

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	: GEN/ADJ/ADC/668/2022-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/96/2023-24
C. Passed by	: Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order passed	: 28.06.2023
E. Date of order issued	: 30.06.2023
F. Show Cause Notice No. & Date	: S/43-03/Inv.-Creative/SIIB-C/CHM/21-22 dated 26.07.2022
G. Noticee(s)/Party/ Importer	: M/s Creative Accessories, 2nd Floor, Plot KH No. 311, MINMAI Bijwasan, Opp. PNB Bank ATM, New Delhi- 110061 IEC no. CWXPB0271R

DIN-20230671MO000000B407

1. यह अपील आदेश संबन्धित 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 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“ सीमा शुल्क आयुक्त (अपील), मुंद्रा
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”

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

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

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

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

(i) उक्त अपील की एक प्रति और A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

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

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

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

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

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

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

Sub.:- SCN No. S/43-03/Inv.-Creative/SIIB-C/CHM/21-22 dated 26.07.2022 issued to M/s Creative Accessories, 2nd Floor, Plot KH No. 311, MINMAI Bijwasan, Opp. PNB Bank ATM, New Delhi- 110061 IEC no. CWXPB0271R

Brief Facts of the Case:-

On the basis of specific intelligence gathered by Special Intelligence and Investigation Branch (SIIB), Custom House, Mundra 2 bills of entry bearing No. 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 filed by M/s Creative Accessories (here-in-after referred to as “the importer” for the sake of brevity) were put on hold by SIIB Section. The goods declared by the importer in the Bills of Entry are as under:

Bill of Entry & Date	Container No.	Goods Description	Quantity	Value (in Rs.)
3898080 dated 10.05.2021	TCNU 4235992 (40')	Earphone Assorted (For Mobile Phone)	12025 DOZ	431457.00/-
		Plastic Case for Mobile Phone	904 GRS	304083.00/-
		Packing Material	60.00 Kgs	5830.50/-
		Battery Model BN34	31 GRS	22013.88/-
3977807 dated 17.05.2021	TGHU 6912878 (40')	Earphone Assorted (For Mobile Phone)	9400 DOZ	252954.00/-
		Plastic Case for Mobile Phone	1477 GRS	353298.40/-

1.1 On examination, it was noticed that major proportion of the goods imported were bearing trademarks and logo of various Brands viz. Apple, Vivo, Samsung, Moto, Lava, Infinix, Lenovo, Realme, Boat, One Plus, MI, Oppo etc. It appeared that goods found during examination are branded goods and the importer, M/s Creative Accessories has attempted to import the goods by way of gross mis-declaration and undervaluation and without BIS and IPR NOC.

The details of the goods found during examination are as under:

Table A

Goods covered under bill of entry no. 3977807 dated 10.05.2021 having container bearing no. TGHU6912878 (40') and examined under panchnama dated 10.06.2021/11.06.2021

Sr. No.	Details/ Marking mentioned on the packaging	Goods found during examination	Quantity of Cartons	Quantity per carton in Pcs/Kgs	Total Quantity in Pcs/Kgs
01	ABR	Apple Airpods Pro	10	100	1000
02	ABR	Apple Airpods	5	100	500
03	DDK	Apple Airpods Pro	10	100	1000
04	AJKK	Vivo Mobile Battery, Model No.-BC1 (Bulk Packing)	1	600	600
05	AJKK	Infocus Mobile Battery, Model No.-CA486586G(TURBO 5 PLUS) (Bulk Packing)	1	600	600
6	AJKK	Samsung Mobile Battery, Model No.-A8 (Bulk Packing)	1	600	600
7	AJKK	Vivo Mobile Battery, Model No.- BB2(Bulk Packing)	1	600	600
8	AJKK	Vivo Mobile Battery, Model No.-BK3 (Bulk Packing)	1	600	600
9	AJKK	Vivo Mobile Battery, Model No.-BK6 (Bulk Packing)	1	600	600
10	AJKK	Samsung Mobile Battery,		240	240

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		Model No.- BA013ABY(Bulk Packing)	1		
11	AJKK	Infinix Mobile Battery, Model No.- BL 49FX(Bulk Packing)	1	600	600
12	AJKK	Samsung Mobile Battery, Model No.- EBI(A21S)(Bulk Packing)	1	500	500
13	AJKK	Samsung Mobile Battery, C7 PRO.- (Bulk Packing)	1	500	1300
		Samsung Mobile Battery, Model No.-EB-BM415ABY(M-51) (Bulk Packing)		800	
14	AJKK	MOTO Mobile Battery, Model No.-H60 (Bulk Packing)	1	250	600
		Lava Mobile Battery, Model No.- Z60(Bulk Packing)		250	
		Gionee Mobile Battery, Model No.-F103 (Bulk Packing)		100	
15	AJKK	Samsung Mobile Battery, Model No.-M01 (Bulk Packing)	1	500	600
		Samsung Mobile Battery, Model No.-EB-BG580ABU(M20) (Bulk Packing)		100	
16	AJKK	Vivo Mobile Battery, Model No.- BG7(Bulk Packing)	1	500	700
		Infinix Mobile Battery, Model No.-BL-39X (Bulk Packing)		200	
17	AJKK	Samsung Mobile Battery, Model No.- BA013ABY (Bulk Packing)	1	300	500
		Lava Mobile Battery, Model No.-Z61 (Bulk Packing)		200	
18	AJKK	Samsung Mobile Battery, Model No.-HQ-S71(M11) (Bulk Packing)	1	500	500
19	AJKK	Samsung Mobile Battery, Model No.-A20 (Bulk Packing)	1	500	600
		Samsung Mobile Battery, Model No.- EB-BG580ABU(M20) (Bulk Packing)		100	
20	AJKK	Lenovo Mobile Battery, Model No.-BL243 (Bulk Packing)	1	200	500
		Gionee Mobile Battery, Model No.-F103 (Bulk Packing)		100	
		Lenovo Mobile Battery, Model No.- BL242(A6000)(Bulk Packing)		200	
21	AJKK	Vivo Mobile Battery, Model No.- BH0(Bulk Packing)	1	500	700
		Infinix Mobile Battery, Model No.-BL-39JX (Bulk Packing)		200	
22	AJKK	Samsung Mobile Battery, Model No.- EBBM317ABY(M31S)(Bulk Packing)	1	500	580
		Samsung Mobile Battery, Model No.- C7 PRO(Bulk Packing)		80	
23	AJKK	Samsung Mobile Battery, Model No.- EB-BA750ABU(A10) (Bulk Packing)	1	500	500
24	AJKK	Samsung Mobile Battery,		500	500

