	<p style="text-align: center;"><b>सीमा शुल्क के प्रधान आयुक्त का कार्यालय</b>  <b>सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</b>  <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b>  <b>CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT</b>  <u>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62,</u> <u>Email-adj-mundra@gov.in</u></p>	
<b>A. File No.</b>	:	GEN/ADJ/COMM/632/2023-Adjn-O/o Pr. Commr-Cus-Mundra
<b>B. Order-in-Original No.</b>	:	MUN-CUSTM-000-COM-.....-24-25
<b>C. Passed by</b>	:	<b>K. Engineer,</b> <b>Principal Commissioner of Customs,</b> <b>Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and Date of issue:</b>	:	01.10.2024. 01.10.2024
<b>E. SCN No. &amp; Date</b>	:	SCN F. No. GEN/ADJ/COMM/632/2023-Adjn-O/o Pr. Commr- Cus-Mundra, dated 04.10.2023.
<b>F. Noticee(s) / Party / Importer</b>	:	M/s. Exemplar Trading (IEC No.BVIPD3861L), 1674, Indraprastha, B-11, Nana Kapay, Mundra Kutch, Gujarat-370405
<b>G. DIN</b>	:	<b>20241071MO000000D050</b>

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

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

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

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

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

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

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

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

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

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

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

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

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

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

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

## FACTS OF THE CASE IN BRIEF:

1. An intelligence gathered by the Directorate of Revenue Intelligence (i.e. DRI), Gandhidham Regional Unit suggested that M/s. Exemplar Trading, 1674, Indraprastha, B-11, Nana Kapay, Mundra Kutch, Gujarat-370405 (IEC No.BVIPD3861L) (hereinafter referred to as "M/s Exemplar Trading") were illegally importing true copy of Jackets having brand as Dolce & Gabbana Brand (D&G , declaring the same as "Baby Polyester Knitted Jacket" falling under CTH No. 610333000 of Customs Tariff at Mundra port in an import consignment stuffed in a container NO. PCIU9559704 covered under Bill of Lading No. HUCC20137200 dated 18.08.2022. It appeared that import of branded Jackets falls under Intellectual Property and import of such branded goods into India is permissible only through the right holder or the person authorized by such right holders as per the relevant Intellectual Property law. The intelligence further indicated that M/s Exemplar Trading has also imported these goods (Baby Polyester Knitted Jackets) by way of mis-declaration and undervaluation of the goods.
2. Acting on the intelligence, investigation was initiated by DRI with respect to the subject consignment but it was gathered that the Bill of Entry for subject consignment was not filed by the importer M/s Exemplar Trading. The Container No. PCIU9559704 was examined by the officers of DRI, Regional Unit, Gandhidham at M/s Landmark CFS Pvt. Ltd. vide Panchnama dated 09.11.2022. The details of the imported goods as per the import documents are found as under:

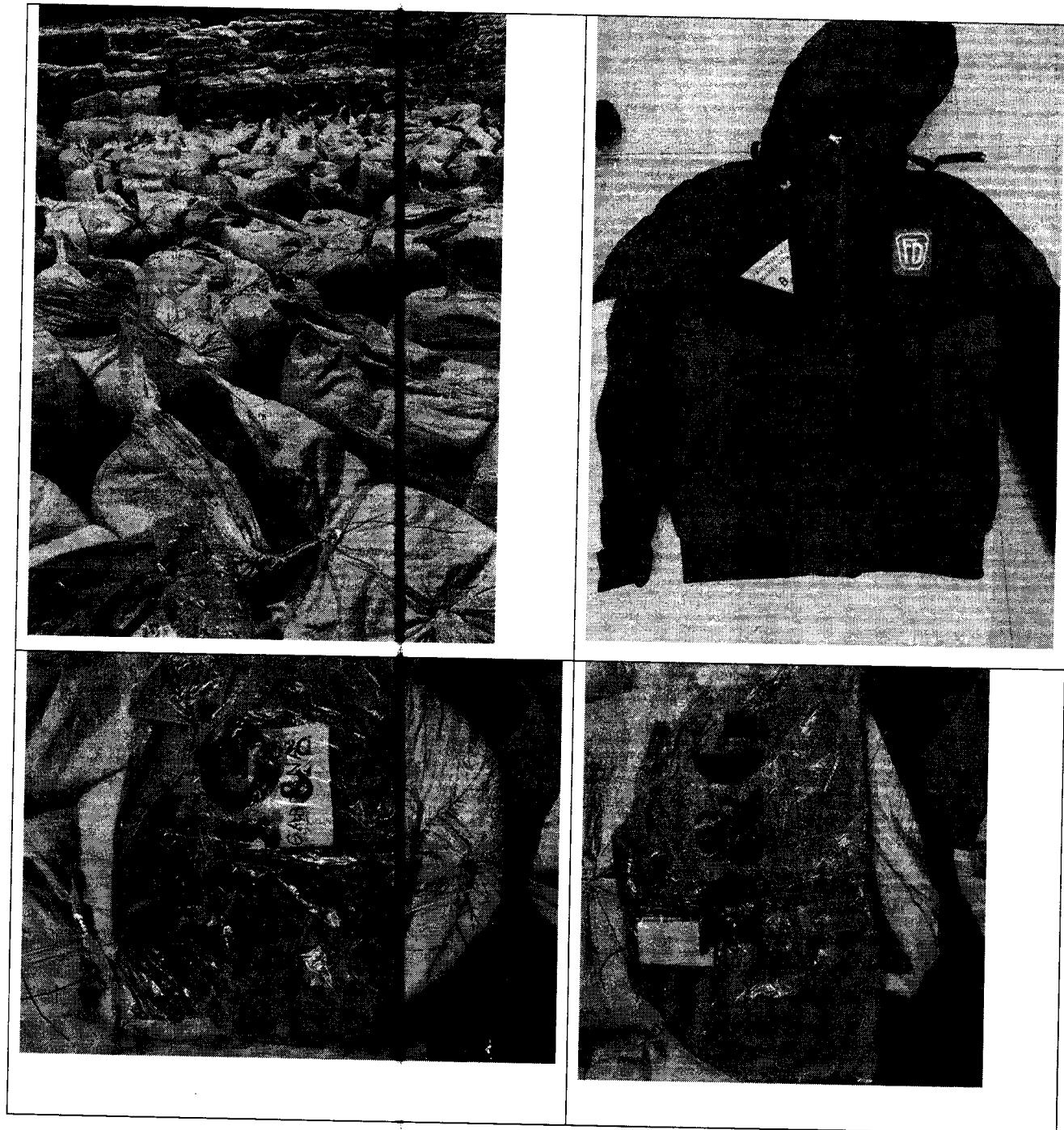
Bill of Lading No. & date	Shipper	Name of the consignee	Notify Party	Description of the goods declared	Container Number	Seal Number
<b>Details found in Bill of Lading showing Place of Delivery as Mundra, India</b>						
HUCC20 137200	Yiwu yaoqun Imp, & Exp. Co Ltd, IF No 328 Chengbei road Yiwu, China.	M/s. Exemplar Trading 1674, Indraprastha, B- 11, Nana Kapaya, Mundra, Kutch, Gujarat- 370405. IEC-BVIPD3861L	M/s. Empezar Logistics Private Limited, SEZ Warehouse keeper. Road Number 11/B, Sector 11, Mundra SEZ-370421 Port Code:INAJM6	243 packages in Total Boy Polyester Knitted jacket, HS Code:61033 300	PCIU955 9704'	CP05 72634

- 2.1. During the examination of the goods stuffed in container no. PCIU95597047, it was noticed that there were marks written on each PP bale of different sizes and the officer also found that jackets of various sizes which appear to be made of fabrics of Polyester knitted/ Cotton Mix/ Denim/ PU Leather were packed in the bales. The number of Pieces packed inside each PP bale was marked on each bale. The jackets Prima facia appeared to be of winter

clothing. The Jackets were having tags/stickers and Made in China remark was found written on sticker stitched inside some of the Jackets. The jackets found inside the bales were packed in thin polythene packing material. The jackets found in back side of the container were made of PU/ faux leather and had brand name Dolce & Gabbana (D&G). These goods were stacked separately during the examination proceedings. The bales were placed in separate stack in such a way so that Jackets with brand name "Dolce & Gabbana" can be counted easily. The total number of jackets found in bales found during the examination of the container are mentioned in below table : -

<b>S.No.</b>	<b>D&amp; G Jackets</b>	<b>Other Jackets</b>	<b>Total</b>
No. of Bales	93	150	243
Number of Jackets	5580	8640	14420

2.2. The photographs of some Jackets having brand name as Dolce & Gabbana (D&G) and other jackets found during examination of the container on 09.11.2022 are appended here -



3.0. The samples were drawn for the valuation of the consignment covered under Bill of Lading No. HUCC20137200 dated 18.08.2022 vide Panchnama dated 24.11.2022 in presence of government empaneled Valuer. The details of all the jackets based on their type, fabric, material etc. is listed in below table:

S.No	Type of Jacket ( Synthetic or Mixed Fabric)	Number of Pieces
1	Jacket with fake Fur Lining	100
2	Wind cheater Jackets for All weather	1520
3	Polyester Mixed fabric jacket	440
4	Jackets with different Lining in inner and outer surface	410
5	Jackets of faux/fake Leather	1620
6	jackets with wired Earphone	60
7	Jackets of High density Fabric	1780
8	PU coated padded jackets	280
9	Jackets with lining of same material in inner and outer surface	950
10	Wind cheater jacket Padded	1680
11	D&G ( Faux leather) Jacket	5580
	<b>Total No. of Jackets</b>	<b>14420</b>

During the examination proceedings the officer withdrew two samples each of all the 11 types of Jackets and then they were marked as A1,A2,B1,B2,C1,C2, D1,D2,E1,E2,F1,F2, G1,G2,H1,H2,I1,I2, J1,J2,K1,K2 for the purpose of valuation.

**3.1** After examination, the entire subject goods were handed over to CFS representative Shri Tarkeshwar Kumar vide Supratnama dated 24.11.2022 for safe custody and was directed by DRI officers not to release/remove or deal or part with the goods without prior permission from the proper officer/competent authority.

**3.2** Further, it appeared the importer had mis-declared the goods imported under Bill of lading No. HUCC20137200 dated 18.08.2022 in respect of description and classification. In the Bill of Lading the description was mentioned as "Boy Polyester Knitted Jacket", however, during examination 11 different types of Jackets consisting of varying types of materials and sizes were found. It also appeared that the Jackets with branding of D&G were copy product and hence were imported in violation of the Intellectual Property Rights of Brand Dolce & Gabbana (D&G). It therefore prima facie appeared that the imported goods covered under Bill of Lading No. HUCC20137200 dated 18.08.2022 declared as Baby Polyester Knitted Jacket having total no. of Jackets 14420, was liable to confiscation under Section 111 (f), and 111(m) of the Customs Act, 1962. The aforesaid goods were accordingly placed under seizure vide Seizure Memo dated 24.11.2022 under the provisions of Section 110 of Customs Act, 1962.

