



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
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DIN - 20250871MN0000111C32

क	फ़ाइल संख्या FILE NO.	S/49-43/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-163 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. MCH/ADC/AK/267/2023-24 dtd 28.02 2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Shri Balaji Impex, Shop No. 4, First Floor, Khasra No. 147, Village Siraspur, Delhi- 110042

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

Appeal has been filed by M/s Shri Balaji Impex, Shop No. 4, First Floor, Khasra No. 147, Village Siraspur, Delhi- 110042, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/ADC/AK/267/2023-24 dtd 28.02 2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that an intelligence was developed by the Directorate of Revenue Intelligence (DRI), Zonal Unit, Ahmedabad that a Delhi based company namely M/s. Zip Zap Exim Private Limited (IEC-0516944169)(hereinafter referred to as "M/s. ZZEPL") in connivance with its domestic buyers/actual importers had established a trading unit in Special Economic Zone, Kandla (Gujarat) (hereinafter referred to as "KASEZ" for the sake of brevity) with a sole intent to bypass the normal Customs Channels and clear the imported goods into domestic area by resorting to gross undervaluation and thereby defrauding the government exchequer by evading the payment of due & appropriate Customs duty. As per SEZ Rules, 2006, if a SEZ (trading) unit clears the goods into Domestic Tariff Area (hereinafter referred to as "DTA" for the sake of brevity), the sale proceeds should be in Foreign Exchange only but intelligence indicated that M/s. ZZEPL was clearing the goods against payment of Indian rupees only and thus they were not earning any foreign exchange. Intelligence further suggested that all dealings with foreign suppliers were being done by the domestic buyers/ actual importers only and M/s. ZZEPL was facilitating the domestic buyers in getting the goods cleared through their SEZ Unit by resorting to gross undervaluation for which they were charging commission.


2.1 M/s. ZZEPL was importing Knitted Polyester Fabrics under Customs Tariff Heading 6006 and various other Electrical Goods such as Mosquito Bats, LED Rechargeable Search Lights, Fancy Mini Torches, Small Rechargeable Batteries, Decorative Disco LED Par Lights, Decorative Disco Focus Lights, Laser Lights, LED Rope Lights, Led Christmas Lights etc., of assorted sizes etc. under Chapter 94 and 85 of Customs Tariff Heading and subsequently, clearing the same into DTA to various DTA importers. While importing the goods M/s. ZZEPL filed Bills of Entry with KASEZ authority for clearance of the goods imported via

Mundra Port to their unit in KASEZ. Subsequently, M/s. ZZEPL also filed DTA Bills of Entry in the name of various domestic buyers & cleared the goods on payment of Customs Duty.

2.2 Accordingly, a Show Cause Notice No. GEN/ADJ/COMM/218/2021-AdjnO/o Commr-Cus-Kandla dated 08.09.2021 was issued to M/s ZZEPL & others.

2.3 Further, M/s Shri Balaji Impex (IEC:0516931822) had imported and cleared similar goods such as "Various Electrical goods: Disco LED Par Light Small 36L, Smoke Machine (Floor smoke stage effect), Small fog effect machine, Decorative Disco LED focus light, Decorative Disco LED laser light mini, Decorative LED par light 54L" through Mundra Port by declaring similar valuations of these goods as declared by M/s. ZZEPL and various domestic buyers in above referred case. Details of such imports are as under:

Table-A



Sl.No.	Bill of Entry No. & Date	Item No.	Description of goods	Quantity (In Pieces)	Declared price per Piece (In USD)	Declared Assessable Value (In Rs.)(Exchange Rate 1 USD= 65.20 Rs.)
1	2683113 dated 01.08.2017	1	Disco LED Par Light Small 36L	6000	0.41	160349.6
		2	Smoke Machine (Floor smoke stage effect)	250	5	82341.34
		3	Small fog effect machine	60	0.375	1481.67
		4	Decorative Disco LED focus light	480	2	63217.92
		6	Decorative Disco LED laser light mini	200	0.26	3424.3
		7	Decorative LED par light 54L	132	2.92	25353.02
			Total			336167.87