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		Model No.-EB-BM207ABY(M30S) (Bulk Packing)	1		
25	AJKK	Samsung Mobile Battery, Model No.-C9 PRO (Bulk Packing)	1	500	500
26	BRT	Boat Neck Band Earphone, Model- Rockerz 365	20	100	2000
27	MYSA	Realme Neck Band Earphone, Model- RM 100	20	100	2000
28	VKS	Plastic Mobile Back Cover of Different Colors	30	1550	46500
29	BRT	Boat Neck Band Earphone, Model- Rockerz 425	10	200	2000
30	BRT	Realme Buds Air Pro +	7	100	700
31	BRT	Realme Neck Band Earphone, Model- Youth Buds 11	3	200	600
32	BRT	Boat Airdopes Model -311	10	100	1000
33	BRT	Realme Pro 4 Bluetooth Airpods	7	100	700
34	DDK	Samsung Wired Ear Phone, Bulk Packing	3	1000	5000
			1	2000	
35	GKP	Boat Neck Band Earphone, Model- Rockerz 235	9	200	1800
36	GKP	Boat Neck Band Earphone, Model- Rockerz 525	29	200	5800
37	DDK	AKG Wired Ear Phone, Bulk Packing	5	1000	5000
38	GKP	Boat Neck Band Earphone, Model- Rockerz 425	18	200	3600
39	BRT	Boat Neck Band Earphone, Model- Rockerz 535	7	200	1400
40	No Marking	Apple Plastic Airpods Case	2	1200	3200
			1	800	
41	Jimmy	Plastic Mobile Back Cover of Different Colors	1	1000	1973
			1	973	
42	Mittal	Samsung Wired Ear Phone, Bulk Packing	49	2000	98000
43	DDK	Boat Neck Band Earphone, Model- Rockerz 355	58	100	5800
44	Sangita	Plastic Packing Material for earphone	9	5000(53 kgs)	45000(477 Kgs)
45	UP	Boat wired Earphone, Model- Rockerz 325	5	2000	10000
46	UP	Realme wired Earphone, Model- R70	3	2000	6000
47	UP	Realme Buds 4 wired Earphone	2	2000	4000
48	UP	Realme wired Earphone, Model- R50	5	2000	10000
49	UP	Boat wired Earphone, Model- Rockerz 325	4	2000	8000
50	UP	Boat wired Earphone, Model- Bass Head 600	3	2000	6000
51	UP	Realme wired Earphone, Model- R80	1	2000	2000
52	Jimmy	Plastic Mobile Back Cover of Different Colors	14	1000	14000
53	713	Plastic Mobile Back Cover of Different Colors	21	920	19320
54	SR	Plastic Mobile Back Cover of Different Colors	128	600	76800
55	UP	Realme wired Earphone, Model- R90	1	1000	1000

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56	SRS	Plastic Mobile Back Cover of Different Colors	25	500	2080
			11	600	
			2	700	
			1	300	
		TOTAL	576		

Table B

Goods covered under bill of entry no. 3898080 dated 10.05.2021 having container bearing no. TCNU4235992 and examined under panchnama dated 12.06.2021/14.06.2021

Sr. No.	Details/Marking mentioned on the packaging	Goods found during examination	Quantity of Cartons	Quantity per carton in Pcs/Kgs	Total Quantity in Pcs/Kgs
01	GKP	Realme True Wireless Buds, Model- TWS-R 11	23	100	2300
02	OUM	Boat Airdopes Ear Buds Model -441	10	100	1000
03	OUM	Realme Buds Q	05	100	500
04	OUM	Oppo Wired Earphone	22	1000	22000
05	OUM	Samsung Wired Earphone	09	1000	9000
06	OUM	Realme Wired Earphone	20	1000	20000
07	OUM	Vivo Wired Earphone	19	1000	19000
08	OUM	Mi Wired Earphone	10	1000	10000
09	Mysha	Boat Neck Band Earphone, Model- Rockerz 365	10	100	1000
10	SHM	Realme Plus Bass Neck Band Earphone	34	100	3400
11	SHM	Boat Plus Heavy Bass Sport Neck Band Earphone	13	100	1300
12	SHM	Boat wired Earphone, Model- 365	30	1000	30000
13	SHM	Realme wired Earphone, Model- 820	10	1000	10000
14	SHM	Realme wired Earphone, Rockerz	10	1000	10000
15	SHM	Boat Neck Band Earphone, Model- BO-1	13	100	1300
16	SHM	Realme Neck Band Earphone, Model- BU-1	09	100	900
17	JLX	Boat Neck Band Earphone, Model- Rockerz 525	10	200	2000
18	VKZ	Plastic Mobile Back Cover of Different Colors	9	648	5832
19	KNNU	Realme Neck Band Earphone, Model- BASS	2	200	400
20	Sangita	Boat Neck Band Earphone, Model- B 240	44	100	4400
21	Sangita	Realme Neck Band Earphone, Model- R 700	10	100	1000
22	SAWAN	Realme Neck Band Earphone, Model- R 700	14	100	1400
23	Sawan	Boat Plus Sport Neck Band Earphone	10	100	1000
24	SSM	One Plus Buds TWS	10	100	1000
25	KNNU	Realme Neck Band Earphone, Model- R 700	05	100	500

