

538 to 543

	कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in	
---	--	---

A	FILE NO.	F. No. GEN/ADJ/ADC/799/2023-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO.	MCH/ADC/AK/10/2024-25
C	PASSED BY	ARUN KUMAR ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA.
D	DATE OF ORDER	16.04.2024
E	DATE OF ISSUE	16.04.2024
F	SCN NUMBER & DATE	GEN/ADJ/ADC/799/2023-Adjn dated 17.04.2023
G	NOTICEE/ PARTY/ IMPORTER	1. M/s Balaji Imports 2. Shri Rajesh Bansal, Director of M/s Whip Logistics India Pvt. Ltd 3. Shri Pratap Bhanusali, Director of M/s Cargo System India Pvt. Ltd. 4. Shri Kamal Marwari, proprietor of M/s R P Logistics 5. Shri Hasan Jalaluddin Biswas 6. Shri A Kamalakannan
H	DIN NUMBER	20240471M0000000F1EE

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

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under **Section 128A** of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
 चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
 नवरंगपुरा, अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
 HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
 NAVRANGPURA, AHMEDABAD-380 009.”**

3. **उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।**

Appeal shall be filed within sixty days from the date of communication of this order.

4. **उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-**

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by -

- उक्त अपील की एक प्रति और A copy of the appeal, and
- इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. **अपील ज्ञापन के साथ ज्यूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।**

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. **अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।**

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. **इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।**

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

BRIEF FACT OF THE CASE:

Specific Intelligence developed by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred as DRI, AZU) indicated that M/s. Balaji Imports, 4265, Gali No. 60-61, Regar Pura, Karol Bagh, New Delhi-110005 (IEC: DFFPK5707B) has imported 'Old and used second hand Computer parts' contained in container no. MOTU0788427 vide Bill of Entry (hereinafter referred as BoE) No. 2829297 dated 11.10.2022 by mis-declaring the same as Computer Cabinet Case from UAE.

2. The cargo stuffed in above mentioned container covered under bill of entry no. 2829297 dated 11.10.2022 was examined by SIIB, Mundra under panchnama dated 18.10.2022. On examination, it was found that the importer had imported 4067 Nos. old and used Computer Cabinet mounted with

Motherboard, SMPS, Fans etc., 500 Nos. old and used laptop adaptors and 420 Nos. old and used cooling fans. Comparison of goods found during examination with the goods declared in the Bill of Entry revealed that the importer has imported the above goods by mis-declaring the same as computer cabinet case.

3. M/s. Suvikaa Associates, authorized Govt approved valuer examined the goods and gave detailed valuation report of the goods. M/s. Suvikaa Associates submitted the report of the consignment vide letter No. DRI/171/22-23 dated 14.11.2022 wherein it was observed that the safety equipment is deemed as second-hand and used. Further, the equipment is serviceable and repairable and can be used again. The estimated operational life of these machines is 3-5 years with proper and scheduled maintenance. The total cost of the cargo is Rs. 2,32,39,200/-. It is also mentioned that cargo does contain second hand used central processing unit and can be considered as electronic waste.

4. The import of old & used computer parts is governed by the provisions of Foreign Trade Policy 2015-20 and E-Waste (Management & Handling) Rules, 2011. The importer has imported second hand computer parts without necessary authorization from DGFT as required under Para 2.31(1)(a) of the Foreign Trade Policy 2015-20 and without obtaining EPR certificate as required under E-Waste (Management & Handling) Rules, 2011. Therefore, the goods i.e. 4067 nos. old and used Computer Cabinet mounted with Motherboard, SMPS, Fans etc., 500 nos. old and used laptop adaptors and 420 nos. old and used cooling fans, having market value of Rs. 2,32,39,200/- were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 24.11.2022.

5. During investigation summons were issued to various persons and their statements were recorded under Section 108 of Customs Act, 1962,

5.1 Statement of Shri Pratap Bhanushali, Director of M/s. Cargo Systems India Pvt. Ltd., a CHA firm was recorded on 28/29.10.2022 wherein he inter-alia stated that M/s. Balaji Imports is their client and in the recent past, they processed the import documents of M/s. Balaji Imports for their import consignment reached at Mundra port. He never personally met the proprietor/importer M/s. Balaji Imports. He came to know whatever little through their KYC documents. Actually, he got the reference of the importer through Shri Vasu Pampani, doing some forwarding activities in Mundra Customs, who is known to him for the last 5 to 6 years. They filed Bill of Entry No. 2829297 dated 11.10.2022 at Mundra Customs for the import consignment of M/s. Balaji Imports. On 11.10.2022 he received copy of Bill of Lading No. AGN171122017204 dated 07.10.2022, invoice No. GB001/22-03 dated 01.10.2022 and packing list through e-mail docs@bluemarkshipping.com on his e-mail, which belongs to Mr. Vasu's firm namely M/s. Bluemark Shipping. He prepared the checklist and forwarded the same to e-mail id docs@bluemarkshipping.com and after getting approval by Mr. Sandeep Chandawat of M/s. Bluemark Shipping, they filed Bill of Entry No. 2829297 dated 11.10.2022.

5.2 Statement of Shri Pampani Salpathy Vasu Partner of M/s. Bluemark Shipping was recorded on 29.10.2022 wherein he inter alia stated that His friend Shri Prince Priyadarshi, who is working in a CHA firm in Mundra,

introduced him to Shri Kamal who is a freight forwarder in Delhi, in the month of Sept, 2022, Shri Kamal sent him the import documents i.e. Invoice, Packing List, B/L and KYC docs to find a CHA for clearance of the goods from Mundra Port which were imported by M/s. Balaji Imports and promised him to pay a commission of Rs. 20,000/- for the same. He asked Shri Pratap Bhanushali, Director of CHA firm M/s. Cargo System India Pvt. Ltd as he is known to him for the last 5 to 6 years, regarding clearance of same to which Shri Pratap Bhanushali agreed. He had sent the documents like bill of lading, invoice, packing list from his mail id i.e.-docs.bluemarkshipping.com to Shri Pratap Bhanushali on his mail id pratap@cargosystemsindia.com on 11.10.2022. He got these docs from Shri Kamal of M/s. R P Logistics from his mail id sales.rplogistics@gmail.com on 11.10.2022. Further, he received the checklist from M/s. Cargo Systems (India) Pvt. Ltd which was further forwarded to Shri Kamal on the same day i.e. 11.10.2022.