4. The Valuation of subject import consignment covered under Bill of Lading HUCC20137200 dated 18.08.2022 was carried out by Govt. approved Valuer Shri Kunal Ajay Kumar of M/s. Suvikaa Associates. As per Valuation Report bearing Ref. No. DRI/191/22-23 dated 15.12.2022, the market value of Jackets was reported as under:-

S. No.	Type of Jacket ( Synthetic or Mixed Fabric)	Number of Pieces	Price per piece (Rs.)	Total Amount (Rs.)
1	Jacket with fake Fur Lining	100	600	60,000/-
2	Wind cheater Jackets for All weather	1520	850	12,92,000/-
3	Polyester Mixed fabric jacket	440	770	3,38,800/-
4	Jackets with different Lining in inner and outer surface	410	740	3,03,400/-
5	Jackets of faux/fake Leather	1620	800	12,96,000
6	jackets with wired Earphone	60	750	45000/-
7	Jackets of High density Fabric	1780	1100	19,58,000
8	PU coated padded jackets	280	900	2,52,000
9	Jackets with lining of same material in inner and outer surface	950	560	5,32,000
10	Wind cheater Jacket Padded	1680	900	15,12,000
11	D&G ( Faux leather) Jacket	5580	1200	66,96,000
<b>Total</b>		<b>14420</b>	<b>Total</b>	<b>1,42,85,200</b>

5. During the investigation, statements of following persons were recorded under Section 108 of the Customs Act, 1962, which are briefly discussed herein-below:

5.1 Statement of Shri Dirgesh Dhiraj Dedhiya, Proprietor of M/s. Exemplar Trading, Office No. B-11, Indraprastha Hotel, Shakti Nagar, Mundra (Kutch) was recorded on 03.01.2023 at the office of DRI, Gandhidham. It was gathered that as per the Panchnama proceedings there were jackets of popular brand 'D&G', whereas his firm was not authorized/registered to import the goods having brand name 'D&G'. He was shown copy of Chartered Engineer Valuation Report and when asked about difference in the value of the cargo declared in commercial Invoice as USD 12566/- and the value given by the Chartered Engineer in the valuation report, he stated that he did not know the actual value of the cargo as he had not seen the commercial invoice of this cargo earlier. Only Mr. Amit Negi and other persons related to him were aware regarding the actual value of the cargo, though on the basis of documents shown to him i.e. Invoice and Chartered Engineer Valuation Report, he agreed that the cargo was undervalued in the commercial Invoice. Further, he said that he was to receive fixed amount equal to the 3% of the Invoice value of cargo in lieu of allowing his IEC of M/s Exemplar Trading to be used for Import of this cargo of jackets. No financial transactions were carried out by him related to the said

cargo. He had not received any money either from Mr. Amit Negi alias Amit or Mr. Baldevsinh till date and No payment has been made to overseas suppliers and to the firms/companies rendering logistics/transportation/clearance services using his bank accounts. He had already provided details of his all Bank Accounts details. Further, he stated that he did not have any knowledge regarding the actual owner of the cargo, Mr. Amit Negi alias Amit was the only person he met and contacted regarding this cargo. Further, he stated that he had not allowed his IEC of M/s. Exemplar Trading for import, to any person other than Shri Mohammad Asif Sathi and Shri Amit Negi alias Amit. He did not have any documents relating to the import made in his firm.

5.2 Statement of Shri Amit Negi alias Amit, Authorized person of M/s. Exemplar Trading, Office No. B-11, Indraprastha Hotel, Shakti Nagar, Mundra (Kutch) was recorded 20.01.2023 and on 27.06.2023. It was gathered that he works as an independent agent for custom clearance work for Import consignments at ICD Tughlakabad, Delhi. There was no firm/company registered in his name or being controlled/supervised by him. However, he was authorized by proprietor of one import firm M/s Exemplar Trading vide Authority letter dated 09.11.2022 to attend examination proceedings of goods imported vide B/L No. HUCC20137200 dated 18.08.2022 in container No PCIU9559704 and to sign related documents on the firm's behalf. In the month of March, 2022, he came in contact with Shri Baldevsinh Vala (Mb. No. 9998xxxxxx, 76988xxxxx & 81605xxxxx), who was working as documentation executive for M/s Benchmark Shipping & Logistics Custom Broker firm at that time. Shri Baldev Sinh Vala asked him to find some work for his forwarding firm M/s Kalpana Exim. He contacted Mr. Malik (Mob No.9210xxxxxx) and asked him if he has any work related to Import consignment as Shri Baldev assured Shri Amit that he could get any Import consignment cleared easily at Mundra Port. He knew Mr. Malik since 2020 who used to do trading of readymade garments. He did not knew his first name. Mr. Malik told him that he wants to Import jackets from China. Thereafter Shri Amit contacted one Mr. Jackie (Mob.no 008618688388388483) in May, 2022 in China, Mr. Jackie is a Chinese national. He came in contact with Mr. Jackie through one of his friends in year 2020. He asked Mr. Jackie to arrange a consignment of winter Jackets who agreed to do so. Mr. Jackie arranged the cargo for them consisting of various types of winter jackets including copy Jackets of famous Brand Dolce & Gabbana (D&G). They had agreed to pay Rs.30 lakhs to Mr. Jackie for the cargo. The cargo was purchased by Shri Amit and Shri Malik on credit for a period of 90 days. The cargo was purchased by him and Mr. Malik in 80:20 partnership basis. Further, for the import of "Boy Polyester Knitted Jacket" in

container no. PCIU9559704, the IEC was arranged by Shri Baldev Singh on commission basis, in June 2022. Shri Baldev Singh and Mr. Dirgesh Dhiraj Dedhiya (Proprietor of Importer firm M/s Exemplar Trading) came to Delhi and met Shri Amit. They finalized a deal for import of men's jacket in firm M/s Exemplar Trading at a commission of 3% of Invoice value in lieu of using IEC of M/s Exemplar Trading for import of jackets, Shri Amit agreed to pay Rs. 12,00,000/- (12 Lakhs) to Mr. Baldev Singh for clearance, documentation and transportation of cargo from Mundra port. As per the Panchnama proceedings there were total 14420 Pcs of winter Jackets found in the container including 5580 jackets of popular brands 'D & G. On being asked about the 5580 Pcs. of jackets of Dolce & Gabbana brand in Import consignment of "Boy Polyester Knitted Jacket" in container no. PCIU9559704, he stated that the Jackets were counterfeit/copy of original brand jackets of Dolce & Gabbana and they were not authorized/registered to import the goods having brand name 'D&G. They imported the counterfeit Jackets of Dolce & Gabbana brand because Mr. Baldev Sinh had assured them that Shri Baldev would arrange the Customs clearance of said consignment. Shri Dirgesh Dedhiya had given the original letter head of his firm M/s Exemplar Trading to Shri Amit as authority letter to attend the examination proceedings. He was shown copy of Chartered Engineer Valuation Reports bearing no. DRI/191/22-23 dated 15.12.2022 in respect of goods imported in firm M/s Exemplar Trading in container no. PCIU9559704 as per which, the value of imported goods (Winter jackets) is reported to be Rs.1,42,85,200/-. He agreed that the cargo is undervalued in the commercial Invoice. He stated that the actual value of the Cargo was around 30000/- USD and their shipper has shown the value of cargo as 12566/- USD on directions given by Mr. Malik. The financial transactions related to Import of Winter jackets from China was imported by them on credit for 90 days and when the cargo was seized by DRI, Mr. Malik refused to pay the money to the shipper. Hence, no financial transactions were carried out by him related to the said cargo. Money was to be transferred to the Shipper through bank account of firm M/s Exemplar trading in ICICI Bank, Mundra (A/c. No. 072705501037), however no payments was made to the shipper till now. The commission to Mr. Baldev Singh was to be paid in cash which has also has not been paid. They have to tried to import counterfeit Jackets of Dolce & Gabbana brand by concealing it with the other unbranded Jackets in container No PCIU9559704 as they and M/s Exemplar Trading were not authorized to import jackets of D&G Brand. Shri Baldev Singh was to arrange Custom Broker for clearing the said cargo but in the meantime, he indulged himself in another smuggling case for which he first absconded himself but subsequently arrested by DRI. Hence, they could not arrange any Custom Broker to file the Bill of entry for the said cargo.

5.3 Further, he was shown statement of the authorized person of M/s. Kalpana Exim, Shri Baldev Sinh Vala and he was agreed with Shri Baldev Sinh Vala's statement. Shri Amit stated that he had met Shri Farhat Nasir/Mr. Malik only once in the year 2018-19 at Tuglakabad ICD. Shri Farhat Nasir/Mr. Malik had visited the ICD for some personal work. However, the current whereabouts of Shri Farhat Nasir/Mr. Malik were not known to him and he did not possess any information about Shri Farhat Nasir/Mr. Malik address or present location. Shri Amit stated that the arranging and handling the Customs Clearance of the goods imported in container No. PCIU9559704, vide Bill of lading No. HUCC20137200 dated 18.08.2022, using IEC of M/s exemplar Trading (IEC No.BVIPD3861L), was entrusted to Shri Baldev Sinh, as he had assured Shri Amit that he would arrange the clearance of the import cargo (winter jackets) without any issues. It was agreed to pay Shri Baldev Sinh Vala Rs. 12,00,000/- for the Customs clearance and transportation of the imported cargo. Shri Amit also stated that he attempted to contact Shri Malik in January 2023 regarding the payment of applicable duty, fine, and penalty for the release of the cargo imported vide bill of lading no. HUCC20137200 dated 18.08.2022, imported using IEC of M/s Exemplar Trading (IEC No.BVIPD3861L). Shri Malik denied paying the duty, stating financial constraints as the reason for being unable to pay the duty, and advised Shri Amit to leave the subject cargo.