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26	KNNU	Boat Neck Band Earphone, Model- B 240	05	100	500
27	KNNU	Boat Plus Sport Neck Band Earphone	05	100	500
28	KNNU	Realme Neck Band Earphone, Model- BASS	02	100	200
29	VKM	Plastic Mobile Back Cover of Different Colors	08	1000	8000
30	IK	Boat Neck Band Earphone, Model- Rockerz 345	10	200	2000
31	IK	ONE PLUS 120BT Neck Band Earphone	05	200	1000
32	IK	Realme Neck Band Earphone, Model- Buds 11	05	200	1000
33	713	Plastic Mobile Back Cover of Different Colors	62	620	38440
34	713	Plastic Mobile Back Cover of Different Colors	51	500	25500
35	713	Plastic Mobile Back Cover of Different Colors	51	890	45390
36	713	Plastic Mobile Back Cover of Different Colors	30	920	27600
37	Punit	Apple Mobile Battery, Model No-5S	1	500	500
38	Punit	Apple Mobile Battery, Model No-SE	1	210	210
39	Punit	Apple Mobile Battery, Model No-11pro	1	55	55
40	Punit	Apple Mobile Battery, Model No-SE 20	1	55	55
41	Punit	Apple Mobile Battery, Model No-11 Pro Max	1	55	55
42	Punit	Apple Mobile Battery, Model No-X	1	460	460
43	Punit	Apple Mobile Battery, Model No-XS MAX	1	150	150
44	Punit	Apple Mobile Battery, Model No-64	1	2000	2000
45	Punit	Apple Mobile Battery, Model No-11	1	105	105
46	Punit	Apple Mobile Battery, Model No-8G	1	260	260
47	Punit	Apple Mobile Battery, Model No-6G	1	2160	2160
48	Punit	Apple Mobile Battery, Model No-XR	1	30	30
49	Punit	Apple Mobile Battery, Model No-7G	1	1600	1600
50	Punit	Apple Mobile Battery, Model No-7P	1	700	700
51	Punit	Apple Mobile Battery, Model No-8P	1	230	230
52	Punit	Apple Mobile Battery, Model No-6SP	1	170	170
53	Punit	Apple Mobile Battery, Model No-6P	1	1	655
54	Punit	Apple Mobile Battery, Model No-XS	1	140	140
55	Punit	Apple Mobile Battery, Model No-5G	1	130	130
56	Punit	Apple Mobile Battery, Model No-XR	1	120	120

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		TOTAL	615		
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1.2 It appeared that goods found under both the bills of entry i.e 3977807 dated 17.05.2021 and 3898080 dated 10.05.2021 were grossly mis-declared, highly undervalued and also major portion of the goods are counterfeit/fake or copied mobile accessories of various brands such as Apple, boat, Real me, Samsung and vivo etc. thereby contravened the various provisions of Customs Act, 1962 and also Intellectual Property Rights of the right holder read with notification no. 51/2010-customs(NT) dated 30.06.2010.

1.3 Valuation of goods – It appeared that the goods found during the examination of both the bills of entry no. 3977807 dated 17.05.2021 and 3898080 dated 10.05.2021 were grossly undervalued and to ascertain the actual value of the goods, valuation was carried out by searching the similar/identical goods from E-commerce website and the data of the similar/identical goods for contemporaneous import were checked from NIDB website. The goods were valued on the basis NIDB date and DRI alert and 40% of the value of goods shown in e-commerce website.

Sr. No.	Bill of entry/ BL No.	Container no.	Value of goods
1	3977807 dated 17.05.2021	TGHU6912878 (40')	4,16,76,496/-
2	3898080 dated 10.05.2021	TCNU4235992 (40')	3,12,07,363.4/-

1.4 Seizure of goods – The goods found during the examination of bill of entry no. 3898080 dated 10.05.2021 valued Rs 3,12,07,363/- and bill of entry No. 3977807 dated 17.05.2021 valued were seized vide seizure memo dated 28.07.2021 under section 110(1) of the Customs Act, 1962.

2.0 Summary of Investigation - During the course of investigation, statements of different persons involved in the case were recorded and following facts were emerged –

A letter was written to the Additional Commissioner of Customs (Preventive), New Custom House, Near IGI Airport & Air Cargo complex, New Delhi-110037 for search/verification at the premise of Customs broker M/s Sark Enterprises and M/s Creative Accessories, and to withdraw incriminating documents, however on search, no firm named as M/s Creative Accessories, found on the address i.e. 2nd Floor, Plot KH.311, MIN MAI Bijwasan, Opp. PNB Bank ATM, New Delhi-110061.