5.3. Statement of Shri Hasan, appeared on behalf of M/s. Balaji Imports, 4265, Gali No. 60-61, Regarpura, Karol Bagh, New Delhi 110005 was recorded on 06.12.2022 wherein he inter alia stated that he is not connected with M/s. Balaji Imports in any manner. On 05.12.2022 he was given a file by Shri Mohamad Shamim, who is his brother-in-law (sister's husband). The said letter was also available in the file. He is not aware who has signed the above authority letter, but was given to him by Shamim. He does not know the person namely Jagdish Kumar, under whose name the letter is issued. He has neither met him nor have any knowledge of his business activities. He also submitted the documents related to M/s. Balaji Imports which were given to him by Shamim. He further stated that he was given a file by Shamim and told to appear in the office of the Directorate of Revenue Intelligence, Ahmedabad. He (Shamim) also told him to hand over the documents to DRI office, Shamim had instructed to appear before DRI as an employee of the firm M/s. Balaji Imports.

5.4 Statement of Shri A Kamalakannan, Manager (Sales), M/s. Whip Logistics, 2768-69-70, Gali No. 22, First Floor, Beadounpura, Karol Bagh, New Delhi 110005 was recorded on 06.12.2022, wherein he stated that presently he is working as Manager (Sales) in M/s. Whip Logistics, New Delhi since last one year. He further stated that he has not received any summons from the Directorate of Revenue Intelligence, Ahmedabad, but, on 05.12.2022 Shri Kamal (he does not know his full name), who is running a CHA firm in the name of RP Logistics called him at Mahipalpur in Delhi and told him that his firm has acted as forwarder in the case of import of goods by M/s. Balaji Imports at Mundra port and told him to appear before DRI, Ahmedabad. He further stated that at the time when he met Shri Kamal, one more person namely Shri Shamim was also present. He did not know Shamim before. Shri Kamal told him to prepare a file of the documents related to import consignment of M/s. Balaji Imports arrived at Mundra port. He collected all the above documents from his office and handed over to Shri Kamal at around 4.30 pm on 05.12.2022 at Mahipalpur. He further stated that his office i.e. office of M/s. Whip Logistics and the office of M/s. Balaji Imports is a common one. He further stated that though the address of M/s. Balaji Imports is different, but the firm is operating from the address of office of M/s. Whip Logistics, 2768-69-70, Gali No. 22, First Floor, Beadounpura, Karol Bagh, New Delhi 110005. He further stated that as per his knowledge no employee of M/s. Balaji Imports is working from the above address. Shri Jagdish Kumar, Proprietor of the said firm attends the office 2 to 3 days in a week and M/s. Balaji Imports is

controlled by Shri Rajesh Bansal of M/s. Whip Logistics. Shri Rajesh Bansal deals in the business of import and trading of mobile accessories,

5.5 Statement of Shri Kamal Marwari, Proprietor of M/s. R P Logistics was recorded on 03.01.2023 wherein he inter alia stated that Shri Rajesh Bansal had approached him for appointing a Customs Broker in Mundra for clearance of computer cabinets imported by M/s. Balaji Imports around first or second week of October, 2022. As he knew one Shri Prince in Mundra who is associated with Customs clearance work, he called him over his mobile and inquired about clearance of the said consignment. Shri Prince agreed for the clearance and quoted Rs. 25,000/- as clearance charges. Thereafter he consulted the rates with Shri Rajesh Bansal, who agreed for the same. Accordingly, he conveyed the same to Prince and asked him for clearance of the consignment. Prince told him to send the documents to Shri Pampani Salpathy Vasu, Partner of M/s. Bluemark Shipping, Gandhidham. He had asked Rajesh Bansal to send the documents pertaining to the said consignment. Thereafter, after few days, Shri Rajesh Bansal had forwarded the documents through mail from the mail ID of M/s. Balaji Imports. As informed by Prince, he forwarded the said documents to Shri Vasu through e-mail. Thereafter, after few days Prince informed that BE has been processed and DO will be issued soon. The next day Prince asked him to provide the E-way bill and told that the container will be released that day. Accordingly, he asked Rajesh Bansal to provide the E-way bill, which Shri Rajesh Bansal provided to him through whatsapp, which he forwarded to Prince. However, in the evening he received call from Prince, who informed that DRI has put the container on hold and same would not be released that day. Prince also informed that the container will be released after examination of the cargo by DRI. Shri Rajesh Bansal is also in the business of freight forwarding in the name of M/s. Whip Logistics India Pvt. Ltd. As his firm is not registered with WCA membership, he works on commission basis and book the cargo by sea and air through other registered freight forwarders. He knows Shri Rajesh Bansal since last 1.5 to 2 years. He knows Shri Prince through a known person named Shyam, who was also engaged in Customs clearance work. He knows Shri Prince since last 2 years. M/s. Balaji Imports had filed BE No. 2829297 dated 11.10.2022 by declaring the goods as computer cabinet case. He confirmed that though the goods were declared as computed cabinet case in the import documents, the actual goods imported were used computer CPU, without Processor, RAM, ROM. The actual cargo found on examination was different than the one declared in the import documents. He confirmed that the computer parts imported were mainly of HP and Dell brand. As per his knowledge there is no employee of M/s. Balaji Imports working from the registered address. Shri Jagdish Kumar, Proprietor of the said firm is actually employee of M/s. Whip Logistics India Pvt. Ltd and attends the office 2 to 3 days in a week. As per his knowledge, all the activities of M/s. Balaji Imports are controlled by Shri Rajesh Bansal. Shri Rajesh Bansal deals in the business of import and trading of mobile accessories.

5.6 Statement of Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd was recorded under section 108 of the Customs Act, 1962 on 02.01.2023 wherein he interalia stated that:

(i) He is director of M/s. Whip Logistics India Pvt. Ltd., which is engaged in the business of freight and forwarding since last one and half years. He is engaged in the business of import of mobile phones and accessories. Shri Jagdish

Kumar, who is Proprietor of M/s. Balaji Imports was working with him since last 18 to 20 years. As Shri Jagdish Kumar was facing some health issues related to kidney and was in need of money, he offered him to obtain IEC in his name and import mobile phones and accessories in the said firm. Shri Jagdish Kumar accepted the offer and submitted required documents for obtaining IEC. On the basis of documents submitted by him, IEC was obtained in the name of M/s. Balaji Imports. Initially, they had imported mobile phones and accessories in the said firm. Later on they decided to import used computer parts by misdeclaring the same as computer case and accordingly, imported one consignment at Mundra port.

