2 – 'Quaker Oats' does not support the price proposed by the department, I find from the NIDB data for the identical item imported during the contemporary period, the contemporaneous import from UAE under the BoE No. 8310738 dated 28.07.2020 has the minimum value as Rs. 41.86 per kg, which is already provided in the SCN. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 29.64 per kg and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 2 to be Rs**. 41.86** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

23.4.10 I find that the noticee has contended that data provided to them in respect of Item No. 5 – 'Langnese Honey' does not support the price proposed by the department, however I find from NIDB data and the contemporaneous import under the BoE No. 8044158 dated 30.06.2020 has the minimum value as Rs. 295.35 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 59.28 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 5 to be **Rs. 295** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

23.4.11 I find that the noticee has contended that data provided to them in respect of Item No. 8 – 'Wells' Oil' does not support the price proposed by the department, however I find from the NIDB data for the identical item imported during the contemporary period, the contemporaneous import under the BoE No. 8111636 dated 08.07.2020 has the minimum value as Rs. 152.80 Per Kg., which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 74.10 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 8 to be **Rs. 153** per kg as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

23.4.12 I find that the noticee has contended that data provided to them in respect of Item No. 9 – 'Instant Coffee Davidoff- fine aroma, Rich aroma, Expresso 57' does not support the price proposed by the department, however I find that the noticee has not declared separate quantity of the different flavours and the proper officer picked

the minimum value in mix of all the flavours from the NIDB data for the identical item imported during the contemporary period, the contemporaneous import under the BoE No. 8583466 dated 25.08.2020 has the minimum value as Rs. 571.99, which is already provided in the SCN and in Table-2 above. I find that on verification of declared values of the imported goods with contemporaneous import price data as reflected in NIDB data the values declared by the importer were on lower side since they declared the value as Rs. 444.60 and the proper officer has rejected the same in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007 as amended. I hold the value in respect of item no. 9 to be **Rs. 571.99** as per Customs Valuation (Determination of value of imported goods) Rules, 2007.

23.4.13 I find that the noticee has contended that no data has been provided to them in respect of following items:-

Item No. 3 – 'Tabsco Sauce',
Item No. 4 – "'Nescafe Gold 12 X 47.5', 'Nescafe Classic 24 X 50', 'Nescafe Classic 24 X 100', Nescafe Classic 12 X 230',
Item No. 6 – 'Fruit Chew Candy - Frutella' and
Item No. 7 – "'Paste Alameera/Tahinah/Nestle 12 X 400', 'Paste Alameera/ Tahinah/ Nestle 12 X 600', "Paste Alameera/ Tahinah/ Nestle 6x 1 kg', 'Nestle Cream'.

I find that no NIDB data for the identical item imported during the contemporary period was available, hence the proper officer conducted market research including Amazon and found that on verification of declared values of the imported goods with contemporaneous import price data, the values declared by the importer were on lower side. Hence I find that the proper officer has rejected the declared value in terms of Section 14 read with Rule 12 and re-determined the same as per market research after reducing trade discount and profit margins etc. I further rely upon the Judgment of ***MRITYUNJAY TRADING PVT LTD V/S COMMISSIONER OF CUSTOMS (PORT), KOLKATA -2009 (244) E.L.T. 441 (TRI-KOLKATA)***.The Appellate Tribunal in its impugned order had held that,

> *"the Customs authorities have taken the trouble of conducting necessary enquiries and have determined the value of the exported goods on a rational basis which also has been disclosed to the appellants. Moreover, the Customs authorities have used the price of two comparable brands to make such determination after allowing trade discount, profit margin etc. Hence, we are of the view that the valuation done by the lower authorities is in order and the same needs no interference and therefore the appeal is rejected.*