Shri. Rajan Arora employee of M/s Sark Enterprises in his stated intimated that he issued tax invoices to the name of M/s GND Cargo M o v e r s _H.No.190/5, Part VI, Sector-5, Gurgaon, Haryana. Shri. Narender Narula is the owner of the firm and Shri. Prince Rana is his employee.

From the Whatsapp chat between M/s. Sark Enterprises and Shri. Prince Rana it is found that the Custom Duty has been paid through M/s GND Cargo Movers and Shri. Prince Rana sent AD Code, Signature

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verification and letter heads of M/s Creative Overseas to M/s Sark Enterprises. He also edited/corrected the details of Cartons in invoices and packing list, provided KYC and looked after all work of documentation i.e providing of documents, details to CHA, tracking of containers, Custom duty payments, Payment/DO Charges to Shipping lines etc.

2.1 Letters dated 28.06.2021 were written to the Right holders of various brands such as Apple, Boat and Realme etc. to examine the goods and inform about the authenticity of the products and to verify whether there is any violation of IPR rules which comes under provisions of the Intellectual Property Rights (Imported goods), Enforcement Rules, 2007. The representatives of the various right holders inspected the goods and provided an inspection report dated 31.08.2021 on behalf of Imagine Marketing Private Limited in the matter of suspension of goods bearing the mark of brands such as Boat, Apple & Realme. As per their letter, it was confirmed that all the products of Boat, Apple and Realme are fake and found to be in violation of the intellectual property rights of the right holder.

Further, M/s React India Private Limited having address at Corporate office, 4&5, 1st Floor, Augusta Point, Sector 53, Gurugram – 122002, Haryana, Authorised Representative, Samsung India vide their mail dated 21.03.2022 stated that the products of Samsung are counterfeit/fake.

Further, M/s Vivo India vide their letter dated 20.05.2022 also stated that the products declared are counterfeit/fake.

From the report of all the right holders i.e Boat, Apple, Realme, Samsung, Vivo etc. it appeared that the products covered under the bills of entry No. 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 are fake or counterfeit and in violation of the intellectual property rights (Imported goods) Enforcement rules, 2007.

Further, despite various reminders, no representatives from M/s Oppo India and M/s One Plus came to examine the goods.

2.3 Further, in completing the on-going investigation statements of Sh. Ketan Sood an authorized person on behalf of Sh. Bijendra, proprietor of M/s Creative Accessories was recorded on 19.07.2021, statement of Shri Narendra Narula, Proprietor of M/s GND Cargo Movers was recorded on 01.12.2021 and statement of Sh. Memon Juned Salim, authorized representative of M/s Creative Accessories was recorded on 12.01.2022 and as detailed in the instant Show Cause Notice.

3.0. Therefore, an SCN bearing no. F.No. S/43-03/Inv.-Creative/SIIB-C/CHM/21-22 dated 26.07.2022 issued to M/s Creative Accessories, 2nd Floor, Plot KH No. 311, MINMAI Bijwasan, Opp. PNB Bank ATM, New Delhi- 110061 are hereby called upon to show cause in writing to the Additional Commissioner of Customs, Mundra having his office situated at 5-B, 1st, Floor, Customs House, AP& SEZ, Mundra (Kutch) – 370421, as

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to why:

- i. The un-declared goods i.e. counterfeit products of various brands viz. Samsung, Apple, Boat, Realme, vivo etc. and the declared goods i.e. electronics and mobile accessories without any brands' trademark/logo, imported vide Bills of entry no. 3898080 dated 10.05.2021 re-valued at Rs 3,12,07,363/- and 3977807 dated 17.05.2021 re-valued at Rs 4,16,76,496/- totaling to **Rs 7,28,83,859/-** which were seized vide Seizure Memo dated 28.07.2022 should not be confiscated under Section 111(d), Section 111(i), Section 111(l) & Section 111(m), and Section 119 of the Customs Act, 1962 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
- ii. Penalty should not be imposed on them, for their acts of commission and omission discussed here in above under Section 112(a)(i), Section 114AA and Section 117 of the Customs Act, 1962.

3.1. And to the Customs Broker M/s Sark Enterprises is hereby called upon to Show cause to the Additional Commissioner of Customs, Mundra having his office situated at 5-B, 1st, Floor, Customs House, AP& SEZ, Mundra (Kutch) – 370421 as to why penalty under Section 112(a)(i) and Section 117 of the Customs Act, 1962 should not be imposed upon them.

3.2. Also to Shri Narendra Narula, Proprietor of M/s GND Cargo Movers, the forwarder, who are actively involved & conniving in the mis-declarartion is hereby called upon to Show cause the Additional Commissioner of Customs, Mundra having his office situated at 5-B, 1st, Floor, Customs House, AP& SEZ, Mundra (Kutch) – 370421 as to why penalty under Section 112(a)(i) and Section 117 of the Customs Act, 1962 should not be imposed upon him.