(ii) M/s. Balaji Imports had filed BE No. 2829297 dated 11.10.2022 by declaring the goods as computer cabinet case. He confirmed that though they had declared computed cabinet case in the import documents, they had imported used computer parts, without Processor, RAM, ROM. He confirmed that the cargo found on examination was different than the one declared in the import documents. He confirmed that the computer parts imported were mainly of HP and Dell brand.

(iii) As he got good deal in the Indian market, he requested his brother Shri Rukesh Bansal, who is settled in Dubai and engaged in the business of mobile phones, mobile parts/accessories, computer parts etc. to supply used computer parts. He further stated that the overseas supplier company viz, M/s. Green Bell General Trading Co. LLC, Dubai is owned by his brother Rukesh.

(iv) He had placed the order telephonically and not prepared any PO for the same. They mis-declared the goods as the import of Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time, is prohibited unless they are registered with the Bureau of India Standards (BIS) and comply to the 'Labeling Requirements' published by BIS, as amended from time to time', or on specific exemption letter from Ministry of Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No. 3022 dated 11.09.2013.

6. From the statements of various persons as mentioned hereinabove, it appeared that all the activities of the IEC firm i.e. M/s. Balaji Imports were controlled and looked after by Shri Rajesh Bansal. Shri Jagdish Kumar, Proprietor of the firm was working with Shri Rajesh Bansal and Shri Rajesh Bansal opened the firm M/s. Balaji Imports by obtaining documents from Shri Jagdish Kumar and also obtained IEC in the name of M/s. Balaji Imports. Shri Jagdish Kumar was a kidney patient and was in need of money.

7. Statutory / Legal provisions relating to Import policy for Electronics and IT Goods:

7.1 Note No. 2(c) under the General Notes Regarding Import Policy was amended vide Notification No. 5/2015-2020 dated 07.05.2019 issued by DGFT. The amended Note No. 2(c) is reproduced below:

(c) Import policy for Electronics and IT Goods

The import of Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the “Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time, is prohibited unless they are registered with the Bureau of India Standards (BIS) and comply to the ‘Labeling Requirements’ published by BIS, as amended from time to time’, or on specific exemption letter from Ministry of Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No. 3022 dated 11.09.2013.

7.1.1 Whereas it appeared that in the present case, the importer has failed to establish that they are registered with the Bureau of India Standards (BIS) and thus failed to comply with the above provisions and violated the above provisions.

7.2 Further, revised Para 2.31(1)(a) of the Foreign Trade Policy, 2015-20 reads as under:

S No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
(a)	i. Desktop Computers ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/Laptops iii. Air Conditioners iv. Diesel generating sets	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time.	Restricted	(i) Importable against Authorization subject to conditions to down under “Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/noncomplaint notified products as in CRO, 2012, as amended from time to time is prohibited”.

7.2.1 In view of the Para 2.31(1)(a) of the Foreign Trade Policy, 2015-20, refurbished/re-conditioned spares or re-furbished parts of Personal Computers/Laptops are ‘Restricted’ and cannot be imported without Authorization. In the instant case, the importer has failed to obtain the authorization from the competent authority and thus violated the above policy.

7.3 Ministry of Environment, Forest and Climate Change, Govt. of India has notified the “Hazardous and Other Waste (Management and Trans boundary Movement) Rules, 2016” vide G.S.R. No. 395 (E) dated 04.04.2016, Rule 13 of the said Rules specifically deals with import of hazardous and other waste. The relevant provisions are as below:

Rule 13: Procedure for import of hazardous and other wastes:

(1) Actual users intending to import or transit for trans boundary movement of hazardous and other wastes specified in Part A and Part B of Schedule III shall apply in Form 5 along with the documents listed therein, to the Ministry of Environment, Forest and Climate Change for the proposed import together with the prior informed consent of the exporting country in respect of Part A of Schedule III waste, and shall send a copy of the application, simultaneously, to

the concerned State Pollution Control Board for information and the acknowledgement in this respect from the concerned State Pollution Control Board shall be submitted to the Ministry of Environment, Forest and Climate Change along with the application.

7.3.1 Whereas it appeared that in view of the above provision, a person, who intends to import hazardous and other wastes specified in Part A and Part B of Schedule III shall apply to the Ministry of Environment, Forest and Climate Change for proposed import and shall send a copy of the application to the concerned State Pollution Control Board. The relevant entry of the impugned goods in Part B of Schedule III is reproduced below:

Basel No.	Description of wastes
B1110	Used Electrical and electronic assemblies other than those listed in Part D of Schedule III Electronic assemblies consisting only of metals or alloys Waste electrical and electronic assemblies or scrap (including printed circuit boards) not containing components such as accumulators and other batteries included in Part A of Schedule III, mercuryswitches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or not contaminated with Schedule II constituents such as cadmium, mercury, lead, poly chlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Part C of Schedule III (note the related entry in Schedule VI, A1180)

7.3.2 Central Board of Customs and Indirect Taxes (CBIC), vide Circular No. 27/2011-Customs dated 4 th July, 2011 has clarified that items at B1110 of the said Schedule III can be imported with permission from Ministry of Environment and Forests; that this entry includes electrical and electronic assemblies (including printed circuit board electronic components and wires) destined for direct reuse and not for recycling or final disposal; that the Ministry of Environment and Forests has also confirmed that imports of second hand computers would require the permission of that Ministry. It has been further clarified that all imported goods falling within the purview of entry B 1110 of Part B of Schedule III of the said Rules, indicating second hand computers, would require the permission of the Ministry of Environment and Forests for import into India.

7.3.3 In view of the above it appeared that the impugned goods, imported by M/s. Balaji Imports are covered under entry B 1110 of Part B of Schedule III of the said Rules viz. "electrical and electronic assemblies (including printed circuit board electronic components and wires)". Thus, as per the provisions of Rule 13 of the said Rules, it is obligatory on the part of importer to obtain permission from the Ministry of Environment, Forests and Climate Change for import into India. In the present case, the importer has failed to obtain such permission and thereby violated the provisions of Rule 13 of the said Rules.