5.4 Statement of Shri Baldevsinh Vala, Authorized person of M/s. Kalpana Exim, Office No. B-11, Indraprastha Hotel, Shakti Nagar, Mundra (Kutch) was recorded on **07.12.2022 and 08.12.2022**. wherein he inter alia stated that:-

- While he was working in M/s Benchmark Shipping and Logistics firm he met with one person namely Shri Amit Negi alias Amit in Mundra and helped him in some clearance work at Mundra port. He and Shri Dirgesh dedhiya of M/s Exemplar Trading visited Delhi and met Shri Amit Negi alias Amit in Mahipalpur (Delhi) and during meeting Shri Amit Negi alias Amit asked him to arrange IEC for an import consignment of Jackets, Shri Baldev Sinh offered this proposal to Shri Dirgesh Dedhiya to lend his IEC of M/s Exemplar Trading for this import consignment in lieu of commission of 3% of invoice value to which Shri Dirgesh Dedhiya agreed. He further stated that the consignment covered under container no. PCIU9559704 arrived at Mundra Port in Month of September 2022. He was unable to arrange clearance for the import consignment of Jackets because he was absconding due to recovery of e-cigarettes by DRI from import consignments dealt by him.

**6.** During the examination of the consignment covered under Bill of Lading No. HUCC20137200 dated 18.08.2022 total 5580 pieces of Jacket having logo/ marking of "D&G" have been found undeclared in the import consignment. It appeared that, Prime-Facie the imported goods are infringing intellectual property rights of brand "Dolce and Gabbana Brand (D&G)". Accordingly, vide letter dated 20.12.2022, 27.01.2023 and 28.03.2023, **M/s Dolce & Gabbana** Brand was requested that a technical person/authorized representative may be sent to this Directorate to inspect the sample/jackets and to ascertain and give report whether the said products are infringing IPR of their firm or not. This Directorate has not received any response against the referred letter till date.

**6.1.** Summons dtd. 30.01.2023, 12.04.2023 and 18.05.2023 were issued to Shri Malik Alias Shri Farhat Nasir, 725/29, Gali No-28, Jaffrabad, North-East, Delhi-110053 to join the investigation and tender statement regarding import of winter Jackets by M/s Exemplar Trading, However, Shri Malik Alias Shri Farhat Nasir did not join the investigation.

**6.2.** The investigation could not be completed in the stipulated time period of six months from the date of the seizure of goods due to unforeseen circumstances. The competent authority vide letter dated 30.03.2023 granted the extension by a further period of six months for issuance of Show Cause Notice in respect of seized goods in terms of the first proviso of Section 110(2) of the Customs Act, 1962 as amended by the Finance Act, 2018.

## **7. Violation of Intellectual Property Rights by subject import consignment:**

Government has enacted Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. The above rules describe the process through which rights of IPR (Intellectual Property Right) holders can be enforced.

In the present case, during examination of the current consignment, it appeared that the imported goods contained undeclared 5580 pieces of Jacket having logo/marking of "D&G" which prima facia infringed Trademark rights of M/s Dolce & Gabbana. Accordingly, clearance of the goods was kept on hold and letter Dt. 20.12.2022, 27.01.2023 and 28.03.2023 and email dated 30.03.2023 were issued to M/s Dolce & Gabbana to join the proceedings and conduct an examination of the import consignment. However, no one from M/s Dolce & Gabbana joined the investigation. In view of this, provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007 cannot be enforced in this case. Since the right holder (M/s Dolce & Gabbana) failed to join the proceedings and failed to execute the consignment specific bond and security in the matter, hence

their right cannot be enforced in terms of provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. In view of above, it appears that the 5580 pieces of Jacket having logo/marketing of "D&G" imported in the current consignment cannot be treated as prohibited.

#### **7.1 Rejection of transaction value of the imported goods and determination of the value of the import goods**

The Shipper M/s YIWU Yaoqun Imp & EXP. Co. Ltd., 1F No. 328 Chengbei Road Yiwu China has issued a commercial Invoice No. YY128 dated 17.08.2022 and packing list for the present import consignment. It was found that the shipper had not made any declaration regarding the Jackets having logo Dolce and Gabbana Brand(D&G). Further, the price of imported goods mentioned in the Invoice No. YY128 dated 17.08.2022 was only USD 12566/-. Shri Amit Negi, in his statement Dt 20.01.2023 stated that he agreed that the cargo was undervalued in the commercial Invoice. He had further stated that the actual value of the Cargo was around 30000/- USD and their shipper had shown the value of cargo as 12566/- USD on directions given by Mr. Malik.

Inspection of subject goods was carried out by Government empaneled Chartered Engineer Shri Kunal Ajay of M/s Suvikaa Associates. During inspection of the goods prima facie it appeared that the value of the goods was grossly mis-declared to evade the applicable Customs Duty. Therefore, the value declared by the importer in the corresponding Bills of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007.

##### **Rule 4. Transaction value of identical goods. -**

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

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

(b) *In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.*

(c) *Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly*

establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

#### **Rule 5 (Transaction value of similar goods).-**

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

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

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

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

#### **Rule 7 of the CVR, 2007, stipulates that:-**

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

As mentioned above, the declared value in the Invoice No. YY128 dated 17.08.2022 is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been significant misdeclaration of goods. In absence of credible data of import of similar goods and other constraints, the value of these goods cannot be determined in terms of Rule 4,5,6,7,8 of Customs Valuation Rules 2007. Hence, the value is to be determined in terms of Rule 9 of said rules. Therefore, the market price as provided by the Chartered Engineer may be considered as the basis for arriving at assessable value of these goods. Accordingly, it appeared that the value of the subject cargo should be considered to be Rs.1,42,85,200/- instead of the declared value.

### **7.3. Liability of imported goods for confiscation**

In view of facts of investigation narrated in foregoing paras, it appeared that Shri Amit, Shri Malik and Shri Baldevsinh in association with Shri Dirgesh Dedhiya the proprietor of M/s Exemplar Trading hatched the conspiracy of importing the Jackets by mis-declaring their description and value. It was well planned that by declaring the goods as "Boy Polyester Knitted jacket" they will import the Jackets having logo/markings of "D&G" which were found undeclared in the import consignment. It appeared that prima facie, the imported goods are infringing intellectual property rights of brand Dolce and Gabbana Brand (D&G). Such branding is to be termed as Intellectual Property and import of such branded goods into India is permissible only through the right holder or the person authorized by such right holders as per the relevant Intellectual Property law. Apparently, the importer / the actual beneficiary owner has not come forward with any evidence which may establish them as right holder and who are legally eligible to import such branded goods. From the statements of Shri Amit and Shri Dirgesh Dedhiya, it appeared that the actual beneficiary owner of the imported goods and other associates were also aware about the violations of Intellectual Property Rights and hence they attempted to import the 5580 Jackets having logo of Dolce and Gabbana Brand (D&G). Further, ongoing through the documents provided during the panchnama proceedings on 09.11.2022, it was observed that the Shipper M/s YIWU Yaoqun Imp & EXP. Co. Ltd., 1F No. 328, Chengbei Road, Yiwu, China has issued a commercial Invoice No. YY128 dated 17.08.2022 and packing list having declared value USD 12665/-. It was found that the shipper had not made any declaration regarding the Jackets having logo Dolce and Gabbana Brand (D&G). Therefore, it appeared that conspirators were fully aware regarding the relevant Intellectual Property law therefore they had not made declaration regarding the import of Jackets having logo Dolce and Gabbana

Brand (D&G). However, since the right holder (Dolce & Gabbana) have not joined the investigation despite repeated reminders from DRI, hence these goods (jackets having D&G imprinted) cannot be treated as prohibited.

It further appeared that the price of imported goods mentioned in the Invoice No. YY128 dated 17.08.2022 was only USD 12566/-. Shri Amit Negi, in his statement dt 20.01.2023 clearly stated that he agreed that the cargo was undervalued in the commercial Invoice. He had further stated that the actual value of the Cargo was around 30000/- USD and their shipper has shown the value of cargo as 12566/- USD on directions given by Mr. Malik. It was evident that the consignment was undervalued and the actual value of the consignment was Rs.1,42,85,200/-. Further in the Bill of Lading, the goods were mentioned as "Boy Polyester Knitted jacket", whereas 11 different types of jackets, including those having brand "D&G" imprinted on them, were found during examination. Hence it appeared that the subject goods are liable to be confiscated under the 111(f) and 111 (m) of the Customs Act, 1962.

## 8. Demand

**8.1.** M/s. Exemplar Trading undervalued the imported goods and also attempted to infringe the intellectual property rights of the prestigious brand Dolce & Gabbana. M/s. Exemplar Trading deliberately suppressed the facts regarding the value and infringement of intellectual property rights of the import goods as came out during the investigation. M/s. Exemplar Trading were well aware about the implication of higher duties on said import goods on its actual value and they have knowingly and deliberately undervalued the import goods with intent to evade the Customs Duties. During investigation, the total value of the import goods was determined to be Rs.1,42,85,200/- by the government empaneled valuer. The goods were correctly classifiable under CTH 61033300 under which applicable Basic Custom duty is 20%. Therefore, the total Duty for the goods imported by M/s Exemplar Trading will be Rs.52,34,097/- (Rupees Fifty Two Lakhs Thirty Four Thousand Ninety Seven Only). The duty calculation is as per the table below:-

S. No	Name of the IEC	Item Description	CTH	Assessable Value	BCD 20%	SWS 10%	IGST 12%	Total Duty
1	M/s Exemplar Trading	Polyester Knitted Jacket	61033300	14285200	2857040	285704	2091353	5234097

**8.2.** By the aforesaid acts, M/s. Exemplar Trading intended to short pay the applicable Customs Duty and other allied duties/taxes by way of deliberate undervaluation, willful mis-statement and suppression of facts leading to

revenue loss to the government exchequer. Hence, the provisions of Section 28 of Customs Act, 1962 is clearly attracted in this case as the importer and its associates had planned to pay the short amount of duty by mis declaring the cargo. The applicable duties on imports are liable to be demanded and recovered from them under Section 28 of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962. From the facts on record, it further appeared that M/s. Exemplar Trading have mis-declared the import goods with respect to their valuation and description. Hence, the goods imported by them and mis-declared were also liable to confiscation under Sections 111(f) and 111(m) of the Customs Act, 1962. The importer/any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, is liable to penalty under Section 112 (a) of the Customs Act, 1962. M/s. Exemplar Trading is, thus liable to penalty under Section 112 (a) of the Customs Act, 1962. They were involved in carrying, removing, depositing, selling and dealing with the subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. For this commission and omission on the part of M/s. Exemplar Trading they are liable to penalty under Section 112 (b) of the Customs Act, 1962 too. Further, since the subject amount of duty was sought to be evaded by M/s. Exemplar Trading by way of suppression of facts and willful mis-statement, they are also liable to penalty under Section 114A of the Customs Act, 1962. Since, M/s. Exemplar Trading and its representatives knowingly and intentionally mis-declared the import goods by way of false or incorrect declarations, in material particular, for the purposes of evasion of import duties under the Customs Act, 1962, therefore they shall also be liable to penalty under Section 114AA of the Customs Act, 1962.