4.0 DEFENCE SUBMISSION:

Advocate Reena Rawat vide letter dated 02.02.2023 submitted an interim reply to the instant Show Cause Notice on behalf of Shri Narendra Narula, Proprietor of M/s GND Cargo Movers and submitted following points w.r.t. the SCN:

- The instant Notice emanates from the findings of investigation as mentioned under para 8.2 of the Notice, which reads as 'the role of the Freight Forwarder Shri Narendra Narula of M/s GND Cargo is also questionable in as much as it is evident from his statement that he is fully involved in the day-to-day activities of the firm. He has been involved in clearing cargo of the importer from various ports. He had handed over the customs clearing work to CB Shri Rajan Arora of M/s Sark Enterprises. This means that Shri Narender Narula very well knows the importer and he is fully aware of the importer. Thus, it can be very well said that he is actively assisting and conniving with the importer and thereby contravened the provisions of the Customs Act, 1962 and

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therefore, shri Narendra Narula, freight forwarder of M/s GND cargo is liable for penalty under section 112(a)(i) and section 117 of the customs Act, 1962.

- That briefly stated the facts of the case are that Noticee is a freight forwarder and also a partner in customs broker firm M/s RND Logistics. Earlier, Noticee was engaged in custom clearance work through his concern namely GND cargo Movers. During the period April, 2021 on being approached by one M/s Creative Accessories, 2nd Floor, Plot KN No. 311, Mn, Main Road, Bijwasan' New Delhi (hereinafter referred to as importer) for import of certain mobile accessories through the port of Mundra, Noticee forwarded the said assignment of clearance to M/s. Sark Enterprises, custom Broker on commission basis. Later the said CB filed 02 Bs/E Nos. 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 on behalf of the above importer declaring the goods as earphones assorted, plastic cases for mobile phones etc. on the basis of import documents. On examination, the quantity and description of the goods were found as per declaration but certain goods were found of different brands like Apple, Samsung, Vivo etc. and Department also suspected under-valuation.
- That during investigation, representatives of the right holders informed that the goods were fake or counterfeit and thus, there was violation of intellectual property Rights (Imported Goods) Enforcement Rules, 2007. In his statement, one shri Rajan Arora, partner of M/s Sark Enterprises, the customs broker firm, which had filed the instant Bs/BE, stated that all the paperwork and payment details were given to them by Noticee and that they had issued tax invoice in the name of M/s GND cargo Movers for clearance of the goods. One Shri Ketan Sood, authorized representative of importer, stated that Noticee had sent him to Mundra port to get the goods shifted from CFS to bonded warehouse and that he was informed by Noticee that goods were declared in the Bs/BE as earphones but Bluetooth earphones/headphones were found during examination. In his statement, Noticee stated that he was working as a mediator between customs broker firm M/s. Sark Enterprises and importer; that he came in contact with proprietor of Importer at Airport, where he was working as clearing agent; that he was dealing with documentation of instant goods and is conspicuous to observe that the instant Notice does not has any such remark that the same has been issued without a DIN.
- That it is settled through various judicial pronouncements that Board's circulars and instructions are binding upon Departmental Officers and any Order, Notice or any other communication issued in contravention of Board's circular/instruction shall be null and void. In this connection, Noticee relies upon under mentioned judgments of Hon'ble Supreme Court-

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- i. *Collector of Central Excise, Patna vs. Usha Martin Industries reported in 1997 (94) ELT 460 (SC).*
 - ii. *Paper products Ltd. vs. Commissioner of Central Excise reported in 1999 (112) ELT 765 (SC).*
 - iii. *Commissioner of Central Excise, Pune vs. Abhi Chemical & Pharmaceuticals Pvt. Ltd. reported in 2005 (181) ELT 351 (SC).*
- That it is a fact that Importer was known to Noticee, in his usual course of business, as Noticee had met the proprietor of Importer at Air cargo, New Delhi. It is also a fact that Noticee had introduced importer to M/s Sark Enterprises, the Customs Broker for clearance of instant goods. Also, Noticee had forwarded the KYC and other import documents received from Importer to the said Customs Broker but it is absolutely incorrect to say that Noticee was involved in clearance of goods imported by instant Importer from various ports. It is also absolutely incorrect to say that Noticee had connived with the Importer qua the import of instant goods. On the contrary, Noticee had no prior knowledge about the fake and counterfeit nature of the goods. It is noteworthy that neither Noticee nor any other person, whose statements were recorded, has stated so. There is evidence in this regard.
 - That Shri Ketan Sood, in his statement has, inter alia, stated that Noticee had sent him to Mundra port to get the goods shifted from CFS to Bonded Warehouse and that Noticee had informed him that Bluetooth earphones/headphones were found in place of earphones. The said statement of Shri Ketan Sood is incorrect and improper. Noticee, therefore, requests Hon'ble Additional Commissioner to allow cross examination of said Shri Ketan Sood to bring the true facts at fore.
 - That in terms of the provisions of Section 138B of the Act, the cross examination of the persons whose statement has been relied upon by the Department cannot be refused unless the Adjudicating Authority had after hearing the party given a finding to the effect that the presence of the witnesses cannot be obtained without undue delay or expense which the officer concerned considers unreasonable. Also, in terms of said Section the Adjudicating Authority before relying upon the statement of a witness against a Noticee, has to ascertain its correctness by examining him and permitting his cross examination. Therefore, the examination in chief of the persons whose statements have been relied upon in the Show Cause Notice are essential to ascertain the truth. Further, the opportunity of cross examination is also to be provided to the Noticee to defend their position in the interest of justice.
 - That it is a trite law that cross-examination is a justifiable right and any order passed without granting cross examination renders the order illegal in view of the law propounded by Hon'ble Supreme Court and

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various High Courts (i) Laxman Exports Ltd. 2002 (143) ELT 21 (SC); (ii) Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II - 2015 (324) ELT 041 (S.C.) (iii) Him Logistics Ltd. 2016 (336) ELT 15 (Del.); (iv) Basudev Garg 2017 (48) STR 427 (Del.); (v) Sampad Naryan Mukerjee 2019 (366) ELT 280 (Cat.); (vi) Commissioner of central Excise Lucknow Vs. shyam Traders -2016 (333) ELT 389 (All.); and (vii) Hi Tech Abrasives Ltd. Vs. Commissioner of Central Excise & Customs, Raipur 2018 (362) ELT 961 (Chhattisgarh).