8. It appeared that during investigation and along with filing of Bill of Entry, the importer has submitted the documents viz. Bill of Lading, Invoice and Packing List only. The importer has imported the impugned goods by mis-declaring the same as computer cabinet case. The importer has failed to obtain permission from the Ministry of Environment, Forests and Climate Change. Thus, the importer has failed to fulfill the condition laid down under sub-Rule (1) of Rule 13 of the "Hazardous and Other Waste (Management and

Transboundary Movement) Rules, 2016". The importer had imported said goods without having BIS certificate as required under Note 2 under the General Notes Regarding Import Policy, amended vide Notification No. 5/2015-2020 dated 07.05.2019 issued by DGFT. Further, M/s. Balaji Imports have imported the goods which are 'Restricted' and cannot be imported without Authorization, as stipulated under Para 2.31(1)(a) of the Foreign Trade Policy, 2015-20. Thus, in view of the above, it appeared that M/s. Balaji Imports have imported old and used Computer Cabinet mounted with Motherboard, SMPS, Fans etc., old and used laptop adaptors and old and used cooling fans which are otherwise restricted/prohibited and can only be imported subject to certain conditions as discussed hereinabove. It, therefore, appeared that all the above acts of contravention on the part of the importer has rendered the goods liable to confiscation, under the provisions of Sections 111(d), 111(l), 111(m) and 111(o) of the Act. It further appeared that the said goods are to be construed as 'smuggling' within the meaning of Section 2 (39) of the Act and the said goods also appears to be termed as 'prohibited' within the meaning of Section 2(33) of the Act. By above acts of omissions and commission, it appears that Shri Jagdish Kumar and Shri Rajesh Bansal were fully aware that the import of the said goods is restricted/prohibited. It appears that the above persons have involved themselves in carrying, keeping, concealing and dealt with the offending goods in a manner which they knew or had reasons to believe were liable to confiscation under the Act. In the above manner, the above persons have rendered themselves liable for penal action under the provisions of Section 112(a), 112(b) and 114AA of the Act.

9. PENAL PROVISIONS UNDER CUSTOMS ACT, 1962:

9.2 Section 112: Penalty for improper importation of goods, etc.- Any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

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

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

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

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

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

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

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

9.4 Section 117: Penalties for contravention, etc., not expressly mentioned: -

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

10. Accordingly, a Show Cause Notice No. GEN/ADJ/ADC/799/2023-Adjn dated 17.04.2023 was issued to all noticee (M/s Balaji Imports, Shri Rajesh Bansal, Director of M/s Whip Logistics India Pvt. Ltd., Shri Pratap Bhanushali, Director of M/s Cargo System India Pvt. Ltd., Shri kamal Marwar, proprietor of M/s R P Logistics, Shri hasan Jalaluddin Biswas and Shri A Kamalakannan) are called upon to show cause to the Additional Commissioner of Customs (Import), having his office at 1 st floor, Building No. 5B, Port User Building as to why: -

i. The said seized goods i.e. 4067 nos. of old and used Computer Cabinet mounted with Motherboard, SMPS, Fans etc., 500 nos. of old and used laptop adaptors and 420 nos. of old and used cooling fans having a total value of Rs.2,32,39,200/- (Rupees Two Crore Thirty-Two Lakhs Thirty-Nine Thousand and Two Hundred Only) should not be confiscated under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962;

ii. Penalties should not be imposed upon M/s. Balaji Imports (Proprietor Shri Jagdish Kumar), 4265, Gali No. 60-61, RegarPura, Karol Bagh, New Delhi under Section 112(a), 112 (b) and 114AA of the Customs Act, 1962.

iii. Penalties should not be imposed upon Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd., 2768, First Floor, Gali No. 22, Beadounpura, Karol Bagh, New Delhi 110005 under Section 112(a), 112 (b) and 114AA of the Customs Act, 1962.

iv. Penalties should not be imposed upon Shri Pratap Bhanushali,

Director of M/s. Cargo Systems India Pvt. Ltd., 202, Agarwal Chamber No. 1, Sector 19 C, Plot No. 7A, Vashi, Navi Mumbai-400705 under Section 112 (b) and 117 of the Customs Act, 1962.

v. Penalties should not be imposed upon Shri Kamal Marwari, Proprietor of M/s. R P Logistics, R-14B, Khirki Ext., Malviya Nagar, New Delhi - 110017 under Section 112 (b) and 117 of the Customs Act, 1962.

vi. Penalties should not be imposed upon Shri Hasan Jalaluddin Biswas, House No. 629, Gali No. 3, C/O Sukhpal Yadav, Rajokari, New Delhi 110038 under Section 117 of the Customs Act, 1962.

vii. Penalties should not be imposed upon Shri A Kamalakannan, Manager (Sales), M/s. Whip Logistics, House No. RZF, 1/11A, 2 nd Floor, Gali No. 1, Near Bhagat Chander, Mahaveer Enclave, Palam Village, South West Delhi 110045 under Section 117 of the Customs Act, 1962.

11. Record of WRITTEN SUBMISSION

11.1 Submissions made by Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd. vide their letter dated 05.02.2024:

11.1.1 It is submitted that noticee had not manipulated during the investigation. It is important to mention that the department had failed to bring the evidence to the said contention. Therefore, the allegation on presumption and assumption have no evidentiary value.

11.1.2 It is submitted that noticee had able to know after the service of the show Cause Notice that he had been shown as the controller of the importer without supporting any evidence which states that the noticee's monetary consideration. Hence, there is flaws in investigation, i.e. no inquiry from the proprietor of the M/s Balaji Import was done as address, no inquiry from the banks to show the control of the noticee. Therefore, the Show Cause Notice is liable to dropped on the merit also.

11.1.3 It is submitted that in present case noticee acted as the forwarder and the documents had been given to Kamal Marwari for clearance. It is also matter of fact that the noticee had neither interacted nor had given documents to the CHA. Hence, imposition of penalty on noticee is not sustainable and show cause notice is liable to be dropped.

11.1.4 It is submitted that the noticee have no local Standi in the importer firm and no control on the business transaction of the importer. In other norms, the noticee had no concern with the business of M/s Balaji Trading as the officers had failed to proof or give evidence that the noticee had any role in the company as alleged to be the controller. Therefore, the department allegation that the noticee is the controller doesn't support any cogent evidence and hence the said allegation is baseless and liable to be dropped.

11.1.5 It is submitted that the noticee were not the importer of goods and was not required to file any documents with the Customs Authorities; that he had not dealt with the exportation of the subject goods and had no role to play in

the clearance of such goods. In this context the reliance have been placed on the slew of judgements cited as follows:

- **Amar Jyoti Packers v. CCE**[2007(207)E.L.T. 345(Del.)=2007(5)S.T.R. 10(Del.)]: if corporate veil is lifted the person who are in actual control of petitioner will have to pay the impugned demand.
- **J.B. Trading Corporation v. UOI**[1990(45)E.L.T. 9(mad.)]
- **K. Sons Overseas (I) P. Ltd. V. CC, Mumbai**[2001(132)E.L.T. 93(Tri.-Mumbai): Imports- Duty Liability- Goods imported under advance licence obtained by transfer from an exporter who had acquired the same in lieu of exporting certain goods – Liability to pay duty in respect of goods imported lies upon the person who actually imported the goods under licence and not upon the exporter even though he acquired the licence by mis-statement- Section 2(26) and 28 of Customs Act, 1962. [para 5]

11.1.6 It is submitted that in the absence of any specific allegation with corroborative evidence, penalty on the noticee cannot be imposed. In this context reliance have been placed on the decision in the case of **Radha Kishan Bhatia v. UOI** reported in 2004 (178) E.L.T. 8 (S.C.) and **Bal Krishan v. Collector of Customs, New Delhi** reported in 1994 (70) E.L.T. 638 (Tribunal). Therefore, the proposal of the penal action against the noticee is liable to be dropped.