2.4 Consequent to the above modus operandi adopted by M/s ZZEPL and the concerned DTA importers, in connivance with Chinese suppliers, it appeared that the appellant, importer of "Various electrical Goods" had also misdeclared/ undervalued the goods imported and cleared through Mundra port under the Bill of Entry as per above mentioned Table-A. In continuation of the Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn-0/ Commr-Cus-Kandla dated 08.09.2021 issued to M/s ZZEPL & others, the assessable value & Customs duty thereon of the Bill of Entry as per Table-A are also liable to be rejected and redetermined. Therefore, the misdeclared/under-assessed value of Rs. 3,36,168/- (Rs. Three Lakh Thirty Six Thousand One Hundred Sixty Eight

Only) declared by M/s Shri Balaji Impex at the time of clearance of goods i.e. "Various Electrical Goods", is required to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same was required to be re-determined to Rs. 86,90,829/- (Rs. Eighty Six Lakh Ninety Thousand Eight Hundred and Twenty Nine only) as per ANNEXURE-A to Show Cause Notice, under Section 14 of the Customs Act, 1962 read with Rule 3, Rule 9 and Rule 10 of the CVR, 2007.

2.5 Further, the appellant hatched the conspiracy to import "Various Electrical Goods", by declaring lower values than the actual transaction values of the said goods to evade the Customs Duty, as indicated in ANNEXURE-A to SCN, and discussed in the foregoing paras of this notice. The differential amount between the actual value of Electrical Goods and the value shown in the commercial invoice, imported from said Chinese supplier were paid by them through non-banking channels / the Bank accounts of third parties with the Banks outside India. They had full knowledge and were instrumental in mis-declaration of the value of the goods at the time of their import. Thus, they had knowingly, consciously and deliberately declared incorrect low values in the impugned Bills of Entry at the time of imports and backed them up with false and fabricated documents, with the sole intention to evade the Customs duty. The firm had indulged in the activities relating to the said undervaluation and mis-declaration of actual price of said imports, which resulted in evasion of Customs duty as detailed in ANNEXURE-A to SCN dated 15.02.2022. All the aforesaid acts of omission and commission on the part of the importer have rendered the impugned imported goods liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962. Further, the firm/ person had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Thus, as discussed at para above, the appellant, had rendered themselves liable for penalty under the provisions of Section 112(a) & (b) / 114A and 114AA of the Customs Act, 1962.

2.6 In view of the above, a Show Cause Notice issued under F.No. GEN/ADJ/ADC/159/2022-Adjn. dated 15.02.2022 whereby M/s Shri Balaji Impex, Shop No. 4, First Floor, Khasra No. 147, Village Siraspur, Delhi-110042 was called upon to show cause to the Additional Commissioner of Customs, Custom House Mundra, having his office at Office of the Principal Commissioner of Customs, Custom House, 5B, Port User Building, Mundra Port, Mundra,

Gujarat - 370421 as to why: -

(1) Total assessable value of Rs. 3,36,168/- (Rs. Three Lakh Thirty Six Thousand One Hundred Sixty Eight Only) declared by them/assessed at the time of clearance of goods i.e. "Various Electrical Goods", as mentioned in ANNEXURE-A to show cause notice, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined to Rs. 86,90,829/- (Rs. Eighty Six Lakh Ninety Thousand Eight Hundred and Twenty Nine only) as mentioned in ANNEXURE-A to this show cause notice, under subsection (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for Bills of Entry, as mentioned in ANNEXURE-A.

(2) Differential Customs Duty amounting to Rs. 31,07,659/- (Rs. Thirty One Lakh Seven Thousand Six Hundred and Fifty Nine Only) on the goods imported i.e., 'Various Electrical Goods', under the Bills of Entry, valued (re-determined value) as detailed in ANNEXURE-A should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(3) The goods i.e 'Various Electrical Goods' imported by them under the said Bills of Entry and further valued (re-determined value) as mentioned in ANNEXURE-A, should not be held liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962.

(4) Penalty should not be imposed upon them under Section 112(a) & (b)/114A and 114AA of the Customs Act, 1962.