23.4.14 To summarize the above, the following Table-3 may be referred:-

Table-3

S. No.	ITEM DESCRIPTION (including the Flavours noticed)	Minimum Value found	BoE No. /date
1	MAGGI CUBE	**68.57**	8044199 dated 30.06.2020
2	QUAKER OATS	**41.86**	8310738 dated 28.07.2020
3	TABSCO SAUCE	**1690**	Market Research
4	INSTANT COFFEE NESCAFE	**-**	-
	NESCAFE GOLD - 12 X 47.5	**2131**	Market Research
	NESCAFE CLASSIC - 24 X 50	**1530**	Market Research
	NESCAFE CLASSIC - 24 X 100	**1530**	Market Research
	NESCAFE CLASSIC - 12 X 230	**1530**	Market Research
5	LANGNESE HONEY	**295**	8044158 dated 30.06.2020
6	FRUIT CHEW CANDY - FRUTELLA	**865**	Market Research
7	PASTE ALAMEERA/TAHINAH/NESTLE	**-**	-
	12 x 400 GM	**300**	Market Research
	12 X 600 GM	**300**	Market Research
	6 x1 KG	**300**	Market Research
	NESTLE (cream)	**1121**	Market Research
8	WELLS' OIL	**152.80**	8111636 dated 08.07.2020
9	INSTANT COFFEE DAVIDOFF	**571.99**	8583466 dated 25.08.2020

23.4.15 I find the declared values lower than the contemporaneous price, and reject the declared value in terms of Section 14 read with Rule 12 and re-determine the same as per table-3 above. I further rely upon the Judgment of ***MRITYUNJAY TRADING PVT LTD V/S COMMISSIONER OF CUSTOMS (PORT), KOLKATA -2009 (244) E.L.T. 441 (TRI-KOLKATA)***.The Appellate Tribunal in its impugned order had held that,

> *"the Customs authorities have taken the trouble of conducting necessary enquiries and have determined the value of the exported goods on a rational basis which also has been disclosed to the appellants. Moreover, the Customs authorities have used the price of two comparable brands to make such determination after allowing trade discount, profit margin etc. Hence, we are of the view that the valuation done by the lower authorities is in order and the same needs no interference and therefore the appeal is rejected."*

23.4.16 In view of the above, I hold that the values arrived at by the proper officer for re-assessing the above said Bills of Entry are correct and proper in terms of Section 14 of the Customs Act, 1962. I also hold that contemporaneous import price data has been disclosed to the importer at this stage in compliance to the order of the Commissioner of Customs (Appeals), Ahmedabad.

23.5 Now I proceed to decide whether extended period under section 28(4) is invocable in respect of imported goods?

23.5.1 I find that the noticee misclassified and undervalued their imported goods and, thus they had willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they had failed to correctly self-assess the impugned goods and had also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they had failed to ensure the accuracy and completeness of the information given therein.

23.5.2 Section 17(1) is reproduced below as:-

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

Section 46 (4) & (4A) of the Customs Act, 1962 states that:

> *"Section 46. Entry of goods on importation. –*
>
> *.*
>
> *.*
>
> *(4) The importer while presenting a bill of entry shall 12 [* * *] 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, 13 [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.]"*

23.5.3 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the importer to correctly declare the description, classification, applicable exemption notification, applicable duties, rate of duties and its relevant notifications etc. in respect of said imported goods and pay the appropriate duty accordingly, whereas, in the instant case, I find that non declaration of accurate information had warranted to the exploring of public domain and market survey and on the basis of data available in India, NIDB data and data available in the market were obtained for valuation of the goods, which in turn confirmed the apprehensions or doubts raised by the department, as it resulted into mis--declaration of value of the imported goods from declared value and thereby duty amount chargeable and recoverable on goods imported as per valuation on the above . In the case before me, as I have recorded hereinabove, that the importer have

failed on several counts in respect of furnishing accurate, correct, true information and thereby have violated provision of Section 46 of the Customs Act, 1962. the importer has failed to correctly classify the imported goods the Bills of Entry of the said imported goods and suppressed the said material facts with an intent to evade payment of duty and thereby they have not paid the appropriate Customs Duty on the said imported goods.

23.5.4 Section 28 (4) is reproduced below as:-

> *" **Section 28(4)**- Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*
> *(a) collusion; or*
> *(b) **any wilful mis-statement**; or*
> *(c) **suppression of facts,***
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."*

23.5.5 I find that in their self-assessment of the Bills of Entry, the noticee has failed to correctly classify the imported goods and suppressed the values with an intent to evade Customs duty. I also find that the Commissioner of Customs (Appeals), Ahmedabad upheld the classification proposed by the Show Cause notice and pointed out that the re-quantification of the values is required in respect of all the items. Therefore, I hold that the noticee knowingly mis-classified the imported goods and suppressed the material facts with an intent to evade Customs duty, and made themselves liable to pay differential duty under the provisions of section 28(4) of the Customs Act, 1962.