- Although Noticee has nothing to do with the valuation of the goods, however Noticee submitted that the redetermination of Value is patently wrong and contrary to the provisions of Customs Valuation Rules, 2007.
- By citing some of the case laws and based on the some inference He/She inter-alia submitted that penalty cannot be imposed upon the noticee. With these points of the submission He/She requested to drop the proceedings invoked in the instant SCN.

In addition to the interim reply dated 02.02.2023 Advocate Reena Rawat, vide letter dated 14.02.2023 submitted an additional reply to the instant Show Cause Notice on behalf of Shri Narendra Narula, Proprietor and submitted following points w.r.t. the SCN:

- That though the Noticee has nothing to do with valuation of goods, however as the allegations of gross undervaluation of the imported goods have direct impact on the Noticee, he wishes to draw your Honour's kind attention to the fact that in the present case alleged under valuation is based on the similar/identical goods from E-commerce websites and the data of the similar/identical goods for contemporaneous import from NIDB website (para 4.1 of the Notice refers). However, Department has not adduced the above documents which has been primarily relied in the impugned Show Cause Notice to fasten guilt of under-valuation on the importer and abetting on the present Noticee and Noticee therefore, requested to supply a copy of the same, in the interest of justice.
- That even the Hon'ble Supreme Court in the matter of Kothari Filaments Vs. CC (Port), Kolkata - 2009 (233) ELT 289 (SC) has held that need to supply all documents/reports etc. relied upon in adjudication, not just those formally called as relied upon documents in the Show Cause Notice. Similarly, in the matter of Popular Mart vs. Commissioner of Cus. (ICD TKD), New Delhi 2016 (341) ELT 310 (Tri. Dol.), Hon'ble Tribunal has held that non-supply of both RUDs and non-RUDs for filing an effective and meaningful reply to the show cause notice is against the principles of natural justice.

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- That Noticee was involved in clearing cargo of the instant Importer from various ports (Para 8.2 of the Notice refers) which is factually incorrect. In Noticee's respectful submission, he was only a freight forwarder of instant importer, not the clearing agent besides any evidence has been adduced in this regard but only bald assertions.

Apart from Shri Narendra Narula no other Noticee of the instant SCN has filed any defence reply till date to the present Show Cause Notice.

5.0 PERSONAL HEARING

Following the principal of natural justice, three opportunities of personal hearing were granted to the all noticee in the matter but only Ms. Reena Rawat attended the PH virtually on behalf of Shri Narendra Narula and reiterated the written submission dated 02.02.2023, also submitted an additional reply dated 14.02.2023 as stated above. In the event of non-attendance by Noticee (except Shri Narendra Narula), the instant case is to be adjudicated *ex-parte* basis, on the basis of available document on record.

6.0 DISCUSSION AND FINDINGS

6.1 I have carefully gone through the Show Cause Notice dated 26.07.2022 as well as the available records of the case. I find that in the present case, ample opportunities have been given to the Noticee to remain present for personal hearing. The adjudication process cannot go indefinitely waiting for the Noticee to turn up for personal hearing. Therefore, I find that the principle of Natural Justice, as prescribed in Section 122A of the Customs Act, 1962 has been followed. Hence, I proceed to take up the matter on the basis of documentary evidences available with the department.

6.2 I have carefully gone through the records of the case, including the Show Cause Notice dated 26.07.2022, the written submissions from Shri Narendra Narula and oral submissions made during the personal hearing and I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided: -

(i) Whether the impugned goods imported by the importer M/s. Creative Accessories, under Bills of entry no. 3898080 dated 10.05.2021 re-valued at Rs 3,12,07,363/- and 3977807 dated 17.05.2021 re-valued at Rs 4,16,76,496/- totaling to **Rs 7,28,83,859/-**, are liable for confiscation under Section 111(d), Section 111(i), Section 111(l) & Section 111(m), and Section 119 of the Customs Act, 1962 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

(ii) Whether the importer M/s Creative Accessories is liable for penalty under Section 112(a)(i), Section 114AA and Section 117 of the Customs Act, 1962..

(iii) Whether the Customs Broker M/s Sark Enterprises is liable for penal action under Section 112(a)(i) & 117 of the Customs Act, 1962.

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(iv). Whether the forwarder, Shri Narendra Narula, Proprietor of M/s G&D Cargo the forwarder under Section 112 (a)(i) & 117 of the Customs Act, 1962.

6.3 The foremost issue before me to decide in this case is as to whether the goods imported by the noticee M/s Creative Accessories by declaring the same as mobile accessories are liable for confiscation or not.