#### **9. Extension for issuance of Show Cause Notice:-**

The DRI put the subject consignment on hold 06.10.2022 and examined the consignment under Panchnama dated 09.11.2023 and 24.11.2023. The last date for issue of Show Cause Notice for confiscation/seizure part appeared to be 05.04.2023. As the investigation was under process, the DRI vide letter dated 30.03.2023 requested the Commissioner of Customs, Customs House, Mundra, for granting an extension of six months period for issuing the Show cause notice under Section 124 of the Customs Act, 1962, in terms of the proviso to Section 110(2) of the Customs Act, 1962. Vide letter dated 31.03.2023 sent by Assistant Commissioner, Adjudication, Custom House, Mundra extension for six months for issuing Show Cause Notice was granted.

## 10. Roles of various persons in smuggling

### **SUSPECTED ROLE OF THE PARTIES**

From the above, it appeared that Proprietorship firm M/s Exemplar Trading and various other persons were involved in the conspiracy of mis-declaration and undervaluation of subject goods. Investigation revealed that following persons have appeared to be involved and connived with the importer M/s Exemplar Trading for aforesaid violations of statutory provisions:

#### **10.1. Role of Shri Dirgesh Dhiraj Dedhiya Proprietor of M/s Exemplar Trading : -**

From the investigations carried out as narrated in foregoing paras, it appeared that Shri Dirgesh Dedhiya, in association with Shri Amit and Shri Baldev planned to import Jackets by making misdeclaration. They also imported 5580 Jackets which has logo of Dolce and Gabbana Brand (D&G). The imported Jackets having logo of Dolce and Gabbana Brand (D&G) goods were infringing intellectual property rights of brand Dolce and Gabbana Brand (D&G). The importer had mis-declared the imported goods in respect of description, value and other material particulars. He was allowed IEC of his firm M/s Exemplar Trading to be used for the import of goods by mis declaring in terms of description, value and other particulars in return of 3% commission on invoice value. He was the proprietor of importing firm M/s Exemplar Trading which had imported the goods through mis-declaration in Bill of lading and IGM to evade applicable Customs Duty. It therefore appeared that M/s Exemplar Trading through its Proprietor Shri Dirgesh Dhiraj Dedhiya had connived with other key persons involved in the smuggling cartel and have imported goods by way of mis-declaration and also such goods do-not correspond to the documents produced by them. They used false, fabricated and incorrect documents showing wrong material particulars of the goods. They used such false documents, even after subscribing to declaration as to the truth of the contents of bill of lading and its supporting documents under section 46 of the Customs Act, 1962, in order to get the goods cleared from Customs.

**11.1.1.** The omission and commission on the part of M/s Exemplar Trading through its Proprietor Shri Dirgesh Dhiraj Dedhiya i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of goods have rendered the subject illegally imported goods **Jackets (Qty. 14420 Market Value- Rs. 1,42,85,200/-)** liable to confiscation under section 111(f) and 111(m) of the Customs Act, 1962. Also, since M/s Exemplar Trading through its Proprietor

Shri Dirgesh Dhiraj Dedhiya were knowingly concerned in importing, concealing and dealing with such goods, they have rendered themselves liable to penalty under **Section 112 (a)** and **Section 112 (b)** of the Customs Act, 1962. M/s Exemplar Trading through its Proprietor Shri Dirgesh Dhiraj Dedhiya knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents, Bill of Lading and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also liable to penalty under **Section 114A and 114AA** of the Customs Act, 1962. For various acts of mis-leading the investigation by not revealing the correct facts and details of other key persons involved in this case, as discussed above, M/s Exemplar Trading through its Proprietor Shri Dirgesh Dhiraj Dedhiya is liable to penalty under **Section 117** ibid too.

**11.2. Role of Shri Amit:-** Shri Amit was the mastermind who alongwith Shri Malik and Shri Baldevsinh illegally imported of Jackets in violation of provisions of Customs Act, 1962, Import policy and other allied acts. He, in connivance with the overseas supplier, arranged import documents having false, incomplete and incorrect material particulars and willfully and deliberately indulged into conspiracy of importing the consignment of Jackets having logo of Dolce & Gabbana Brand(D&G) by concealing the same in the consignment of Polyester Knitted Jackets imported at Mundra. He was the controller and handler of original importers at Mundra, in whose name the import of offending goods was originally made.

**11.2.1.** Shri Amit Negi Alias Amit is the mastermind behind illegal import of Winter Jackets and jackets with logo of "D &G" brand.

- (i) He had hatched the conspiracy of importing Jackets by way of misdeclaration in terms description and value
- (ii) To import the Jackets, he had used IEC of a firm fraudulently as the Proprietor of the IEC holder firm was admittedly not aware about the import
- (iii) He had caused arranging and supplying forged and fabricated documents for import of subject goods from overseas supplier.
- (iv) He did not reveal the details of Shri Malik, other persons involved in the smuggling.
- (v) He further ensured that lower price of USD 12566/-was mentioned in the invoice in place of actual value of the goods.

**11.2.2.** The omission and commission on the part of Shri Amit i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods **Jackets (Qty. 14420,**

**Market Value- Rs. 1,42,85,200/-** liable to confiscation under 111(m) of the Customs Act,1962. Also, since Shri Amit was knowingly connived in importing, concealing, purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under **Section 112 (a)** and **Section 112 (b)** of the Customs Act, 1962. Since Shri Amit knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, Authorization letter for attending examination related documents, Bill of Lading and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore he is also liable to penalty under **Section 114A and 114AA** of the Customs Act, 1962. For various acts of mis-leading the investigation by not revealing the correct facts and details of other key persons involved in this case, as discussed above, Shri Amit is liable to penalty under **Section 117** ibid too.

**11.3. Role of Shri Baldevsinh Vala-** Shri Baldevsinh was a key conspirator who alongwith Shri Amit and Shri Dirgesh Dedhiya of M/s Exemplar Trading illegally imported of Jackets in violation of provisions of Customs Act, 1962, Import policy and other allied acts. He, in connivance with Shri Amit arranged IEC of M/s Exemplar Trading by convincing Shri Dirgesh Dedhiya proprietor of M/s Exemplar Trading. Shri Baldevsinh willfully and deliberately indulged in conspiracy of importing the consignment of unbranded winter jackets and Jackets having logo of Dolce & Gabbana Brand(D&G) by concealing the same in the consignment of Boy Polyester Knitted Jackets imported at Mundra. He was the key person to arrange the clearance of this import consignment at Mundra.

**11.2.1.** Shri Baldevsinh absconded before he can arrange for the clearance of the said goods as he was also involved in clearance of smuggled e-cigarettes and other restricted items at Mundra Port. He had hatched the conspiracy of importing Jackets by way misdeclaration in terms description and value in connivance with Shri Amit and Shri Dirgesh Dedhiya.

- (i) To import the Jackets, he had used IEC of a firm fraudulently as the Proprietor of the IEC holder firm was admittedly not aware about the import
- (ii) He had caused arranging and supplying forged and fabricated documents for import of subject goods from overseas supplier
- (iii) He did not reveal the details of other persons involved in the smuggling.
- (iv) He had agreed to get this consignment cleared and transported to Delhi in lieu of monetary compensation of Rs 12 lakhs.

**11.2.2.** The omission and commission on the part of Shri Baldev Sinh i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods **Jackets (Qty. 14420, Market Value- Rs. 1,42,85,200/-)** liable to confiscation under section 111(m) of the Customs Act,1962. Also, since Shri Baldevsinh was knowingly concerned in importing, concealing, purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under **Section 112(a)** and **Section 112(b)** of the Customs Act, 1962. Since Shri Baldevsinh knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, Authorization letter for attending examination related documents, Bill of Lading and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore he is also liable to penalty under **Section 114A and 114AA** of the Customs Act, 1962. For various acts of mis-leading the investigation by not revealing the correct facts and details of other key persons involved in this case, as discussed above, Shri Baldevsinh is liable to penalty under **Section 117** ibid too.

**11.3 Role of Shri Malik/ Shri Farhat Nasir:-** Shri Malik/Farhat Nasir was a key conspirator who along with Shri Amit, Shri Baldev Sinh and Shri Dirgesh Dedhiya of M/s Exemplar Trading illegally imported of Jackets in violation of provisions of Customs Act, 1962, Import policy and other allied acts. Mr. Malik told Shri Amit that he wants to Import jackets from China. Thereafter, Shri Amit contacted one Mr. Jackie (Mob.no-008618688388388483) in May, 2022 in China, Mr. Jackie is a Chinese national. Shri Amit asked Mr. Jackie to arrange a consignment of winter Jackets who agreed to do so. Mr. Jackie arranged the cargo for them consisting of various types of winter jackets including copy Jackets of famous Brand Dolce & Gabbana (D&G). Shri Amit and Shri Malik/Farhat Nasir had agreed to pay Rs.30 lakhs to Mr. Jackie for arranging the cargo. The cargo was purchased by Shri Amit and Shri Malik on credit for a period of 90 days. Shri Malik/ Shri Farhat Nasir in connivance with Shri Amit hatched the conspiracy to import Jackets by undervaluing. Summons Dated 30.01.2023, 12.04.2023 and 18.05.2023 were issued to Shri Malik Alias Shri Farhat Nasir, 725/29, Gali No-28, Jaffrabad, North-East, Delhi-110053 to join the investigation and tender statement regarding import of winter Jackets by M/s Exemplar Trading, However, Shri Malik Alias Shri Farhat Nasir vide email dated 02.05.2023 denied having any role/relation with the subject consignment imported by M/s Exemplar Trading and did not join the investigation.

- (i) Shri Malik in connivance with Shri Amit had hatched the conspiracy of importing **Jackets** by way mis-declaration in terms description and value.
- (ii) Shri Malik was the end user of the subject goods as he was in business of sale of readymade garments as stated by Shri Amit in his statement. Shri Malik/Farhat Nasir caused arranging and supplying forged and fabricated documents for import of subject goods from overseas supplier.
- (iii) Shri Malik and Shri Amit ensured that lower price of USD 12566/- was mentioned in the invoice in place of actual value of the goods.

**11.3.1.** The omission and commission on the part of Shri Malik/Shri Farhat Nasir i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods **Jackets (Qty. 14420, Market Value- Rs.1,42,85,200/-)** liable to confiscation under 111(m) of the Customs Act,1962. Also, since Shri Malik/Shri Farhat Nasir has knowingly connived in importing, concealing, purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under **Section 112(a)** and **Section 112(b)** of the Customs Act, 1962. Since Shri Farhat knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, Bill of Lading and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore he is also liable to penalty under **Section 114A and 114AA** of the Customs Act, 1962. Shri Malik/Shri Farhat Nasir did not join the investigation despite issuance of various summons to him by not revealing the correct facts and details of other key persons involved in this case, as discussed above, Shri Malik/ Shri Farhat Nasir is liable to penalty under **Section 117** ibid too.