23.6 I proceed to decide whether Customs duty amounting to Rs. 31,42,206/- leviable on the goods imported vide Bill of Entry No. 8781422 dated 11.09.2020, is to be re-determined and recovered from the importer, and whether interest under Section 28AA of the Customs Act, 1962 is recoverable?

23.6.1 I find that Total Customs duty of Rs. 31,42,206/- has been proposed to be recovered under Show Cause Notice under Section 28(4) of the Customs Act, 1962, attributable to the mis-declaration, mis-classification and under-valuation. As I hold the values as per Table-3 above for the items imported vide the said Bill of Entry, I find the duty payable Rs. 31,42,206/- is required to be recovered along-with interest under Section 28AA of the Customs Act, 1962.

23.6.2 Section 28AA of the Customs Act, 1962 states that:

*"[**28AA. Interest on delayed payment of duty**--[(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,--

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]"

23.6.3 Therefore, I hold that the noticee is liable to Customs duty payment of **Rs. 31,42,206/-** which is recoverable under the provisions of Section 28(4) of the Customs Act, 1962 from them as they have resorted to mis-classification of the imported goods. I find that the total Customs duty of Rs. 5,65,735/-, already paid by them is also liable to be appropriated against total liability of Customs duty on final assessment.

23.7 Now I decide Whether the goods imported at ICD-Sachana and having declared value Rs.10,24,905/- placed under seizure under Panchnama dated 23.10.2020 are liable to confiscation under Section 111 (m) of the Customs Act, 1962 and whether redemption fine is imposable on the said goods.

23.7.1 The Notice has also proposed for confiscation of imported goods under Section 111(m) of the Customs Act, 1962. The said provision reads as under:-

" (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"

23.7.2 I find that in terms of Section 17 of the Customs Act, "self-assessment" has been provided for the duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit, or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the noticee and aforesaid fact came to light only subsequent to the in-depth investigation. I find that the said importer is liable to pay differential Customs duty as they had imported the goods by wrongly classifying the goods and undervaluing the value of imported goods for evading Customs Duty. Thus, I find that the noticee have violated the provisions of Section 46 (4) of the Customs Act, 1962 and these acts on part of the noticee, I hold the imported goods of declared value of **Rs. 10,24,905/-** (re-assessed at an enhanced value of Rs. 58,07,200/-) are liable to confiscation under Section 111(m) of the Customs Act, 1962.

23.7.3 I find that the goods seized vide panchanama dated 23.10.2020, initially assessed and released provisionally on execution of bond of Rs. 34,00,000/- and bank Guarantee of Rs.18,00,000/- as per the request of the importer. As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

"***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 [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…"

23.7.4 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of ***M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as under:

"….
….
….

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates 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, , by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

....

...."

23.7.5 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of ***SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.),*** has followed the dictum as laid down by the Madras High Court. In view of the above, I find that subject goods can be allowed to be redeemed on payment of redemption fine under Section 125 of the Customs Act, 1962, hence redemption fine in lieu of confiscation is imposable on the said imported goods.

23.8 Now I decide whether Penalty under the provisions of Section 112 (a) and (b), Section 114A and Section 114AA of the Customs Act, 1962 is imposable upon M/s. Devang Naresh Pandya HUF.

23.8.1 Section 112 reads as follows:

*"**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*

...

shall be liable, -

...

[2] [(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 …"

23.8.2 I find from the foregoing Paras that the noticee is liable to pay differential Customs duty as they had imported the goods by wrongly classifying them and undervaluing the imported goods, therefore, the goods were liable to confiscation under Section 111(m) and the importer is liable for penalty under Section 112(a) of the Customs Act, 1962.

23.8.3 I find that the importer had contravened the provisions of the Customs Act, 1962, with intent to evade payment of applicable Customs duty. The deliberate effort to mis-declare the description of goods and the value of imported goods and to mis-lead the department into hoodwinking to circumvent correct amount of Customs duty is utter disregard to the requirement of law and breach of trust deposed on them. Such outright act in defiance of law appears to have rendered themselves liable for penal action as per the provisions of Section 114A. I further find that in view of the proviso to section 114A of Customs Act, 1962, that where any penalty has been levied under this section, no penalty shall be levied under section 112 or 114. Thus I refrain from imposing on them penalty under 112(a) of the Customs Act, 1962.