2.7 The adjudicating authority vide the impugned order as ordered as under:

(1) He rejected the declared assessable value of Rs. 3,36,168/- (Rupees Three Lakh Thirty Six Thousand One Hundred Sixty Eight Only) for

the goods mentioned in Table-A to the Show Cause Notice under Rule 12 of CVR, 2007 and order to re-determine the same as Rs. 86,90,829/- (Rupees Eighty Six Lakh Ninety Thousand Eight Hundred Twenty Nine only) in terms of Rule 9 of the CVR, 2007 read with Section 14 of Customs Act, 1962;

- (2) He confirmed the demand of differential/short paid Customs duty amounting to Rs. 31,07,659/- (Rupees Thirty One Lakh Seven Thousand Six Hundred and Fifty Nine Only) for the goods mentioned in Table-A to the Show Cause Notice and order to recover the same from the appellant M/s Shri Balaji Impex in terms of the provisions of Section 28(8) read with Section 28(4) of Customs Act, 1962;
- (3) He ordered to recover the interest from the appellant at appropriate rate under Section 28AA of Customs Act, 1962 on the above confirmed demand of duty;
- (4) He ordered to confiscate the impugned goods mentioned in Table-A under Section 111(d) and 111(m) of the Customs Act 1962. Since, the subject goods are not physically available for confiscation; therefore, he refrained from imposing any redemption fine under Section 125 of the Customs Act, 1962;
- (5) He imposed a Penalty of Rs. 31,07,659/- (Rupees Thirty One Lakh Seven Thousand Six Hundred and Fifty Nine Only) on the appellant under Section 114A of the Customs Act, 1962;
- (6) He imposed a Penalty of Rs. 8,70,000/- (Rupees Eight Lakh Seventy Thousand only) on the appellant under Section 114AA of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 It is submitted that the Adjudicating Authority has gravely erred in not considering any of the submissions made by the Appellant in their reply to



Show Cause Notice and cursorily issued the impugned Order towing the line of the investigation conducted by DRI in respect of M/s ZZEPL without appreciating that in the present case Appellant had not imported the subject goods from M/s ZZEPL and they have no connection whatsoever with M/s ZZEPL and their can be no comparison with the goods imported by M/s. ZZEPL. Appellant has submitted that DRI is only an investigating Agency and once the Show Cause Notice has been issued it is the duty of the adjudicating authority to adjudicate the same on the basis of Customs Act and Valuation Rules, and not on the basis of any opinion investigating agency. Kind attention in this regards is invited to the latest judgment rendered by the Hon'ble Delhi Tribunal in the case of Sai International Vs. CC vide Final Order No. 50117 /2024 dated 25.01.2024

"20. In other words, the entire case of the Revenue is that the opinion of the officers of DRI who inspected the goods that they were over-valued is sufficient to form a reasonable doubt regarding the transaction value in the shipping bills and reject it under rule 8, regardless of all the documents produced by the appellant including 11 C/50200/2021 the bank realization certificates which reflect the transaction value. Nothing in the Act or the Export Valuation Rules provide for rejection of the transaction value based on the intelligence received by the officers of DRI or their subjective opinion rejecting the value of the goods. Needless to say, such an order cannot be sustained."



3.2 The Appellant has submitted that impugned demand is barred by limitation having been raised beyond normal period of two years and extended period can be invoked only under Section 28(4) of the Customs Act, 1962, only where any duty has not been levied or not paid or has been short levied or short paid or erroneously refunded by reasons of (a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the Proper Officer shall, within five years from the relevant date, serve notice on the person chargeable with duty. Appellant has submitted that in the present case in the entire Show Cause Notice or Order, Department has not given any instance or collusion, wilful mis-statement or suppression of facts by the importer/ his agent / employee. Even in the entire case there is no statement of any person connected with the present case has been recorded. Department has only assumed that the modus operandi as adopted by M/s. ZZEPL in another case investigated by DRI, same have been

done in the present case also, which is factually incorrect and wrong. Even such presumption and assumption by the Department is incorrect. There is not an iota of evidence that Appellant has misdeclared the goods in respect of quantity, description and value; any amount paid over and above the transaction value by the importer. Hence invocation of extended period is patently wrong.