11.1.7 It is submitted that there is no evidence that the noticee were involved in illegal import of goods and the entire case was made out on the basis of statements. The statements of co-accused as relied upon cannot be considered as evidentiary value, because of the oral statement. The reliance upon the decision of Hon'ble Supreme Court in the case of **Harischaran Kurmi v. State of Bihar - (1964) 6 SCR 623 : AIR 1964 SC 1184 : (1963) 52 ITR 443 : (1964) 2 Cri. LJ 344**.

11.1.8 Furthermore, the show cause notice fails to prove as to how and in what manner the Noticee has dealt with the subject goods for which it had knowledge and re-asons to believe that such goods are liable to confiscation. The Noticee denies having ever physically dealt with the subject goods knowingly or having reason to believe that such goods are liable to confiscation.

11.1.9 The show cause notice also invokes sections 114AA of the Act. Section(III) & 114AA of the Act deals with penalty for use of false and incorrect material. The Noticee submits that the application of section 114AA of the Act is dependent upon establishing the fact that a person against whom the said section is being invoked, has "knowingly or intentionally" made, signed or used or caused to be made, signed or used, any declaration, statement or document etc. which is false or incorrect in any manner. Meaning thereby, the onus lies heavily on the department to establish mens rea qua the noticee which, it is submitted, has not been discharged in the present case. The whole case made out against the notice for imposing penalty on it is that the notice had "become a party to submission of the documents to the customs".

11.1.10 Thus from the submissions made above, it would be clear that the Noticee has not contravened the provisions of either section 112 or section 114AA of the Act, as alleged. On the other hand, the department has failed to substantiate the allegations and failed to establish mens rea qua the Noticee by bringing on record any documentary evidence or otherwise as to in what manner the provisions so invoked, as cited above, in the present case has been

contravened by the Noticee.

11.1.11 It is submitted that the Noticee in any stage had not concealed any information from the department and also department has failed to bring the cogent evidence of the noticee for the involvement in the relation to the importation of the goods. The department, failed to bring any mens-rea of the noticee to avail the undue drawback as alleged in the present case. In this contention reliance has been on the decision of the Hon'ble Supreme Court in the case of AKBAR BADRUDDIN JIWANI Versus COLLECTOR OF CUSTOMS reported in 1990 (47) E.L.T.161(S.C.) wherein held that Mens rea has to be established for imposition of penalty.

"60. In the present case, the Tribunal has itself specifically stated that the noticee has acted on the basis of bona fide belief that the goods were importable under OGL and that, therefore, the notice deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in the mind the bona fide of the noticee, as specifically found by the Appellate Tribunal.

"61. We refer in this connection to the decision in the Merck Spares v. Collector of Central Excise & Customs, New Delhi [1983 E.L.T. 1261] Shama Engine Valves Ltd. V. Collector of Customs, Bombay [1984(18) E.L.T. 533] and Madhusudan Gordhandas & Co. v. Collector of Customs, Bombay [1987 (29) E.L.T. 904] wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in Hindustan Steel Ltd. V. State of Orissa by this Court that: [SCR HN p. 753 = 1978(2) E.L.T. (J159) (S.C.)]

"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or in guilty of contumacious or dishonest conduct, or act in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable in the manner prescribed by the statute."

11.1.12 The noticee also submitted that there was no evidence that the noticee had any knowledge and hence there was no deliberate disobedience of statutory provisions. Thus, it was submitted that the imposition of penalty was illegal and violative of principles of natural justice. The noticee also relied upon on the decision of Hon'ble Delhi High Court in the case of RASHMI JAIN Versus ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE reported in 2015 (316) E.L.T. 389 (Del.) relying on the judgments in case of Tarak Nath Gayen and Others v. Customs, Excise and Gold (Control) Appellate Tribunal and Others - 1987 (31) E.L.T. 631 (Cal.) as well as in Hindustan Steel Ltd. v. State of Orissa - 1978 (2) E.L.T. (J159) (S.C)

11.1.13 In the light of submissions made herein above, factual as well as legal, it is requested that the show cause notice be quashed and set aside and the proceedings emanating therefrom may be dropped.

11.1.14 It is also matter of fact that proprietor of the importer had been died and also the foreign supplier had requested for sent back the goods to the department vide email dated 28.07.2023 through its counsel as unpaid seller.

Hence it is requested that goods may be sent back to the shipper and also the show cause notice may be dropped.

11.2 Submissions made by Shri Kamal Marwari, Proprietor of M/s. R P Logistics vide their letter dated 05.02.2024:

11.2.1 It is submitted that noticee as the forwarder had given the reference for import shipment to the CHA and the CHA as per law had verified the KYC of the importer as per the duties as assigned as per the law. The noticee is the unpaid forwarder and only concern with forwarder charges.

11.2.2 It is submitted that noticee had not manipulated during the investigation. It is important to mention that the department had failed to bring the evidence to the said contention. Therefore, the allegation on presumption and assumption have no evidentiary value.

11.2.3 It is submitted that in the absence of any specific allegation with corroborative evidence, penalty on the noticee cannot be imposed. In this context reliance have been placed on the decision in the case of Radha Kishan Bhatia v. UOI reported in 2004(178) E.L.T. 8 (S.C.) and Bal Krishan v. Collector of Customs, New Delhi reported in 1994 (70) E.L.T. 638 (Tribunal). Therefore, the proposal of the penal action against the noticee is liable to be dropped.

11.2.4 Thus, from the submissions made above, it would be clear that the Noticee has not contravened the provisions of either section 114(iii) of the Act, as alleged. On the other hand, the department has failed to substantiate the allegations and failed to establish mens rea qua the Noticee by bringing on record any documentary evidence or otherwise as to in what manner the provisions so invoked, as cited above, in the present case has been contravened by the Noticee.