23.8.4 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

Section 114AA of the Customs Act, 1962:

"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."

23.8.5 I find that the noticee in spite of being fully aware of the products purchased/imported, deliberately declared the classification of few goods under wrong C.T.H. and under-valued all the imported goods at the time of filing the said Bill of Entry in order to evade customs duty. Further, I find that they have failed to declare the actual details to the Customs Authorities for assessment. Thus, I find that the noticee has deliberately withheld from disclosing to the Department, the true classification and value as discussed in foregoing paras. Hence, for the said act of contravention on their part, the noticee is liable for penalty under Section 114AA of the Customs Act, 1962.

23.8.6 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of ***PRINCIPAL COMMISSIONER OF CUSTOMS, NEW DELHI (IMPORT) VS. GLOBAL TECHNOLOGIES & RESEARCH (2023)4 CENTAX 123 (TRI. DELHI)*** wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".*

23.9 Now I decide whether M/s. Parekhs International, Ahmedabad and Shri Jatin Chandulal Parekh, Partner of M/s. Parekhs International, Ahmedabad are liable to penalty under Section 112 and 1 14AA of the Customs Act, 1962?

23.9.1 I find that the Commissioner of Customs (Appeals), Ahmedebad has remanded the matter for re-examining the Penal provision invoked against Custom Broker M/s. Parekhs International and Shri Jatin Parikh under Section 112 and Section 114AA of the Customs Act, 1962 in light of corroborative evidences. From the foregoing paras, it is held that M/s. Devang Naresh Pandya HUF has mis-declared and undervalued the imported goods under the said Bill of Entry and liable for penalty under Section 112 and 114AA. Further I find that the CHA were authorised by the Importer M/s. Devang Naresh Pandya HUF to carry out the Customs clearing work of the said goods imported by them at ICD Sachana on their behalf. . In this connection, I refer to the Regulation 10 of the Customs Brokers Licensing Regulations, 2018:-

> "***Regulation 10. Obligations of Customs Broker:*** *-*
> *A Customs Broker 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;*
> .
> .
> ."

23.9.2 I find that M/s. Parekhs International has failed to take all the necessary majors at the time of filing of the Bill of Entry, regarding advising their client for proper deceleration of the goods imported and its appropriate classification, exercise due diligence to ascertain the correctness of information with reference to work related to clearance of cargo etc. Further, M/s. Parekhs International also failed to ensure the

proper conduct of their G-card holder Shri Jatin Parikh, thereby also violated the provisions of Rule 10 of the Customs Brokers Licence Regulations, 2018, as amended.

23.9.3 I find that Shri Jatin C. Parikh, partner in M/s. Parekhs International stated in his statement that *"He has monitored the movement of container carrying the goods from Gateway Port to ICD-Sachana, scrutinized the documents, worked out all the required details to file the Bill of Entry in ICEGATE like arriving at the classification of the items imported, ascertaining the rate of Customs duty leviable, worked out the Assessable value and applicable Customs duty and filed the Bill of Entry no. 8781422 dated 11/09/2020, on behalf of the Importer".* I find that Shri Jatin C. Parikh was aware of the mis-classification and undervaluation by the importer as he was actively involved in classification, valuation and ascertainment of customs duty. I refer to the Section 112 of the Customs Act ,1962:-

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
…
shall be liable, -
…

2 [(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 :
…"

23.9.4 I find from the foregoing paras, the value and classification of the goods were found mis-declared, therefore, M/s. Parekhs International and Shri Jatin C. Parikh are culpable for the act of omission and commission made on their active part in mis-declaration and undervaluation of the imported goods, which are liable for confiscation, and hence have rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

23.9.5 I further find that the Penal provision has also been invoked against Shri Jatin Chandulal Parekh and M/s Parekhs International under Section 114AA of the Customs Act, 1962. Further, I find from the Regulation 10 of the Customs Brokers Licensing Regulations, 2018 that M/s. Parekhs International and Shri Jatin Chandulal Parekh have not advised the importer to comply with the Customs Act and Rules made thereunder and failed to exercise due diligence to ascertain the correctness of information with reference to work related to clearance of cargo, and thereby also violated the provisions of Rule 10 of the Customs Brokers Licence Regulations, 2018 as

well as attracted penal provisions under Section 114AA, which provides that "*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*". I find that both Shri Jatin Chandulal Parekh, and M/s. Parekhs International have rendered himself liable to penalty under 114AA in view, of the omission and commission discussed herein above.