3.3 It is further submitted that impugned Show Cause Notice has been served to the Appellant after a period of 5 years from the date of import as in the present case although the Show Cause Notice is dated 15.02.2022, however same was served to the Appellant only on 01.02.2024, when in response to personal hearing Notice, Appellant requested for supply of copy of Show Cause Notice. Appellant has submitted that as the service of Show Cause Notice is on 01.02.2024 after the period of 5 years from the date of contextual B/E, present Show Cause Notice is even barred by limitation of 5 years and thus is liable to be dismissed on this ground alone.

3.4 The Appellant has submitted that the impugned proceedings are barred by limitation as vide Finance Act, 2018, Government of India amended Sub-section (9) of Section 28 and omitted the words 'where it is possible to do so' and thus the amended Sub-section mandated for a rigid time frame for completion of adjudication proceedings. Finance Act, 2018 also inserted a Sub-Section 9A after Section 9 which carved out exception where period of limitation prescribed in amended Sub-section (9) would not apply. Appellant has submitted that though the provisions of Subsection (9) as obtaining on the date of issuance of Show Cause Notice would apply in the present case and there being no germane reason for keeping the adjudication pending for the last two years, impugned Show Cause Notice has since lapsed after expiry of period prescribed in Subsection (9) and the proceedings which are being pursued in furtherance of impugned Show Cause Notice cannot be countenanced.

3.5 In view of the aforesaid statutory provisions enshrined in subsection (9) and (9A) of Section 28 of the Customs Act, 1962, Hon'ble Delhi High Court in the matter of Swatch Group India Pvt. Ltd. Vs. Union of India has since held that Show Cause Notice having become barred by limitation, any order passed in such proceedings is illegal. The observation of the Hon'ble High Court is extracted below for Your Honour's perusal -

"In our view, there is no material to show that it was not possible for

the Proper Officer to determine the amount of duty within the prescribed period. The mention of the words, 'where it is not possible to do so', in our opinion, does not enable the Department to defer determination of the notices for an indeterminate period of time. The legislature in its wisdom has provided a specific period for the authority to discharge its functions. The indifference of the concerned officer to complete the adjudication within the time period as mandated, cannot be condoned to the detriment of the assessee. Such indifference is not only detrimental to the interest of the taxpayer but also to the exchequer."

3.6 Impugned proceedings are ex-facie wrong and arbitrary to the express provisions of Section 28(9) of the Customs Act, 1962 extracted supra and the law propounded by the Hon'ble Delhi High Court in the matter of Swatch Group supra. The Appellant has further submitted that in the present case, impugned B/E was filed and the goods were duly examined and granted passed out of custom charge after due scrutiny of documents and the value declared in the B/E by the Proper Officer and hence rejection of true and correct transaction value is patently wrong and illegal. The Appellant has submitted that the Department has not unearthed any evidence to show that any of the material particulars declared in the subject B.E. or import documents were false or that the Appellant had deliberately suppressed any information from the Department. Hence the invocation of extended period being illegal, the present demand cannot be sustained. Reliance is placed upon the judgments passed by the Hon'ble Tribunal in the case of Manohar Bros (Capacitors) as reported in 1998 (98) ELT 821 and on Intrade Impex Pvt. Ltd as reported in 2001(129) ELT 737(Tri Del).

3.7 The Appellant has submitted that they had declared the true and correct transaction value mentioned in the invoice and remitted the same through normal banking channels to the foreign supplier and therefore, there being no evidence of any payment, over and above the invoice value, the charge of mis-declaration of value is solely on the basis of conjectural inferences and cannot be sustained. The appellant has also submitted the copy of swift code evidencing payment of invoice value. The Appellant has submitted that the only reason for rejection of transaction value is the Show Cause Notice No. GEN/ADJ/ADC/159/2022-Adj dated 15.02.2022 issued to M/s. ZZEPL and others wherein as per Department, various importers in connivance with M/s. ZZEPL, a SEZ unit undervalued the goods and paid the amount over and above

the transaction value through hawala. Appellant has submitted that impugned case is totally different from the aforesaid case investigated by the DRI. Besides duty cannot be demanded solely on the basis of above Show Cause Notice. For better appreciation, Appellant has drawn attention to the following facts:

- (i) In the present case Appellant had not imported the goods from M/s. ZZEPL (SEZ Unit) but they have directly imported the goods from M/s. Kimdywell International (H.K) Limited in normal course of business.
- (ii) Appellant had no relation with M/s. ZZEPL or any other importers as detailed in the Show Cause Notice.
- (iii) Appellant in the present case imported Disco LED Par Light, Smoke Machine, Small Fog Effect Machine, Decorative Disc LD, Decorative Disc LED Laser Mini and Decorative LED Par Light and there is no reasons given in the Show Cause Notice dated 15.02.2022 relied by the Department as to how value of these goods have been enhanced and on what basis.
- (iv) Appellant has submitted that in the present case they have imported goods under invoice No. HLZS20170713 and paid the invoice value i.e. USD 5957.24 to M/s Kimdywell International (H.K) Limited Hongkong through their Indusland Bank on 13.09.2017.
- (v) In the case of M/s. ZZEPL there are statements of various persons inter alia including the Directors / employees / freight forwarder / CHAs and importers, who admitted undervaluation, however in the present case there is no such investigation / inquiry from any person.
- (vi) In the case of ZZEPL they have imported goods from Chinese suppliers and then sold the same in DTA to the Indian importers, however in the present case, Appellant had imported the good directly from M/s. Kimdywell International (H.K) Ltd.
- (vii) In the case of M/s ZZEPL, goods were imported from foreign Suppliers M/s Shenzhen Xinyoutong Import & Export (H.K) Ltd., Guanzhou, China, M/s. Winsun Impugned and Exp Group Co Ltd., Yiwu, China, M/s. Akari Global Company Limited etc however in the present cases



Appellant has imported the goods from M/s. Kimdywell International (H.K) Ltd.

- (viii) There is no fraud, misstatement or suppression of facts as no statement(s) of any person connected to Appellant's case has been recorded.
- (ix) True and correct transaction value of the Appellant in subject B/E cannot be compared with Enhanced value of goods imported by M/s ZZEPL.

3.8 In view of above, it is submitted that Show Cause Notice No. GEN/ADJ/ADC/159/2022-Adj dated 15.02.2022 issued in the case of M/s. ZZEPL is not comparable at all to the present Notice and no demand can be confirmed on the basis of the above Show Cause Notice. The Appellant has submitted that the mechanism and authority of determination of value of imported goods is enshrined in the Customs Act, 1962 read with Customs Valuation Rules 2007 which mandates that the transaction value shall be the value for the purpose of assessment of duty. The Appellant has further submitted that transactional value declared in the bill of entry, on the basis of mutually agreed prices in ordinary course of international trade as reflected in invoice issued by overseas supplier, was in accordance with Section 14 of Customs Act, 1962 read with Customs Valuation Rules, 2007 and it cannot be rejected barring certain exceptions provided under Rule 3(2) of Customs Valuation Rules, but the impugned Order has confirmed rejection of transactional value without citing any reason, without corroborating with receipt of any additional consideration and re-determined the value in terms of Rule 9 without giving any cogent reason for not following the mechanism of proceeding sequentially from Rule 4 to the Rule 9 as mandatorily required under Rule 3(4) of Customs Valuation Rules. Therefore, the redetermination is contrary to the attendant provisions of law as well as contrary to various decisions, including judgment of Hon'ble Supreme Court, in the following cases: -

- (i) Hon'ble Supreme Court in its judgment dated 10.12.2018 in the case of Commissioner of Central Excise & Service Tax, Noida vs. M/s Sanjivani Non Ferrous Trading Pvt. Ltd. reported in 2019 (365) ELT 3 (S.C.) after analyzing various judgments including the judgment delivered in the case of Eicher Tractors Ltd., cited supra dismissed the departmental appeal and upheld

the Order of Tribunal. Hon'ble Apex Court in Para 13 of the Order held that:

"13) It is therefore rightly contended by Mr. Dushyant A. Dave, learned senior Counsel appearing for respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of price which was actually paid, and that was mentioned in Bills of Entry. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transactional value. Since there is no such exercise done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous."