11.2.5 It is submitted that the noticee in any stage had not concealed any information from the department and also department has fails to bring the cogent evidence of the noticee for the involvement in the relation to the importation of the goods by the importer. The department, failed to bring any mens-rea of the noticee to avail the undue drawback as alleged in the present case. In this contention reliance has been on the decision of the Hon'ble Supreme Court in the case of AKBAR BADRUDDIN JIWANI Versus COLLECTOR OF CUSTOMS reported in 1990 (47) E.L.T. 161 (S.C.) wherein held that mens rea has to be established for imposition of penalty.

11.2.6 The noticee also submitted that there was no evidence that the noticee had any knowledge and hence there was no deliberate disobedience of statutory provisions. Thus, it was submitted that the imposition of penalty was illegal and violative of principles of naturel justice. The noticee also relied upon on the decision of Hon'ble Delhi High Court in the case of RASHMI JAIN Versus ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE reported in 2015 (316) E.L.T. 389 (Del.) relying on the judgments in case of Tarak Nath Gayen and Others v. Customs, Excise and Gold (Control) Appellate Tribunal and Others - 1987 (31) E.L.T. 631 (Cal.) as well as in Hindustan Steel Ltd. v. State of Orissa - 1978 (2) E.L.T. (J159) (S.C).

11.2.7 In the light of the submissions made hereinabove, factual as well as

legal, it is requested that the show cause notice be quashed and set aside and the proceedings emanating therefrom may be dropped.

Record of PERSONAL HEARING

12. Personal hearing was fixed on 21.08.2023 for all the Noticees. But none appeared on the scheduled date. However, Shri Pratap Bhanushali, Director of M/s Cargo System India Pvt. Ltd., has appeared for personal hearing and reiterated their submission made in the matter to the DRI.

Another personal hearing was fixed on 03.10.2023 and 24.11.2023 for rest of the Noticees but all the PH Intimation Letter were received back as undelivered by the postal authorities. Another personal hearing was fixed on 05.02.2024 due to change of adjudicating authority. But even on that date noticee has neither acknowledged the letter nor attended the PH. These letters were found to return unserved. It is observed that sufficient opportunity has been given to Noticee but they chose not to join adjudication proceedings. It is observed that the letters were sent on address given in the SCN. If there was any change of address they should have informed the Department so that any communication must be served to them on that address. Considering the scenario, there is no option but to proceed with the adjudication proceedings in terms of merit of the case ex-parte.

DISCUSSION & FINDING

13. I have carefully gone through the fact of the case available on records, the Show Cause Notice and the written defense submission submitted by 2 noticee out of total 6 noticee. I find that effective personal hearing in respect of the 1 noticee out of total 6 noticee have been concluded. I find that they have been granted 4 different opportunities of personal hearing by the adjudicating authority. Thus, the compliance to the requirement of the proviso to Section 122A (2) of the Customs Act, 1962 has been met out. Accordingly, I proceed to decide the case based on documents and facts as available on record and as per the deposition made by the noticee.

13.1 I find that following main issues are involved in the subject Show Cause Notice, which are required to be decided-

- i. Whether 4067 nos. of old and used Computer Cabinet mounted with Motherboard, SMPS, Fans etc., 500 nos. of old and used laptop adaptors and 420 nos. of old and used cooling fans having a total value of Rs.2,32,39,200/- (Rupees Two Crore Thirty-Two Lakhs Thirty-Nine Thousand and Two Hundred Only) should be confiscated under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962 or otherwise;
- ii. Whether penalty should not be imposed under section 112 (a), 112(b), 117 and 114AA of the Customs Act, 1962 or otherwise as proposed in the Show Cause Noti

13.2 I find that DRI Ahmedabad intercepted the container no. MOTU0788427 covered under Bill of Entry No. 2829297 dated 11.10.2022 on the basis of

specific intelligence regarding that M/s Balaji imports has imported "Old and Used second hand Computers Parts" by mis-declaring the same as Computer Cabinet Case.

13.3 I find that panchnama dated 18.10.2022 was recorded during examination the subject goods, it was found that the importer M/s Balaji Imports had imported 4067 Nos. old and used Computer Cabinet mounted with Motherboard, SMPS, Fans etc., 500 Nos. old and used laptop adaptors and 420 Nos. old and used cooling fans. Comparison of goods found during examination with the goods declared in the Bill of Entry revealed that the importer has imported the above goods by mis-declaring the same as computer cabinet case. M/s. Suvikaa Associates, authorized Govt approved valuer examined the goods and gave detailed valuation report of the goods vide letter No. DRI/171/22-23 dated 14.11.2022 wherein it was find that the safety equipment is deemed as second-hand and used. Further, the equipment is serviceable and repairable and can be used again. The estimated operational life of these machines is 3-5 years with proper and scheduled maintenance. The total cost of the cargo is Rs. 2,32,39,200/-. It is also mentioned that cargo does contain second hand used central processing unit and can be considered as electronic waste,

13.4 I find that the import of old & used computer parts is governed by the provisions of Foreign Trade Policy 2015-20 and E-Waste (Management & Handling) Rules, 2011. The importer has imported second hand computer parts without necessary authorization from DGFT as required under Para 2.31(1)(a) of the Foreign Trade Policy 2015-20 and without obtaining EPR certificate as required under E-Waste (Management & Handling) Rules, 2011. Therefore, the goods i.e. 4067 nos. old and used Computer Cabinet mounted with Motherboard, SMPS, Fans etc., 500 nos. old and used laptop adaptors and 420 nos. old and used cooling fans, having market value of Rs. 2,32,39,200/- were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 24.11.2022.

13.5 During the investigation I find that statements of various persons were recorded, wherein it appeared that Shri Jagdish Kumar, Proprietor of M/s. Balaji Imports, 4265, Gali No. 60-61, Regar Pura, Karol Bagh, New Delhi allowed Shri Rajesh Bansal to create a firm named M/s. Balaji Imports in his name to import various electronic items in which they decided to import e-waste i.e. old and used computer cabinet (mounted with motherboard, SMPS, fan) and laptop adaptors by mis-declaring the same as computer cabinet case. I find that Shri Jagdish Kumar, Proprietor of M/s. Balaji Imports knowingly allowed Shri Rajesh Bansal to import e-waste i.e. old and used computer cabinet (mounted with motherboard, SMPS, fan) and laptop adaptors by mis-declaring the same as computer cabinet case for monetary benefits. Further, I find that Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt, Ltd offered Shri Jagdish Kumar, employee of M/s. Whip Logistics India Pvt, Ltd., who was facing some health issues and was in need of money, to obtain an IEC in his name so that they can import the impugned goods in the said firm. He obtained various documents from Shri Jagdish Kumar for obtaining IEC. Shri Rajesh Bansal imported used computer parts by mis-declaring the same as computer cabinet case at Mundra port vide BE No. 2829297 dated 11.10.2022. Thus, it appears that Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd., masterminded the import of e-waste i.e. old and used computer cabinet (mounted with motherboard, SMPS, fan) and laptop adaptors by mis-

declaring the same as computer cabinet case for monetary benefits.