**12.1.** Considering the above, a Show Cause Notice F.No. GEN/ADJ/COMM/632/2023-Adjn dated 04.10.2023 was issued to M/s. Exemplar Trading 1674, Indraprastha, B-11, Nana Kapay, Mundra Kutch, Gujarat-370405 (IEC No. BVIPD3861L (Prop. Dirgesh Dhiraj Dedhiya) made answerable in writing to the Commissioner, Customs House, Mundra having office situated at office of the Customs House Mundra, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421, as to why: -

- (a) The illegally imported goods i.e. Jackets by declaring the same as Baby Polyester Knitted Jacket (Qty. 14420 pieces, Market Value-

Rs. 1,42,85,200/-) should not be confiscated under section 111(f) and 111(m) of the Customs Act, 1962.

- (b) The applicable duty of **Rs. 52,34,097/- (Rs. Fifty-Two Lakhs Thirty-Four Thousand Ninety-Seven Only) (as per Annexure A)** with applicable interest to be recovered from M/s Exemplar Trading under Section 28 and 28AA of the Customs Act, 1962.
- (c) Penalty should not be imposed on them under Section 112(a) & 112(b), 114(A), 114AA & 117 of the Customs Act, 1962.

**12.2.** Further, in the Show Cause Notice, Shri Amit S/o Shri Madan Mohan, Authorized person of M/s Exemplar Trading, Office No. B-11, Indraprastha Hotel, Shakti Nagar, Mundra, R/o GD-85, First Floor, Pul Pehladpur, New Delhi-11004, were called upon to show cause in writing to the Commissioner, Customs House, Mundra having office situated at Customs House, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 as to why:

- (a) Penalty should not be imposed on him under Section 112(a) & 112(b), 114(A), 114AA & 117 of the Customs Act, 1962.

**12.3** Further, Shri Baldev Sinh Vala S/o Shri Vala Nanbha, Authorised signatory of M/s Kalpana Exim, Office No.B-11, Indraprastha Hotel, Shakti Nagar, Mundra(Kutch), R/o-Plot No. 92-B, Hinglaj Nagar-2, Mundra, Kutch were called upon to show cause in writing to the Commissioner of Customs, Customs House, Mundra having office situated at office of the Customs House Mundra, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 as to why:

- (a) Penalty should not be imposed on him under Section 112(a) & 112(b), 114(A), 114AA & 117 of the Customs Act, 1962.

**12.4** Further, Shri Malik alias Shri Farhat Nasir, Add-725/29, Gali No-28, Jaffrabad, North-East, Delhi-110053 were called upon to show cause in writing to the Commissioner, Customs House, Mundra, having his office situated at office of the Customs House Mundra, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 as to why:

- (a) Penalty should not be imposed on him under Section 112(a) & 112(b), 114(A), 114AA & 117 of the Customs Act, 1962.

**13. DEFENSE SUBMISSION:** In the Show Cause Notice, the noticees were asked to submit their written reply to the Notice, within stipulated time, however, none of the Noticees submitted any reply to the Show Cause Notice within the stipulated time.

**13.1** Shri Baldev Singh Vala submitted reply dated 18.05.2024, against impugned SCN, wherein he submitted as under:

- (i) That they deny allegation levelled in the SCN.
- (ii) That penal action proposed against him not tenable on the grounds that M/s. Exemplar illegally imported goods i.e. Jackets by declaring the same as Baby Polyester Knitted Jacket (Qty. 14420 pieces, Market Value- Rs.1,42,85,200/-).
- (iii) That it is evident from the statement dated 03.01.2023 of Shri Dirgesh Dhiraj Dedhiya, proprietor of M/s. Exemplar Trading and statements dated 20.01.2023 and 27.06.2023 of Shri Amit Negi, Authorized Person of M/s. Exemplar Trading that both of them were aware about the nature of goods imported by M/s. Exemplar Trading. As a matter of fact, goods were imported pursuant to conversation between Shri Amit Negi (buyer) of M/s. Exemplar Trading and Mr. Jackie (seller) of China. Hence, it is incorrect to assume or allege that he had used IEC of M/s. Exemplar Trading in a fraudulent manner without their knowledge. Hence, the allegation is not sustainable in the eyes of law.
- (iv) That there is a violation of the principles of natural justice in as much as no document is identified in support of the allegation regarding "arranging and supplying forged and fabricated documents for import of subject goods from overseas supplier". Hence, the allegation is not sustainable in the eyes of law.
- (v) That the allegation at Para 11.2.1(iii) is factually incorrect in as much as he has informed all available information with him in his statement recorded by the officers in the course of investigation, hence the allegation is not sustainable.
- (vi) That the notice does not cite contravention of any provision of customs law while it would allege at para 11.2.1(iv) that he had agreed to get the consignment cleared and transported to Delhi. The notice in a way is assuming collusion between him, custom broker (unknown) in alleging that he had undertaken to get a consignment cleared after examination, without any evidence.
- (vii) That he denies the penalty proposed under Section 114AA of Customs Act, 1962 that the notice make reference to forgery of documents without pinpointing any single document.

- (viii) That penalty under Section 112(a) and (b) can not be invoked against him as the goods were imported by M/s. Exemplar Trading, Shri Amit Negi and Shri Malik and not by him and no bill of entry was filed.
- (ix) That invocation of Sec. 114A against him is ill conceived as it can be invoked only against the person who is liable to pay duty or interest.
- (x) That Provisions of Sec. 112(a) and 112(b) operate in different situations and hence, both cannot be invoked simultaneously.
- (xi) That Provisions of Section 117 are residuary in nature and hence, cannot be invoked once Section 112 (a) and/or (b), 114A and 114AA are invoked.

#### **14: RECORDS OF PERSONAL HEARING:**

**14.1** 'Audi alteram partem', is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to all the noticees on 16.07.2024 and 09.09.2024. Details of the record of PH are as under:

- (i) 1<sup>st</sup> PH conducted on 16.07.2024 and out of the 5 Noticees, only Shri Baldev Singh Vala appeared in the personal hearing and reiterated his written submission dated 20.05.2024, cited as above. No other Noticee appeared in the PH fixed on 16.07.2024 nor sought adjournment in the matter.
- (ii) A 2nd Personal Hearing was granted 09.09.2024 to meet the ends of natural justice, however none of the Noticees appeared in the personal hearing again, nor sought any adjournment of PH. Therefore, assuming that the noticees does not desire to be heard in person, no further P.H. was given to the Noticees.

#### **15. DISCUSSION AND FINDINGS:**

**15.1.** I have carefully gone through the **SCN bearing F.No. GEN/ADJ/COMM/632/2023-Adjn, dated 04.10.2023** issued by the Commissioner of Customs, Custom House, Mundra, proposing confiscation of the goods imported in the consignment covered under Bill of Lading No. HUCC20137200 dated 18.08.2022 (no Bill of Entry Filed) and imposition of penalty/fine etc. Considering the facts of the case, the relied upon documents, submissions made by the Noticees, relevant legal provisions and the available records, the issues to be decided before me are as under : -

- (i) Whether the illegally imported goods i.e. **Jackets by declaring the same as Baby Polyester Knitted Jacket (Qty. 14420 pieces, Market**

**Value- Rs. 1,42,85,200/-**) are liable to be confiscated under section 111(f) and 111(m) of the Customs Act, 1962.

- (ii) Whether the customs duty total amounting to **Rs.52,34,097/- (Rs. Fifty Two Lakhs Thirty Four Thousand Ninety Seven Only)** (as per Annexure A to Show Cause Notice) on the import of subject goods is liable to be demanded and recovered from the importer in terms of Section 28 of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962.
- (iii) Whether Penalty as proposed vide impugned SCN is liable to be imposed upon the noticees or otherwise under Section 112(a) & 112(b), 114(A), 114AA & 117 of the Customs Act, 1962.

**15.2** I find that the instant case arises out of mis-declaration, misclassification and undervaluation of imported goods by the importer whereby they have allegedly evaded the duties of Customs in respect of Bill of Lading No. HUCC20137200 dated 18.08.2022.

**15.3** I find that in the instant case, the investigating agency DRI have alleged the following major violations with regard to Customs Act, 1962 and its allied Acts:

- **Mis-declaration of description and other material particulars as well as undervaluation of goods.**
- **Infringing the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as applicable.**

**15.4** I find that following the principles of natural justice, Personal Hearing was granted to all Noticees twice, however, except Shri Baldev Vala, none of the noticees appeared in the personal hearings nor sought any adjournment. Therefore, in respect of all other noticees except Shri Baldev Vala, I now proceed to decide the matter on the basis of material available on record.

#### **16. Valuation of impugned Goods: -**

**16.1.** I observe that the valuation of imported goods ought to be done in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007). As per the said provisions of the Act and Rules, transaction value of the imported goods is to be accepted subject to Rule 12 of CVR, 2007.

**16.2.** I find that in the instant case, Shri Dirgesh Dhiraj Dedhiya, Proprietor of M/s. Exemplar Trading in his statement dated 03.01.2023 has stated inter alia that he does not know the actual value of the cargo as he has not seen the commercial invoice. He further admitted that the cargo appears to be undervalued. Further, no Bill of Entry has been filed in the matter. Hence

“transaction value” as declared in import documents cannot be considered to be true and correct. Considering all these factors it is reasonable to believe that the value of the goods reflected in the invoice does not reflect the true and accurate “transaction value” for the purposes of **Section 14 of Customs Act, 1962** and thus the same is liable to be rejected in terms of **Rule 12 of the CVR, 2007**.