(ii) In Appellant's most respectful submissions Hon'ble Supreme Court in its judgment dated 22.04.2019 (2019 (366) ELT 601 (S.C.) in the case of Anil Kumar Anand vs. Commissioner of Customs in Para 21 of its Order again emphasized that "Once the statutory Rules exist and provide for sequential implementation, the assessing authority has no option but to proceed in accordance with those Rules, in that manner" and accordingly remanded the matter back to adjudicating authority for valuation of imported goods by sequential application of Customs Valuation Rules.

(iii) Three member bench of Hon'ble Supreme Court in a recent judgment dated 17.05.2019 in the case of Century Metal Recycling Pvt. Ltd. vs Union of India and Others while relying upon an earlier judgment of Apex Court in the case of M/s Sanjivani Non-Ferrous Trading Pvt. Ltd. held that the "transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry" and accordingly set aside the departmental appeal.

3.9 The Appellant has submitted that Department in the instant case has not proposed rejection of transaction value on the basis of any evidence of contemporaneous import of identical/similar impugned order is contrary to the law propounded by the Hon'ble Supreme Court in South India Television (P) Ltd. as reported in 2007(214)ELT3(SC) that the burden to prove that the invoice value



is incorrect heavily relies on the department and without adducing any evidence of contemporaneous import of similar/identical goods at higher price rejection of transaction value cannot be countenanced. Further, if the charge of undervaluation cannot be supported either by evidence or information about comparable imports the benefit of doubt must go to the importer.

3.10 The provisions of Section 14(2) of the Customs Act, 1962 and the values notified there under are applicable only to the goods mentioned therein and determined by the board. In the instant case the Department has arbitrarily usurped the powers of the Central Board of Excise and Customs and have arbitrarily determined the value of the subject goods on the basis of some other investigation which has no relation with the importer and hence cannot be countenance being contrary to ground reality that such goods were in fact sold, imported and cleared by various importers during the relevant period at the prices declared in the impugned B.E.

3.11 The provisions of Section 112 are attracted only in respect of improper importation of goods and the condition precedent for imposition of penalty thereunder is the commission or omission on the part of the offender to render the goods liable to confiscation under Section 111 of the Customs Act, 1962 or in abetting of the said act of omission or commission. In the facts and circumstances of the instant case, there being no mis-declaration and there being no contumacious act and hence there being no violation of Section 111, invocation of the aforesaid provisions is patently illegal. Moreover, confiscation itself is not proposed in the impugned Show Cause Notice.

3.13 Qua invocation of provisions of provisions of Section 114AA, Appellant submits that same are applicable only in those cases where export benefits are claimed without exporting the goods and presenting forged documents knowingly or intentionally as is discernible from the 27th report of Standing Committee on Finance read as under

"After Section 114A of the Customs Act, the following Section shall be inserted, namely:-

"114AA. Penalty for use of false and incorrect material - If a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or



incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

63. The information furnished by the Ministry states as follows on the proposed provision:

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty upto 5 times the value of goods. A new section 114AA is proposed to be inserted after Section 114A."

64. It was inter alia expressed before the committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an Importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under."

"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an Importer can be summoned under Section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because persons summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

65. The Ministry also informed as under;

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent export where the exports were shown only on

paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. *The committee observes that owing to the increased instances of willful fraudulent usage of export promotion schemes the provisions of levying of penalty upon five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The committee, however, advice the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."*

3.14 The aforesaid extract explains that Section 114AA was enacted to punish only those who avail export benefits without exporting anything and not for every kind of violation under the Customs Act. Therefore, in Appellant has submitted that invocation of the same in the instant case is patently wrong.