23.10 I also find that the ratio of case laws cited by the noticees in their submission are not squarely applicable in this case.

24. Therefore, I pass the following order -

ORDER

(i) I confirm the demand of total Customs duty of Rs. 31,42,206/- (Rupees Thirty One Lakhs Forty Two Thousand Two Hundred and Six Only) leviable on the goods imported vide Bill of Entry No. 8781422 dated 11.09.2020, under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest at appropriate rate as per the provisions of Section 28 AA of the Customs Act, 1962 and order to appropriate the total Customs duty already paid amounting to Rs. 5,65,735/-, (Rupees Five Lakhs Sixty Five Thousand Seven Hundred and Thirty Five Only) against the total liability of Customs duty.

(ii) I hold that goods imported vide Bill of Entry No. 8781422 dated 11.09.2020, totally valued at Rs. 58,07,200/- (Rupees Fifty Eight Lakhs Seven Thousand and Two Hundred only), liable to confiscation under Section 111(m) of the Customs Act,1962. However, I allow the same to be redeemed on payment of redemption fine of Rs. 3,00,000/- (Rupee Three Lakhs only) under Section 125 (1) of the Customs Act,1962, in lieu of Confiscation.

(iii) I impose penalty of Rs. 31,42,206/- (Rupees Thirty One Lakhs Forty Two Thousand Two Hundred and Six Only) plus interest at (i) on the importer under section 114A of the Customs Act,1962. I refrain them for penalty under section 112(a) of the Customs Act, 1962 as per proviso to Section 114A of Customs Act, 1962, as discussed.

(iv) I impose penalty of Rs. 1,00,000/- (Rs. One Lakhs only) on the importer under section 114AA of the Customs Act, 1962.

(v) I order to invoke and enforce the bond for Rs. 35,00,000/- and Bank Guarantee for Rs. 18,00,000/- furnished by the importer at the time of provisional release of the seized goods, for recovery of the confirmed govt. dues.

(vi) I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the Custom Broker, M/s Parekhs International in terms of the provisions of Section 112 (a)(ii) of the Customs Act, 1962.

(vii) I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only on the Custom Broker, M/s Parekhs International in terms of the provisions of Section 114AA of the Customs Act, 1962.

(viii) I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on Shri Jatin Chandulal Parekh, partner in M/s. Parekhs International in terms of the provisions of Section 112 (a)(ii) of the Customs Act, 1962.

(ix) I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only on Shri Jatin Chandulal Parekh, partner in M/s. Parekhs International in terms of the provisions of Section 114AA of the Customs Act, 1962.

30. The Show Cause Notice No. VIII/10-114/ICD-Sachana/O&A/HQ/2020-21 dated 29.11.2021 is disposed of in terms of the para above.

Signed by
Shree Ram Vishnoi
Date: 17-04-2025 16:42:20

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

DIN: 20250471MN000000B9EC
F. No. VIII/10-114/ICD-Sachana/O&A/HQ/2020-21 Date: **17.04.2025**

To,
(1) M/S DEVANG NARESH PANDYA, HUF
NO. 8, 1STFLOOR, ASHOK CHAMBER,
DEVJI-RATANSHI MARG, DANA BUNDER,
MASJID (EAST)-MUMBAI– 400009

(2) M/S. PAREKHS INTERNATIONAL,
309, 3RD FLOOR, CHITRARATH COMPLEX,
NR. HOTEL PRESIDENT, C.G ROAD, AHMEDABAD

(3) SHRI JATIN CHANDULAL PAREKH,
PARTNER OF M/S. PAREKHS INTERNATIONAL,
309, 3RD FLOOR, CHITRARATH COMPLEX,
NR. HOTEL PRESIDENT, C.G ROAD, AHMEDABAD

Copy for information and necessary action to -

1. The Principal Commissioner, Customs, Ahmedabad (attn. RRA Section)
2. The Deputy Commissioner, Customs, ICD Sachana.
3. The Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate.
4. Guard File