**16.3. RE-DETERMINATION OF VALUE OF IMPUGNED GOODS:**

(i) I find that Shri Dirgesh D. Dedhiya admitted in his statement that the value mentioned in invoice/packing list does not represent the actual value and the imported cargo appeared to be undervalued. The aforementioned fact is corroborated by the Panchnamas following 100% examination of goods in the presence of Expert Chartered Engineer and statements of various persons stating that the goods were mis-declared with respect to description, value and documents like invoices and packing list. It evidently leads to the conclusion that the value declared by the importer in the Bills of Lading and invoice was not the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007 for short). Therefore, the same is liable to be rejected in terms of Rule 12 of the CVR, 2007. Accordingly, the value is ought to be re-determined by sequentially proceeding in terms of Rules **4 to 9 of CVR, 2007**. I would like to discuss the same as under:

The relevant Rules of CVR, 2007 are reproduced hereunder: -

**3. Determination of the method of valuation. -**

(1) *Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) *Value of imported goods under sub-rule (1) shall be accepted:*

*Provided that -*

*(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*

*(i) are imposed or required by law or by the public authorities in India; or*

*(ii) limit the geographical area in which the goods may be resold; or*

*(iii) do not substantially affect the value of the goods;*

*(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

#### **Rule 4. Transaction value of identical goods. -**

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

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

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the

*goods being valued shall be used to determine the value of imported goods.*

*(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.*

*(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.*

*(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.*

**Rule 5. Transaction value of similar goods: -**

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

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

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

**(ii) Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.**

**Rule 7 of the CVR, 2007, stipulates that: -**

*(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -*

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

(iii) In view of above, I observe that the **Rule 4 of CVR, 2007** applies where imported goods are same in all respects, including physical characteristics, quality and reputation, as the goods being valued except for minor difference in appearance that do not affect the value of the goods. **Rule 5 of CVR, 2007 (similar goods)** applies where the imported goods are though not like in all respect however, they have same characteristics. Both identical and similar goods should be produced in the country in which the goods being valued were produced and produced by the same person who produced the goods under examination, or where no such goods are available, goods purchased by different persons. Besides, while applying the said rules, the transaction values of the identical/similar goods have to be viewed at the same commercial level and substantially in the same quantity the goods being valued. Since in this instant case, proper description, specification, characteristics of goods were not declared & data of goods (found on examination) was also not available, the value of the goods could not be

determined under Rule 4 & 5 of CVR, 2007, and as per the Rule 6 of the CVR, 2007, the value shall be determined under Rule 7 of CVR, 2007.

**16.4.** The services of a Govt. approved Chartered Engineer/Valuer Shri Kunal Ajay Kumar, Prop. of M.s Suvika Associates was sought for valuation of impugned goods. Accordingly, they submitted Valuation Report bearing Ref. No. DRI/191/22-23 dated 15.12.2022, whereby the market value of Jackets was reported Rs. 1,42,85,200/-. The said report was enclosed with the Show Cause Notice at RUD No. 6.

**16.5.** Whereas on the facts and evidences discussed above and keeping in view the related statutory provisions of Customs Act, 1962 and other regulations, as regards valuation aspect of the matter, it is incontestable that the importer has suppressed the actual transaction values and declared lower values of the above-mentioned import consignment with an intention to evade payment of correct Customs Duties. Further, it transpires as per valuation report of the expert Chartered Engineer that the actual value of goods is Rs. 1,42,85,200/-; which is much higher than the value of cargo as shown in invoice as 12566 USD. In view of the above facts, in line with the provisions of Rule 7 of the Customs Va USD, the actual value of impugned goods is taken as Rs. 1,42,85,200/- for the purpose of arriving at fair value for assessment.

## **17. MIS-DECLARATION AND LIABILITY TO CONFISCATION OF IMPORT GOODS OF M/S. EXEMPLAR TRADING: -**

**17.1** From the foregoing paras, it is apparent that the transaction value of various goods imported in the name of M/s Exemplar Trading as declared in the **Bill of Lading no. HUCC20137200 dated 18.08.2022** and in the supporting invoice produced at the time of import into India did not reflect the correct transaction value. Further, as discussed herein above, there were mis-declaration with respect to description of import goods in the said Documents. The mis-declarations in respect of value made by the importer with an intent to evade payment of appropriate Customs duty and other material particulars has made the said goods liable for confiscation under Section 111(f) and 111(m) of Customs Act, 1962.

## **18. DEMAND OF CUSTOMS DUTY: -**

**18.1** In view of the aforesaid facts and evidences discussed in foregoing paras, it is well established that the impugned goods imported by the importer covered under Bill of Lading No. HUCC20137200 dated 18.08.2022 (no Bill of Entry filed) at Customs House, Mundra were mis-declared with respect to value and other material particulars. The importer while knowingly and deliberately shown lesser value of the impugned goods in the Invoice, suppressed the actual

transaction value of impugned goods with intent to evade the Customs Duty. Moreover, in spite of issuance of number of Summons to the Importer, Shri Amit Negi and his associates including Mr. Malik, the Importer failed to provide the correct value of the goods and actual documents thereof. Moreover, Mr. Malik neither joined the investigation, nor did they provide the actual import or financial documents showing actual transaction value. Owing to not providing correct value of goods, the valuation of goods covered under Bill of Lading and Invoice was done through empanelled Chartered Engineer. I find that had the DRI not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. As the importer has deliberately evaded the Customs Duty by suppressing material facts, extended period of demand of duty as laid down under **Section 28(4) of the Customs Act, 1962** is attracted in the instant case.

## **18.2. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962**

**18.2.1.** The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

*“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded—*

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

- (a) collusion; or*
- (b) any willful 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.*

***Explanation-*** For the purposes of this section, “relevant date” means, -

*(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*

*(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*

- (c) in a case where duty or interest has been erroneously refunded, the date of refund
- (d) in any other case, the date of payment of duty or interest.

**19.** The calculation of the applicable Customs Duty based on the valuation report of the Empanelled Chartered Engineer (RUD-no. 6 to SCN) is summarised hereunder: -

**Table**

S. No	Name of the IEC	Item Description	CTH	Assessable Value	BCD 20%	SWS 10%	IGST 12%	Total Duty
1	M/s Exemplar Trading	Polyester Knitted Jacket	6103330 0	14285200	2857040	285704	2091353	5234097

**19.1.** Thus, I hold that Customs duty totally amounting to **Rs. 52,34,097/- (Rs. Fifty Two Lakhs Thirty Four Thousand and Ninety Seven Only)** is liable to be demanded and recovered from the importer under **Section 28(4)** of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

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

**(i).** I find that it is alleged in the SCN that the goods are liable for confiscation under Section 111(f) and Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the confiscation of improperly imported goods. The relevant legal provisions of Section 111(f) and Section 111(m) of the Customs Act, 1962 are reproduced below: -

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

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of*

*goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"*

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

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

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

**iv.** A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that in the instant case option to pay the redemption fine can be given to the noticees for goods where there is no policy restriction.

**21.** In this connection, from the records available before me I find that none the aforementioned persons have retracted their respective statement. Further, the instant case is related to mis-declaration of goods in respect of Description and valuation by **M/s. Exemplar Trading**, which is based on documentary

evidences and corroborated by voluntary statements recorded under Section 108 of the Customs Act, 1962. Besides, all the relied upon documents have already been supplied to the noticees, and the submissions made by them have been taken on record. I find that **the statements recorded under Section 108 of the Customs Act, 1962, also make for substantive evidences.**

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

- The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull- 1983(13)ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement-and was not influenced by threat, duress or inducement etc. is a true one.

**21.2 Violation of Intellectual Property Rights by subject import consignment:**

Government has enacted Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. The above rules describe the process through which rights of IPR (Intellectual Property Right) holders can be enforced.

In the present case during examination of the current consignment, it appeared that the imported goods contained undeclared 5580 pieces of Jacket having logo/markings of "D&G" which prima facia infringed Trademark rights of M/s Dolce & Gabbana. Accordingly, clearance of the goods was kept on hold and letter Dt. 20.12.2022, 27.01.2023 and 28.03.2023 and email dated 30.03.2023 were issued to M/s Dolce & Gabbana to join the proceedings and conduct an examination of the import consignment. However, no one from M/s Dolce & Gabbana joined the investigation. In view of this, provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007 cannot be enforced in this case. Since the right holder (M/s Dolce & Gabbana) failed to join the proceedings and failed to execute the consignment specific bond and security in the matter, hence their right cannot be enforced in terms of provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. In view of above, I find that the 5580 pieces of Jacket having logo/markings of "D&G" imported in the current consignment cannot be treated as prohibited.

**22. NOW I PROCEED TO EXAMINE THE ROLES OF THE VARIOUS NOTICEES TO THE SHOW CAUSE NOTICE:**

**22.1. Role and liability of M/s. Exemplar Trading (Shri Dirgesh D. Dedhiya, Proprietor), under Customs Act 1962: -**

i. **M/s. Exemplar Trading - A Proprietary concern of Shri Dirgesh D. Dedhiya.** From the statements recorded by DRI of Shri Dirgesh D. Dedhiya, Shri Amit Negi, Shri Baldevsinh Vala and other investigation proceedings, it is observed that –

► The examination of the consignment imported in the name of his firm M/s Exemplar Trading in container no. PCIU9559704, Bill of Lading No. HUCC20137200 dated 18.08.2022, was carried out by DRI officers on 09.11.2022 and 24.11.2022 under Panchnamas drawn at Landmark CFS, Mundra. Shri Dirgesh was shown the said Panchnama dated 09.11.2022 and 24.11.2022 and Seizure Memo dated 24.11.2022, B/L No. HUCC20137200 dated 18.08.2022, commercial invoice alongwith the related documents including an authority letter authorizing Shri Amit Alias Amit Negi to attend the examination proceedings. He stated that as per the Panchnama proceedings

there were jackets of popular brand 'D&G', whereas his firm was not authorized/registered to import the goods having brand name 'D&G'.

- On the basis of documents shown to him i.e. Invoice and Chartered Engineer Valuation Report, he agreed that the cargo was undervalued in the commercial Invoice.
- He stated that he was to receive fixed amount equal to the 3% of the Invoice value of cargo in lieu of allowing his IEC of M/s Exemplar Trading to be used for Import of this cargo of jackets.
- He further stated that Shri Amit Negi alias Amit had used the original blank letter head of his firm as authority letter for examination without his permission.
- He further stated that he and Mr. Baldevsinh met Mr. Amit Negi alias Amit at Delhi in mid of July 2022 for the first time. Mr. Amit came to meet him in Mundra again on 18/19.08.2022 after the container arrived and he was in regular contact with Shri Amit Negi alias Amit on phone.
- He had not allowed his IEC of M/s. Exemplar Trading for import, to any person other than Shri Mohammad Asif Sathi and Shri Amit Negi alias Amit.
- Shri Amit Negi in his statement dated 20.01.2023 stated that Shri Dirgesh Dedhiya had given the original letter head of his firm M/s Exemplar Trading to Shri Amit as authority letter to attend the examination proceedings.
- Shri Baldevsinh Vala in his statement dated 07/08.12.2022 stated that He and Shri Dirgesh Dedhiya of M/s Exemplar Trading visited Delhi and met Shri Amit Negi alias Amit in Mahipalpur (Delhi) and during meeting Shri Amit Negi alias Amit asked him to arrange IEC for an import consignment of Jackets, Shri Baldev Sinh offered this proposal to Shri Dirgesh Dedhiya to lend his IEC of M/s Exemplar Trading for this import consignment in lieu of commission of 3% of invoice value to which Shri Dirgesh Dedhiya agreed.