PERSONAL HEARING:

Personal hearing was granted to the Appellant on 12.06.2025, following the principles of natural justice wherein Ms. Reena Rawat, Advocate, appeared for the hearing and she re-iterated the submission made at the time of filing the appeal. She also submitted judgments of Hyundai Motors India Ltd Vs. Revisional Authority as reported in 2014 (304) ELT 527(Mad) and Vanvilas Co-operative Sugar Factory Ltd Vs. UOI as reported in 1983 (12) ELT 290(Kar) regarding delay in filing of appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Custom House, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 08.05.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 28.02.2024 as 04.03.2024. Hence, the appeal has not been been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. In this

case, the appeal was filed with a delay of 5 days beyond the initial sixty-day period, but within the condonable 30 days period. The Appellant has submitted that the appeal was dispatched by post on 27.04.2024 well before period of limitation but was delivered late by postal authorities. The appellant has also relied upon the case laws of Hyundai Motors India Ltd Vs. Revisional Authority as reported in 2014 (304) ELT 527(Mad) and Vanvilas Co-operative Sugar Factory Ltd Vs. UOI as reported in 1983 (12) ELT 290(Kar) wherein it was held that Application/Appeal dispatched date by post is to be taken for computing limitation. The appellant has further submitted that the delay of 5 days may be condoned in ten interest of justice. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. I ,therefore, condone the delay of 5 days in the interest of natural justice.

5.1 The appellant has submitted a copy of the challan No.230 dtd 10.04.2024 towards payment of Rs.2,33,075/- towards the applicable pre deposit . As the appeal has been filed with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.2 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:-

- (i) Whether the adjudicating authority correctly rejected the transaction value declared by the Appellant and validly re-determined the assessable value under the Customs Act, 1962, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (ii) Whether the impugned goods are liable to confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962.
- (iii) Whether the penalties imposed on the Appellant under Sections 114A and 114AA of the Customs Act, 1962, are sustainable.
- (iv) Whether the demand of duty is time-barred under Section 28(4) of the Customs Act, 1962.

5.3 The primary contention of the Appellant is that the transaction value was arbitrarily rejected without proper grounds and without following the sequential rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, the impugned order clearly details the basis for doubting the declared value. The DRI investigation, as noted in the facts, uncovered a pattern of undervaluation and mis-declaration, supported by intelligence and information regarding additional payments made over and above the declared value to foreign suppliers. Rule 3(1) of the CVR, 2007, states that the value of imported goods shall be the transaction value. However, the proviso to Rule 3(1) read with Rule 12 allows for the rejection of transaction value if the proper officer has "reason to doubt the truth or accuracy of the value declared." In the present case, the adjudicating authority explicitly cited specific reasons for doubting the value, including the intelligence developed by DRI, information about extra payments to suppliers, and comparative data from other imports. The SCN details these aspects, which constitute sufficient "grounds for doubting" as required by Rule 12(1).

5.4 While the Appellant contended a violation of sequential application of valuation rules (Rules 4, 5, 7, 8), the impugned order explicitly states that based on the findings, Rule 3 cannot be applied, and Rule 9 (Residual Method) is appropriate for re-determination. The application of Rule 9 is permissible when value cannot be determined under Rules 4, 5, or 7. In a situation where there is conclusive evidence of clandestine payments or mis-declaration, making identical or similar goods comparisons impractical or unreliable, the residual method can be legitimately invoked. The adjudicating authority's detailed discussion regarding the intelligence, parallel imports, and the Appellant's alleged involvement in similar activities (ZZEPL imports) provides sufficient basis for resorting to Rule 9. Therefore, the rejection of transaction value and its re-determination are found to be in consonance with the CVR, 2007, supported by factual findings of undervaluation and mis-declaration.

5.5 The Appellant has argued that the demand is time-barred under Section 28(4) of the Customs Act, 1962, as there was no fraud, collusion, willful misstatement, or suppression of facts. However, the impugned order explicitly relies on the DRI investigation which uncovered a deliberate scheme of undervaluation and mis-declaration involving extra payments to foreign suppliers. These findings, as detailed in the Statement of Facts and Discussion, constitute "suppression of facts" and "contravention" with "intent to evade duty."