M/s Creative Accessories, 2nd Floor, Plot KH No. 311, MINMAI Bijwasan, Opp. PNB Bank ATM, New Delhi- 110061 having IEC no. CWXPB0271R (here-in-after referred to as “the importer” for the sake of brevity) filed 2 bills of Entry No. 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 for the import and clearance of the goods declared as –

Bill of Entry & Date	Container No.	Goods Description	Quantity	Value (in Rs.)
3898080 dated 10.05.2021	TCNU 4235992 (40')	Earphone Assorted (For Mobile Phone)	12025 DOZ	431457.00/-
		Plastic Case for Mobile Phone	904 GRS	304083.00/-
		Packing Material	60.00 Kgs	5830.50/-
		Battery Model BN34	31 GRS	22013.88/-
3977807 dated 17.05.2021	TGHU 6912878 (40')	Earphone Assorted (For Mobile Phone)	9400 DOZ	252954.00/-
		Plastic Case for Mobile Phone	1477 GRS	353298.40/-

6.3.1 On examination by SIIB section, goods bearing trademarks and logo of various Brands viz. Apple, Vivo, Samsung, Moto, Lava, Infinix, Lenovo, Realme, Boat, One Plus, MI, Oppo etc. were found. The details of the goods found during the examination is as under –

Goods covered under bill of entry no. 3977807 dated 10.05.2021 having container bearing no. TGHU6912878 (40') and examined under panchnama dated 10.06.2021/11.06.2021

Sr. No.	Details/ Marking mentioned on the packaging	Goods found during examination	Quantity of Cartons	Quantity per carton in Pcs/Kgs	Total Quantity in Pcs/Kgs
01	ABR	Apple Airpods Pro	10	100	1000
02	ABR	Apple Airpods	5	100	500
03	DDK	Apple Airpods Pro	10	100	1000
04	AJKK	Vivo Mobile Battery, Model No.-BC1 (Bulk Packing)	1	600	600
05	AJKK	Infocus Mobile Battery, Model No.-CA486586G(TURBO 5 PLUS) (Bulk Packing)	1	600	600
6	AJKK	Samsung Mobile Battery, Model No.-A8 (Bulk Packing)	1	600	600
7	AJKK	Vivo Mobile Battery, Model No.- BB2(Bulk Packing)	1	600	600
8	AJKK	Vivo Mobile Battery, Model No.-BK3 (Bulk Packing)	1	600	600
9	AJKK	Vivo Mobile Battery, Model No.-BK6 (Bulk Packing)	1	600	600
10	AJKK	Samsung Mobile Battery, Model No.- BA013ABY(Bulk Packing)	1	240	240
11	AJKK	Infinix Mobile Battery, Model No.- BL 49FX(Bulk Packing)	1	600	600

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12	AJKK	Samsung Mobile Battery, Model No.- EBI(A21S)(Bulk Packing)	1	500	500
13	AJKK	Samsung Mobile Battery, C7 PRO.- (Bulk Packing)	1	500	1300
		Samsung Mobile Battery, Model No.-EB-BM415ABY(M-51) (Bulk Packing)		800	
14	AJKK	MOTO Mobile Battery, Model No.-H60 (Bulk Packing)	1	250	600
		Lava Mobile Battery, Model No.- Z60(Bulk Packing)		250	
		Gionee Mobile Battery, Model No.-F103 (Bulk Packing)		100	
15	AJKK	Samsung Mobile Battery, Model No.-M01 (Bulk Packing)	1	500	600
		Samsung Mobile Battery, Model No.-EB-BG580ABU(M20) (Bulk Packing)		100	
16	AJKK	Vivo Mobile Battery, Model No.- BG7(Bulk Packing)	1	500	700
		Infinix Mobile Battery, Model No.-BL-39X (Bulk Packing)		200	
17	AJKK	Samsung Mobile Battery, Model No.- BA013ABY (Bulk Packing)	1	300	500
		Lava Mobile Battery, Model No.-Z61 (Bulk Packing)		200	
18	AJKK	Samsung Mobile Battery, Model No.-HQ-S71(M11) (Bulk Packing)	1	500	500
19	AJKK	Samsung Mobile Battery, Model No.-A20 (Bulk Packing)	1	500	600
		Samsung Mobile Battery, Model No.- EB-BG580ABU(M20) (Bulk Packing)		100	
20	AJKK	Lenovo Mobile Battery, Model No.-BL243 (Bulk Packing)	1	200	500
		Gionee Mobile Battery, Model No.-F103 (Bulk Packing)		100	
		Lenovo Mobile Battery, Model No.- BL242(A6000)(Bulk Packing)		200	
21	AJKK	Vivo Mobile Battery, Model No.- BH0(Bulk Packing)	1	500	700
		Infinix Mobile Battery, Model No.-BL-39JX (Bulk Packing)		200	
22	AJKK	Samsung Mobile Battery, Model No.- EBBM317ABY(M31S)(Bulk Packing)	1	500	580
		Samsung Mobile Battery, Model No.- C7 PRO(Bulk Packing)		80	
23	AJKK	Samsung Mobile Battery, Model No.- EB-BA750ABU(A10) (Bulk Packing)	1	500	500
24	AJKK	Samsung Mobile Battery, Model No.-EB-BM207ABY(M30S) (Bulk Packing)	1	500	500
25	AJKK	Samsung Mobile Battery,		500	500