13.6 Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd. vide his letter dated 05.02.2024 has submitted that the noticee have no local Standi in the importer firm and no control on the business transaction of the importer. In other norms, the noticee had no concern with the business of M/s Balaji Imports as the officers had failed to proof or give evidence that the noticee had any role in the company as alleged to be the controller. Therefore, the department allegation that the noticee is the controller doesn't support any cogent evidence. In this regard, I find that Statement of Shri Kamal Marwari, Proprietor of M/s. R P Logistics was recorded on 03.01.2023 wherein he inter alia stated that Shri Rajesh Bansal had approached him for appointing a Customs Broker in Mundra for clearance of computer cabinets imported by M/s. Balaji Imports and he had forwarded the documents pertaining to the said consignment through mail from the mail ID of M/s. Balaji Imports and he had also provided the E-way Bill to him through WhatsApp. Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd. vide his letter dated 05.02.2024 has also submitted that in present case, noticee acted as the forwarder and the documents had been given to Kamal Marwari for clearance. Further, Shri Rajesh Bansal, in his statement recorded on 03.01.2023 stated that Shri Jagdish Kumar, who is Proprietor of M/s. Balaji Imports was working with him since last 18 to 20 years. As Shri Jagdish Kumar was facing some health issues related to kidney and was in need of money, he offered him to obtain IEC in his name and import mobile phones and accessories in the said firm, Shri Jagdish Kumar accepted the offer and submitted required documents for obtaining IEC. On the basis of documents submitted by him, IEC was obtained in the name of M/s. Balaji Imports. In the view of the above, I find that there is direct involvement of Shri Rajesh Bansal in relation to the importation of the impugned goods.

13.7 I find that the import of e-waste is contrary to various restrictions imposed by DGFT, in violation of various policy provisions. Thus, they (M/s Balaji imports and Shri Rajesh Bansal) knowingly played an important role in effecting the said unscrupulous import which is liable to confiscation under Section 111 of the Customs Act, 1962. The acts of omission and commission on the part of Shri Jagdish Kumar, Proprietor of M/s. Balaji Imports and Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd rendered the imported goods liable for confiscation under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Further, I find that clause (a) of Section 112 of the customs Act, 1962 prescribes penalty for the act of commission and/or omission in illegal import and/or abetment thereto; whereas clause (b) of Section 112 of the Customs Act, 1962 thereof prescribes penalty for knowingly dealing with the illegally imported goods. The acts of omission and commission on the part of Shri Jagdish Kumar, Proprietor of M/s. Balaji Imports and Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd rendered themselves liable to penalty under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962. They had also knowingly and intentionally made, signed or used or caused to be made, signed or used documents relating to import of mis-declared old and used computer cases (mounted with mother board, SMPS, fan, etc.) and laptop adaptors (E-waste) which he knew or had reason to believe were false and incorrect in material particulars. Hence the said act on his part rendered him liable for penalty under Section 114AA of the Customs Act, 1962.

13.8 Shri Kamal Marwari, Proprietor of M/s. R P Logistics vide his letter dated 05.02.2024 has submitted that the department has failed to substantiate the allegations and failed to establish mens rea qua the Noticee by bringing on record any documentary evidence or otherwise as to in what manner the provisions so invoked, as cited above, in the present case has been contravened by the Noticee and also department has failed to bring the cogent evidence of the noticee for the involvement in the relation to the importation of the goods by the importer. In this regard, I find that statement of Shri Pampani Salpathy Vasu Partner of M/s. Bluemark Shipping was recorded on 29.10.2022 wherein he inter alia stated that he got the documents like bill of lading, invoice, packing list from Shri Kamal Marwari, Proprietor of M/s. R P Logistics from his mail id sales.rplogistics@gmail.com on 11.10.2022. Further, Shri Kamal Marwari, Proprietor of M/s. R P Logistics in his statement recorded on 03.01.2023 stated that Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd. had forwarded the documents pertaining to the said consignment through mail from the mail ID of M/s. Balaji Imports and he had forwarded the said documents to Shri Vasu through e-mail. It is evident from the statement of both, Shri Pampani Salpathy Vasu Partner and Shri Kamal Marwari, that the documents pertaining to the said consignment had been forwarded by Shri Kamal Marwari and therefore, I find that there is direct involvement of Shri Kamal Marwari in relation to the importation of the impugned goods.

13.9 I find that Shri Kamal Marwari, Proprietor of M/s. R P Logistics arranged CHA for the clearance of the impugned goods, which he knew were restricted/prohibited for import into India and thus dealt with the goods, which they knew are liable to confiscation under Section 111 of the Customs Act, 1962. Shri Kamal Marwari, Proprietor of M/s. R P Logistics has abetted in the clearance of the impugned goods, the import of which is restricted/prohibited. It appeared that Kamal had tried to divert the investigation by sending Hasan and Kamalakannan by protecting the main beneficiary. In view of above, it appeared that he knowingly played an important role in effecting the said unscrupulous import which is liable to confiscation under Section 111 of the Customs Act, 1962. The acts of omission and commission on the part of Shri Kamal Marwari, Proprietor of M/s. R P Logistics rendered the imported goods liable for confiscation under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962 and rendered himself liable to penalty under Section 112(b)(i) and 117 of the Customs Act, 1962.

13.10 I find that Shri Pratap Bhanushali, Director of M/s. Cargo Systems India Pvt. Ltd., a CHA filed Bill of Entry for the impugned goods, which he knew were restricted/prohibited for import into India and thus dealt with the goods, which he knew are liable to confiscation under Section 111 of the Customs Act, 1962. Shri Pratap Bhanushali, Director of M/s. Cargo Systems India Pvt. Ltd has abetted in the act of contravention, which it was his duty to comply. In view of above, it appeared that he knowingly played an important role in effecting the said unscrupulous import which is liable to confiscation under Section 111 of the Customs Act, 1962. The acts of omission and commission on the part of Shri Pratap Bhanushali, Director of M/s. Cargo Systems India Pvt. Ltd rendered the imported goods liable for confiscation under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962 and rendered himself liable to penalty under Section 112(b)(i) and 117 of the Customs Act, 1962.