5.6 The Hon'ble Supreme Court in *Union of India v. Rajasthan Spinning & Weaving Mills* [2009 (238) E.L.T. 3 (S.C.)] clarified that the extended period of limitation can be invoked if there is mens rea to evade duty, meaning a deliberate act of omission or commission. The facts of the present case, as established by the Adjudicating Authority, indicate that the Appellant was not merely making an interpretational error but actively concealing the true value of the goods and mis-declaring them. This clearly falls within the ambit of "suppression of facts" with intent to evade, thereby justifying the invocation of the extended period of limitation under Section 28(4). The Appellant's argument about previous clearances at the declared CTH does not absolve them from liability for a fraudulent scheme uncovered by specific intelligence.

5.7 Section 111(d) makes goods liable to confiscation if imported contrary to any prohibition imposed under the Customs Act or any other law for the time being in force. Section 111(m) provides for confiscation if goods are imported where the value or description has been mis-declared. The impugned order's finding that the goods were mis-declared and undervalued, as demonstrated by the investigation and re-determination of value, directly attracts the provisions of Section 111(m). Additionally, the order implies that the nature of the goods (e.g., "prohibited goods") makes them liable for confiscation under Section 111(d).

5.8 The imposition of penalties is consequential to the goods being liable for confiscation and the proven intent to evade duty.

a) Section 114A: This section provides for penalty equal to the duty evaded where the duty has not been levied or short-levied or erroneously refunded by reason of collusion or any willful misstatement or suppression of facts. As discussed above, the findings clearly indicate that the differential duty arose due to the Appellant's suppression of facts and mis-declaration. The Hon'ble Supreme Court in *CCE v. Dharmendra Textile Processors* [2008 (231) E.L.T. 3 (S.C.)] held that mens rea is not an essential ingredient for imposing penalty under Section 114A, and it is attracted if there is evasion of duty by reason of fraud, collusion, willful misstatement or suppression of facts. The evidence on record supports the adjudicating authority's finding of such acts.

b) Section 114AA: This section imposes a penalty for false declaration or documents. Given the findings of mis-declaration of goods and



undervaluation, it is clear that false and incorrect declarations were made. This penalty is attracted when a person knowingly or intentionally makes a false or incorrect declaration, statement, or furnishes any document which is false or incorrect in any material particular. The chain of events, starting from intelligence, investigation, and clandestine payments, indicates knowing and intentional actions on the part of the Appellant.

5.9 The Appellant's contention that payments were made through banking channels does not negate the findings of undervaluation or mis-declaration, especially if additional clandestine payments were involved. The assertion of "no mens rea" is also rebutted by the nature of findings related to suppression and active efforts to evade duty. Based on the comprehensive analysis of the facts and legal provisions, the adjudicating authority's decision to confirm the differential duty, confiscate the goods, and impose penalties is well-founded and legally sustainable.

6. In view of the detailed discussions and findings above, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) I hereby uphold the rejection of the declared assessable value of Rs. 3,36,168/- and its re-determination at Rs. 80,90,829/- by the adjudicating authority.

(ii) I hereby uphold the confirmation of differential Customs duty amounting to Rs. 31,07,659/-.

(iii) I hereby uphold the order of confiscation of the impugned goods under Section 111(d) and 111(m) of the Customs Act, 1962.

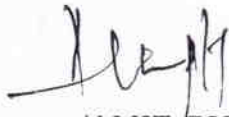
(iv) I hereby uphold the imposition of penalty of Rs. 31,07,659/- on M/s. Shree Balaji Impex under Section 114A of the Customs Act, 1962.

(v) I hereby uphold the imposition of penalty of Rs. 8,70,000/- on M/s. Shree Balaji Impex under Section 114AA of the Customs Act, 1962.



7. Consequently, the appeal filed by M/s. Shree Balaji Impex is hereby rejected.




(AMIT GUPTA)


Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-43/CUS/MUN/2024-25
2819

Date: 08.08.2025

By Registered post A.D/E-Mail

To,
M/s. Shree Balaji Impex
Shop no. 4, First floor, Khasra no. 147,
Village Siraspur, Delhi-110042.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.