**22.1.1** From the investigation and above-referred statements, it appears that Shri Dirgesh D. Dedhiya, Proprietor of M/s Exemplar Trading, allowed Shri Amit Negi and Shri Baldevsinh Vala to use his IEC to import impugned goods on a commission of 3% of Invoice value. He provided his letter head to Shri Amit Negi for examination of the Cargo by DRI and was also in the know how of the facts of the case, such as undervaluation and infringement of IPR. However, merely stating that he allowed his firm's IEC on a 3% commission does not absolve him from his liability to monitor as to for which purpose his firm's IEC is being used by the actual beneficiary (Shri Amit Negi and Mr. Malik). It was his duty to ensure that the goods being imported are not prohibited goods, not misclassified, misdeclared or undervalued and does not violate the Customs Rules and regulations in any way, in which Shri Dirgesh D. Dedhiya failed totally. As his IEC was used directly as Importer and with his knowledge, he and his firm is liable for various penalties imposable under the Customs Act, 1962.

**22.1.2** Thus, such acts of omissions and commission on part of Shri Dirgesh D. Dedhiya, have rendered the imported goods liable for confiscation under Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation. *However, I find that in a number of judgments, Courts have set precedent that penalty under section 114(a) and 112 are mutually exclusive and cannot be invoked simultaneously. I place reliance for the same on the judgment of CESTAT Ahmedabad vide their Final Order No. A/10416/2023 dated 07.03.2023 in Customs Appeal No. 10821 of 2020- SM, in the matter of Shri Sunil Garg vs. C.C. Mundra. The same view was reiterated by CESTAT, New Delhi in the matter of Commissioner of Customs, NCH, New Delhi Vs. Shri Ashwini Kumar Alias Amanullah in Customs Appeal No. 52084 and 52121 of 2019, vide Order dated 10.11.2020. Further, in the case of M/s Chaudhary International vs Commissioner of Customs Bombay, 1999 (109) ELT 371, the tribunal observed that – Since the goods were consigned to M/s Chaudhary Intt. and the Bill of Lading as well as other relevant import documents were in the name of M/s Chaudhary Intt, therefore, M/s Chaudhary Intt. could alone be considered as owner of the goods at the time of importation. It is significant that Bill of Lading is not merely a document of affreightment or carriage of the goods but it is also universally recognized as a document of title during international trade and commerce. Hence, duty demand under section 28 (4) of the Customs Act, 1962 from M/s Exemplar Trading is justified. Therefore, I find that penalty under 114A is imposable on M/s Exemplar Trading, and its proprietor Shri Dirgesh D. Dedhiya, being the importer. Further, penalty under Section 112(a) and 112(b) cannot be invoked under the Act, being mutually exclusive. Further, Shri Dirgesh D. Dedhiya has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars; therefore, he is also liable to be penalized under Section 114A and 114AA of the Customs Act, 1962.*

I find that penalty under Section 117 of Customs Act, 1962 has also been proposed upon **the Noticee**. However, I find that in the instant case, Penalty under 114A and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Shri Dirgesh D. Dedhiya. To support this, I rely on the observation of CESTAT, Mumbai in the matter of Shri Suresh Kumar Aggarwal Vs Commissioner of Customs – III, Nhava Sheva, in Customs Appeal No. 85299 of 2021, Order dated 03.06.2024, wherein, it was held “I do not find it a fit case for penalty under Section 117 as acts and omissions of Noticee are covered within the penal provisions as provided under Section 114 AA of the Act”.

**22.2. Role and liability under Customs Act 1962 of Shri Amit Negi Alias Amit, Delhi: -**

**22.2.1** I find that in the foregoing paras, Shri Amit was the mastermind who alongwith Shri Malik and Shri Baldevsinh illegally imported Jackets in violation of provisions of Customs Act, 1962, Import policy and other allied acts. He, in connivance with the overseas supplier, arranged import documents having false, incomplete and incorrect material particulars and willfully and deliberately indulged into conspiracy of importing the consignment of Jackets having logo of Dolce & Gabbana Brand(D&G) by concealing the same in the consignment of Polyester Knitted Jackets imported at Mundra. Further -

- i. He had hatched the conspiracy of importing Jackets by way of misdeclaration in terms description and value
- ii. To import the Jackets, he had used IEC of a firm fraudulently
- iii. He had caused arranging and supplying forged and fabricated documents for import of subject goods from overseas supplier.
- iv. He did not reveal the details of Shri Malik, other persons involved in the smuggling.
- v. He further ensured that lower price of USD 12566/-was mentioned in the invoice in place of actual value of the goods.
- vi. He has also indicated in his statement that he and Malik were the one who had invested together in raising money for the Imports in question.

**22.2.2** *The omission and commission on the part of Shri Amit i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Jackets (Qty. 14420, Market Value- Rs. 1,42,85,200/-) liable to confiscation under 111(m) of the Customs Act,1962. Also, since Shri Amit knowingly connived in importing, concealing, purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962. I further find that though Shri Amit Negi was the key conspirator in this matter, but the imports were made in the name of M/s Exemplar Trading and not in the name of Shri Amit Negi. Therefore in the instant case, penalty under Section 114A cannot be invoked, as no duty has been demanded from Shri Amit Negi in the Show Cause Notice. This view has been held in a number of cases. The Chandigarh Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) in the case of M/s Vanick Oils and Fats Pvt Ltd Vs Commissioner of Central Excise, [2023 TAXSCAN (CESTAT) 483], has held that the penalty under Section 114 A of the Customs Act is invariably linked to the quantum of duty evaded. CESTAT*

Chandigarh held that penalty under section 114A of the Customs Act, 1962 not imposable in absence of any duty demand. Similar view was held by CESTAT, Delhi in the matter of COMMISSIONER OF CUSTOMS, ICD, Patparganj Vs. M/S KSS ABHISHEK SAFETY SYSTEMS PVT, CUSTOMS APPEAL NO. 52419 OF 2019, vide Order dated 08.04.2024, wherein the Tribunal observed that section 114A provides for penalty where the duty has not been levied or short levied by reason of collusion or any willful mis-statement or suppression of facts by the person who is liable to pay duty.

However, I find that since Shri Amit knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, Authorization letter for attending examination related documents, Bill of Lading and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore he is also be liable to penalty under Section 114AA of the Customs Act, 1962.

Further, I observe that penalty under Section 117 of Customs Act, 1962 has also been imposed upon the Noticee, however, I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention of any provision for which no express penalty is elsewhere provided for such contravention or failure. I find that in the instant case, Penalty under Section Section 112 and 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Shri Amit Negi. To support this, I rely on the observation of CESTAT, Mumbai in the matter of Shri Suresh Kumar Aggarwal Vs Commissioner of Customs – III, Nhava Sheva, in Customs Appeal No. 85299 of 2021, Order dated 03.06.2024, wherein, it was held "I do not find it a fit case for penalty under Section 117 as acts and omissions of Noticee are covered within the penal provisions as provided under Section 114 AA of the Act".

### **22.3. Role and Liability under Customs Act, 1962, of Shri Malik/ Shri Farhat Nasir: -**

**22.3.1** I find that Shri Malik/Farhat Nasir was a key conspirator who along with Shri Amit, Shri Baldev Singh and Shri Dirgesh Dedhiya of M/s Exemplar Trading were part of the conspiracy in the import of Jackets in violation of provisions of Customs Act, 1962, Import policy and other allied acts. Mr. Malik told Shri Amit that he wanted to Import jackets from China. Thereafter, Shri Amit contacted one Mr. Jackie (Mob.no-008618688388388483) in May, 2022 in China, Mr. Jackie is a Chinese national. Shri Amit asked Mr. Jackie to arrange a consignment of winter Jackets who agreed to do so. Mr. Jackie arranged the cargo for them consisting of various types of winter jackets

including copy Jackets of famous Brand Dolce & Gabbana (D&G). Shri Amit and Shri Malik/Farhat Nasir had agreed to pay Rs.30 lakhs to Mr. Jackie for arranging the cargo. The cargo was purchased by Shri Amit and Shri Malik on credit for a period of 90 days. Shri Malik/ Shri Farhat Nasir in connivance with Shri Amit hatched the conspiracy to import Jackets by undervaluing. This fact has been corroborated by the statement of Shri Amit Negi. Further, Summons Dated 30.01.2023, 12.04.2023 and 18.05.2023 were issued to Shri Malik Alias Shri Farhat Nasir, 725/29, Gali No-28, Jaffrabad, North-East, Delhi-110053 to join the investigation and tender statement regarding import of winter Jackets by M/s Exemplar Trading, However, Shri Malik Alias Shri Farhat Nasir vide email dated 02.05.2023 (**RUD-16**) denied having any role/relation with the subject consignment imported by M/s Exemplar Trading and did not join the investigation despite issuance of numerous summons to him. I find that -

- (i) Shri Malik in connivance with Shri Amit had hatched the conspiracy of importing Jackets by way mis-declaration in terms description and value.
- (ii) Shri Malik was the end user of the subject goods as he was in business of sale of readymade garments as stated by Shri Amit in his statement. Shri Malik/Farhat Nasir caused arranging and supplying forged and fabricated documents for import of subject goods from overseas supplier.
- (iii) Shri Malik and Shri Amit ensured that lower price of USD 12566/- was mentioned in the invoice in place of actual value of the goods.
- (iv) Shri Amit has also indicated in his statement that he and Malik were the one who had invested together in raising money for the Imports in question.

**22.3.2.** *Thus, the various acts of omission and commission on the part of Shri Malik/ Shri Farhat Nasir i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Jackets (Qty. 14420, Market Value- Rs. 1,42,85,200/-) liable to confiscation under 111(m) of the Customs Act,1962. Also, since Shri Malik/ Shri Farhat Nasir connived in importing, concealing, purchasing / selling and dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962. I further find that though Mr. Malik alias Shri Farhat Nasir was the key conspirator in this matter, but the imports were made in the name of M/s Exemplar Trading and not in the name of Mr. Malik alias Shri Farhat Nasir. Therefore, in the instant case, penalty under Section 114A cannot be invoked, as no duty has been demanded from Mr. Malik alias Shri Farhat*

Nasir in the Show Cause Notice. This view has been held in a number of cases. The Chandigarh Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) in the case of M/s Vanick Oils and Fats Pvt Ltd Vs Commissioner of Central Excise, [2023 TAXSCAN (CESTAT) 483], has held that the penalty under Section 114 A of the Customs Act is invariably linked to the quantum of duty evaded. CESTAT Chandigarh held that penalty under section 114A of the Customs Act, 1962 not imposable in absence of any duty demand. Similar view was held by CESTAT, Delhi in the matter of COMMISSIONER OF CUSTOMS, ICD, Patparganj Vs. M/S KSS ABHISHEK SAFETY SYSTEMS PVT, CUSTOMS APPEAL NO. 52419 OF 2019, vide Order dated 08.04.2024, wherein the Tribunal observed that section 114A provides for penalty where the duty has not been levied or short levied by reason of collusion or any willful mis-statement or suppression of facts by the person who is liable to pay duty. Since Shri Farhat knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, Bill of Lading and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore he is also liable to penalty under Section 114AA of the Customs Act, 1962.