13.11 I find that Shri Hasan and Shri A Kamalakannan (Sales), M/s. Whip Logistics, who appeared on behalf of M/s. Balaji Imports as authorized person to give statement, though they are not connected with M/s. Balaji Imports in

any manner, they did not know Shri Jagdish Kumar of M/s. Balaji Imports and had no knowledge of his business activities. Thus, Shri Hasan and Shri A Kamalakannan (Sales), abetted in the import of impugned goods, which are liable to confiscation under Section 111 of the Customs Act, 1962. The acts of omission and commission on the part of Shri Hasan and Shri A Kamalakannan (Sales), rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

14 . . As discussed above the subject goods "Old and Used second hand Computer parts" found oriented from UAE and imported in India without necessary authorization from DGFT as required under Para 2.31(1)(a) of the Foreign Trade Policy 2015-20 and without obtaining EPR certificate as required under E-Waste (Management & Handling) Rules, 2011. Therefore, provisions of Section 125 of the Customs Act, 1962 are attracted for redeeming the confiscated goods on payment of redemption fine. The importer has requested for re-export of the goods. I find it appropriate to allow re-export of the subject goods subject to redemption under section 125 of the Customs Act, 1962. As per settled legal position, for ascertaining appropriate quantum of redemption fine, margin of profit is required to be considered. Accordingly, considering facts and circumstances of the case the quantum of redemption fine is required to be ascertained.

ORDER

15. In view of foregoing discussion and findings, I pass the following order.

- i. I confiscate the said seized goods i.e. 4067 nos. of old and used Computer Cabinet mounted with Motherboard, SMPS, Fans etc., 500 nos. of old and used laptop adaptors and 420 nos. of old and used cooling fans having a total value of Rs. 2,32,39,200/- (Rupees Two Crore Thirty-Two Lakhs Thirty-Nine Thousand and Two Hundred Only) under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.33,50,000/- (Rs. Thirty Three lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.
- ii. I impose a penalty of Rs.11,50,000/- (Rs. Eleven lakh Fifty Thousand only) upon M/s. Balaji Imports (Proprietor Shri Jagdish Kumar), under Section 112(a)(i) of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 2,00,000/- (Rs. two lakh Only) upon M/s. Balaji Imports (Proprietor Shri Jagdish Kumar), under Section 112(b)(i) of the Customs Act, 1962.
- iv. I also impose a penalty of Rs. 2,00,000/- (Rs. two Lakh Only) upon M/s. Balaji Imports (Proprietor Shri Jagdish Kumar), under Section 114AA of the Customs Act, 1962.
- v. I impose a penalty of Rs.11,50,000/- (Rs. Eleven lakh Fifty Thousand only) upon Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd., under Section 112(a)(i) of the Customs Act, 1962.
- vi. I impose a penalty of Rs. 2,00,000/- (Rs. two lakh Only) upon Shri Rajesh Bansal, Director of M/s. Whip Logistics India Pvt. Ltd., under Section 112(b)(i) of the Customs Act, 1962.

- vii. I **also** impose a penalty of Rs 2,00,000/- (Rs. two lakh Only) upon **Shri Rajesh Bansal**, Director of M/s. Whip Logistics India Pvt. Ltd., under **Section 114AA** of the Customs Act, 1962.
- viii. I **impose** a penalty of Rs. 2,00,000/- (Rs. two lakh Only) upon **Shri Pratap Bhanushali**, Director of M/s. Cargo Systems India Pvt. Ltd., under **Section 112 (b)(i)** of the Customs Act, 1962.
- ix. I **impose** a penalty of Rs. 1,00,000/- (Rs. One lakh Only) upon **Shri Pratap Bhanushali**, Director of M/s. Cargo Systems India Pvt. Ltd., under **Section 117** of the Customs Act, 1962.
- x. I **impose** a penalty of Rs. 2,00,000/- (Rs. two lakh Only) upon **Shri Kamal Marwari**, Proprietor of M/s. R P Logistics, under **Section 112 (b)(i)** of the Customs Act, 1962.
- xi. I **impose** a penalty of Rs. 1,00,000/- (Rs. One lakh Only) upon **Shri Kamal Marwari**, Proprietor of M/s. R P Logistics, under **Section 117** of the Customs Act, 1962.
- xii. I **impose** a penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) upon **Shri Hasan Jalaluddin Biswas**, under **Section 117** of the Customs Act, 1962.
- xiii. I **impose** a penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) upon **Shri A Kamalakannan**, Manager (Sales), M/s. Whip Logistics, under **Section 117** of the Customs Act, 1962.
- xiv. I **also** permit to re-export of the goods on payment of redemption fine and penalties and other charges as applicable as ordered above.

16. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

17. Show Cause Notice dated 17.04.2023 issued vide F. No.- GEN/ADJ/ADC/799/2023-Adjn- O/o Pr. Commr-Cus-Mundra is hereby disposed off vide above order.

Signed by

Arun Kumar

Date: 16-04-2024 at 11:39:00
Additional Charge Officer (Import)
Custom House, Mundra

To (Noticee),

538 to 543

o/c

- i. M/s. Balaji Imports, 4265, Gali No. 60-61, RegarPura, Karol Bagh, New Delhi.
- ii. **Shri Rajesh Bansal**, Director of M/s. Whip Logistics India Pvt. Ltd., 2768, First Floor, Gali No. 22, Beadounpura, Karol Bagh, New Delhi 110005.
- iii. **Shri Pratap Bhanushali**, Director of M/s. Cargo Systems India Pvt. Ltd., 202, Agarwal Chamber No. 1, Sector 19 C, Plot No. 7A, Vashi, Navi Mumbai-400705.

- iv. **Shri Kamal Marwari**, Proprietor of M/s. R P Logistics, R-14B, Khirki Ext., Malviya Nagar, New Delhi – 110017.
- v. **Shri Hasan Jalaluddin Biswas**, House No. 629, Gali No. 3, C/O Sukhpal Yadav, Rajokari, New Delhi 110038.
- vi. **Shri A Kamalakannan**, House No. RZF, 1/11A, 2 nd Floor, Gali No. 1, Near Bhagat Chander, Mahaveer Enclave, Palam Village, South West Delhi 110045.

Copy to;

- i. **The Deputy/Assistant Commissioner (RRA/TRC/EDI)**, Custom House, Mundra.
- ii. **The Additional Director General**, Directorate of Revenue Intelligence, Unit No. 15, Magnet Corporate Park, Near Sola Flyover, S. G. Highway, Thaltej, Ahmedabad- 380054 for information please
- iii. **Guard File**