Further, I observe that penalty under Section 117 of Customs Act, 1962 has also been proposed upon the Noticee. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Shri Mailk/ Shri Farhat Nasir. To support this, I rely on the observation of CESTAT, Mumbai in the matter of Shri Suresh Kumar Aggarwal Vs Commissioner of Customs – III, Nhava Sheva, in Customs Appeal No. 85299 of 2021, Order dated 03.06.2024, wherein, it was held “I do not find it a fit case for penalty under Section 117 as acts and omissions of Noticee are covered within the penal provisions as provided under Section 114 AA of the Act”.

#### **22.4 Role and liability under Customs Act 1962 of Shri Baldevsinh Vala :-**

**22.4.1** I find that in his statement recorded under Section 108 of the Customs Act, 1962 on 07.12.2022, Shri Baldevsinh Vala inter alia stated as under:-

> That he and Shri Dirgesh D. Dedhiya of M/s Exemplar Trading visited Delhi and met Shri Amit Negi alias Amit in Mahipalpur (Delhi) and during meeting Shri Amit Negi alias Amit asked him to arrange IEC for an import consignment of Jackets, Shri Baldev Sinh offered this proposal to Shri Dirgesh Dedhiya to lend his IEC of M/s Exemplar Trading for this import consignment in lieu of commission of 3% of invoice value to which Shri Dirgesh Dedhiya agreed. (This

fact also corroborated by Shri Dirgesh D. Dedhiya in his statement dated 03.01.2023)

- > *He further stated that the consignment covered under container no. PCIU9559704 arrived at Mundra Port in Month of September 2022. He was unable to arrange clearance for the import consignment of Jackets because he was absconding due to recovery of e-cigarettes by DRI from import consignments dealt by him.*
- > *He stated further that the consignment covered under container no. PCIU955704 arrived at Mundra Port in the Month of Sept 2022 and on being examined by DRI, undeclared Jackets of popular brands 'D&G' have been recovered from the consignment.*

Shri Amit Negi in his statement dated 20.01.2023 stated as under :-

- > *Shri Amit contacted Mr. Malik (Mob No.9210xxxxxx) and asked him if he has any work related to Import consignment as Shri Baldev assured Shri Amit that he could get any Import consignment cleared easily at Mundra Port.*
- > *For the import of Boy Polyester Knitted Jacket in container no. PCIU9559704 the IEC was arranged by Shri Baldev Singh on commission basis, in June 2022. Shri Baldev Singh and Mr. Dirgesh Dhiraj Dedhiya (Proprietor of Importer firm M/s Exemplar Trading) came to Delhi and met Shri Amit. They finalized a deal for import of men's jacket in firm M/s Exemplar Trading at a commission of 3% of Invoice value in lieu of using IEC of M/s Exemplar Trading for import of jackets, Shri Amit agreed to pay Rs. 12,00,000/- (12 Lakhs) to Mr. Baldev Singh for clearance, documentation and transportation of cargo from Mundra port.*
- > *They imported the counterfeit Jackets of Dolce & Gabbana brand because Mr. Baldev Singh had assured them that Shri Baldev would arrange the Customs clearance of said consignment.*
- > *Shri Baldev Singh was to arrange Custom Broker for clearing the said cargo but in the meantime, he indulged in another smuggling case for which he first absconded himself but subsequently arrested by DRI.*

**22.4.2** *From the above statements and evidences before me, I find that Shri Baldevsingh was responsible and assured the importers for clearance of Cargo of Jackets. He, in connivance with Shri Amit arranged IEC of M/s Exemplar Trading and by convincing Shri Dirgesh Dedhiya proprietor of M/s Exemplar Trading on commission basis. As Shri Baldensinh Vala asked for and settled for a hefty amount of Rs. 12 Lacs, for clearance of cargo of Impugned goods, (Imported Jackets), it is amply clear that he was in the know about the conspiracy to import duplicate Jackets of popular brands. Shri Baldevsingh willfully and deliberately*

indulged in the conspiracy of importing the consignment of unbranded winter jackets which were undervalued and Jackets having logo of Dolce & Gabbana Brand (D&G) by concealing the same in the consignment of Boy Polyester Knitted Jackets imported at Mundra. He was the key person to arrange the clearance of this import consignment at Mundra.

**22.4.3** I further observe that Shri Baldevsinh absconded before he can arrange for the clearance of the said goods as he was also involved in clearance of smuggled e-cigarettes and other restricted items at Mundra Port. From this, I observe that Shri Baldevsinh Vala is a habitual offender as he is involved in multiple investigations of irregularities under the Customs Act, 1962. He had clearly been part of the conspiracy of importing Jackets by way misdeclaration in terms description and value in connivance with Shri Amit Negi and Shri Dirgesh Dedhiya.

**22.4.4.** The omission and commission on the part of Shri Baldevsinh Vala i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Jackets (Qty. 14420, Market Value- Rs. 1,42,85,200/-) liable to confiscation under section 111(m) of the Customs Act,1962. Also, since Shri Baldevsinh was knowingly involved in importing, concealing, purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. However, since no duty has been demanded from Shri Baldevsinh Vala in the Notice, therefore, as discussed in foregoing paras, provisions for penalty under Section 114A cannot be invoked in the matter. Since Shri Baldevsinh Vala, knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, Bill of Lading and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore he is also liable to penalty under Section 114AA of the Customs Act, 1962.

I find that penalty under Section 117 of Customs Act,1962 has also been imposed upon the Noticee. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Shri Baldevsinh Vala. To support this, I rely on the observation of CESTAT, Mumbai in the matter of Shri Suresh Kumar Aggarwal Vs Commissioner of Customs – III, Nhava Sheva, in Customs Appeal No. 85299 of 2021, Order dated 03.06.2024, wherein, it was held “I do not find it a fit case for penalty under Section 117 as acts and omissions of

Noticee are covered within the penal provisions as provided under Section 114 AA of the Act".

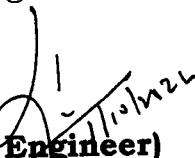
**23. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:**

**ORDER**

- (i) I reject the declared value of goods imported under Bill of Lading HUCC20137200 dated 18.08.2022 and Invoice amounting to USD 12566/-, in terms of Rule 12 of CVR, 2007; and order to re-determine the value of the same as **Rs. 1,42,85,200/-** in terms of Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 readwith Section 14 of the Customs Act, 1962
- (ii) I order to confiscate the impugned goods having re-determined value at **Rs.1,42,85,200/-** under Section 111(f) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs 15,00,000/- (Rupees Fifteen Lakhs Only)** under Section 125 of the Customs Act, 1962.
- (iii) I confirm the demand of Customs Duty amounting to **Rs.52,34,097/- (Rs. Fifty Two Lakhs Thirty Four Thousand Ninety Seven Only)** payable on the aforesaid goods (as per Annexure-A) from **M/s Exemplar Trading (IEC No. BVIPD3861L)** in terms of the provisions of Section 28 (4) of the Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (iv) I impose penalty of **Rs.52,34,097/- (Rs. Fifty Two Lakhs Thirty Four Thousand Ninety Seven Only)** upon M/s Exemplar Trading (Proprietor Shri Dirgesh D. Dedhiya under Section 114A of the Customs Act, 1962, however, I refrain from imposing penalty upon him under Section of Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.
- (v) I impose penalty of **Rs.5,00,000/- (Rs. Five Lakhs Only)** upon **Shri Amit Negi (Beneficial owner of the import goods)** under Section 112(a)(ii) of the Customs Act, 1962.
- (vi) I impose penalty of **Rs.5,00,000/- (Rs. Five Lakhs Only)** upon Mr. Malik Alias Shri Farhat Nasir (**Beneficial owner of the import goods**) Section 112(a)(ii) of the Customs Act, 1962.
- (vii) I impose penalty of **Rs.5,00,000/- (Rs. Five Lakhs Only)** upon Shri Baldevsinh Vala under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a Penalty of **Rs. 5,00,000/- (Rs. Five Lakhs only)** upon M/s Exemplar Trading (Proprietor Shri Dirgesh D. Dedhiya under Section 114AA of the Customs Act, 1962.
- (ix) I impose a Penalty of **Rs. 10,00,000/- (Rs. Ten Lakhs only)** upon Shri Amit Negi under Section 114AA of the Customs Act, 1962.

- (x) I impose a Penalty of **Rs. 10,00,000/-** (Rs. Ten Lakhs only) upon Shri Farhat Nasir Alias Mr. Malik under Section 114AA of the Customs Act, 1962.
- (xi) I impose a Penalty of **Rs. 5,00,000 /-** (Rs. Five Lakhs only) upon Shri Baldensinh Vala under Section 114AA of the Customs Act, 1962.
- (xii) I refrain from imposing penalty on any of the noticees under Section 117 of the Customs Act, 1962, in view of the discussion in the forgoing Paras.

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

  
**(K. Engineer)**  
 Commissioner of Customs,  
 Customs House, Mundra

F.No. GEN/ADJ/COMM/ 632/2023-Adjn  
**By Speed Post & through proper/official channel**

Date: 01.10.2024

To:-

- (a) M/s. Exemplar Trading (IEC No.BVIPD3861L), 1674, Indraprastha, B-11, Nana Kapay, Mundra Kutch, Gujarat-370405.
- (b) Shri Dirgesh Dedhiya, Proprietor of M/s Exemplar Trading (IEC No.BVIPD3861L) 1674, Indraprastha, B-11, Nana Kapay, Mundra Kutch, Gujarat-370405
- (c) Shri Amit Alias Shri Amit Negi S/o Shri Madan Mohan, Authorized person of M/s Exemplar Trading, Office No. B-11, Indraprastha Hotel, Shakti Nagar, Mundra, R/o GD-85, First Floor, Pul Pehladpur, New Delhi-11004.
- (d) Shri Baldev Sinh Vala S/o Shri Vala Nanbha, Authorised Signatory of M/s Kalpana Exim, R/o- Plot No-92-B, Hinglaj Nagar-2, Mundra, Gujarat.
- (e) Shri Malik/Shri Farhat Nasir, 725/29, Gali No-28, Jaffrabad, North-East, Delhi-110053.

**Copy to:**

- (1) The Additional Director General, DRI, Ahmedabad
- (2) The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
- (3) Notice Board.
- (4) Guard File.