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		Model No.-C9 PRO (Bulk Packing)	1		
26	BRT	Boat Neck Band Earphone, Model- Rockerz 365	20	100	2000
27	MYSA	Realme Neck Band Earphone, Model- RM 100	20	100	2000
28	VKS	Plastic Mobile Back Cover of Different Colors	30	1550	46500
29	BRT	Boat Neck Band Earphone, Model- Rockerz 425	10	200	2000
30	BRT	Realme Buds Air Pro +	7	100	700
31	BRT	Realme Neck Band Earphone, Model- Youth Buds 11	3	200	600
32	BRT	Boat Airdopes Model -311	10	100	1000
33	BRT	Realme Pro 4 Bluetooth Airpods	7	100	700
34	DDK	Samsung Wired Ear Phone, Bulk Packing	3	1000	5000
			1	2000	
35	GKP	Boat Neck Band Earphone, Model- Rockerz 235	9	200	1800
36	GKP	Boat Neck Band Earphone, Model- Rockerz 525	29	200	5800
37	DDK	AKG Wired Ear Phone, Bulk Packing	5	1000	5000
38	GKP	Boat Neck Band Earphone, Model- Rockerz 425	18	200	3600
39	BRT	Boat Neck Band Earphone, Model- Rockerz 535	7	200	1400
40	No Marking	Apple Plastic Airpods Case	2	1200	3200
			1	800	
41	Jimmy	Plastic Mobile Back Cover of Different Colors	1	1000	1973
			1	973	
42	Mittal	Samsung Wired Ear Phone, Bulk Packing	49	2000	98000
43	DDK	Boat Neck Band Earphone, Model- Rockerz 355	58	100	5800
44	Sangita	Plastic Packing Material for earphone	9	5000(53 kgs)	45000(477 Kgs)
45	UP	Boat wired Earphone, Model- Rockerz 325	5	2000	10000
46	UP	Realme wired Earphone, Model- R70	3	2000	6000
47	UP	Realme Buds 4 wired Earphone	2	2000	4000
48	UP	Realme wired Earphone, Model- R50	5	2000	10000
49	UP	Boat wired Earphone, Model- Rockerz 325	4	2000	8000
50	UP	Boat wired Earphone, Model- Bass Head 600	3	2000	6000
51	UP	Realme wired Earphone, Model- R80	1	2000	2000
52	Jimmy	Plastic Mobile Back Cover of Different Colors	14	1000	14000
53	713	Plastic Mobile Back Cover of Different Colors	21	920	19320
54	SR	Plastic Mobile Back Cover of Different Colors	128	600	76800
55	UP	Realme wired Earphone, Model- R90	1	1000	1000
56	SRS	Plastic Mobile Back Cover of Different Colors	25	500	2080
			11	600	
			2	700	
			1	300	

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		TOTAL	576		
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Goods covered under bill of entry no. 3898080 dated 10.05.2021 having container bearing no. TCNU4235992 and examined under panchnama dated 12.06.2021/14.06.2021

Sr. No.	Details/Marking mentioned on the packaging	Goods found during examination	Quantity of Cartons	Quantity per carton in Pcs/Kgs	Total Quantity in Pcs/Kgs
01	GKP	Realme True Wireless Buds, Model- TWS-R 11	23	100	2300
02	OUM	Boat Airdopes Ear Buds Model -441	10	100	1000
03	OUM	Realme Buds Q	05	100	500
04	OUM	Oppo Wired Earphone	22	1000	22000
05	OUM	Samsung Wired Earphone	09	1000	9000
06	OUM	Realme Wired Earphone	20	1000	20000
07	OUM	Vivo Wired Earphone	19	1000	19000
08	OUM	Mi Wired Earphone	10	1000	10000
09	Mysa	Boat Neck Band Earphone, Model- Rockerz 365	10	100	1000
10	SHM	Realme Plus Bass Neck Band Earphone	34	100	3400
11	SHM	Boat Plus Heavy Bass Sport Neck Band Earphone	13	100	1300
12	SHM	Boat wired Earphone, Model- 365	30	1000	30000
13	SHM	Realme wired Earphone, Model- 820	10	1000	10000
14	SHM	Realme wired Earphone, Rockerz	10	1000	10000
15	SHM	Boat Neck Band Earphone, Model- BO-1	13	100	1300
16	SHM	Realme Neck Band Earphone, Model- BU-1	09	100	900
17	JLX	Boat Neck Band Earphone, Model- Rockerz 525	10	200	2000
18	VKZ	Plastic Mobile Back Cover of Different Colors	9	648	5832
19	KNNU	Realme Neck Band Earphone, Model- BASS	2	200	400
20	Sangita	Boat Neck Band Earphone, Model- B 240	44	100	4400
21	Sangita	Realme Neck Band Earphone, Model- R 700	10	100	1000
22	SAWAN	Realme Neck Band Earphone, Model- R 700	14	100	1400
23	Sawan	Boat Plus Sport Neck Band Earphone	10	100	1000
24	SSM	One Plus Buds TWS	10	100	1000
25	KNNU	Realme Neck Band Earphone, Model- R 700	05	100	500
26	KNNU	Boat Neck Band Earphone, Model- B 240	05	100	500
27	KNNU	Boat Plus Sport Neck Band Earphone	05	100	500
28	KNNU	Realme Neck Band Earphone, Model- BASS	02	100	200
29	VKM	Plastic Mobile Back Cover		1000	8000

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		of Different Colors	08		
30	IK	Boat Neck Band Earphone, Model- Rockerz 345	10	200	2000
31	IK	ONE PLUS 120BT Neck Band Earphone	05	200	1000
32	IK	Realme Neck Band Earphone, Model- Buds 11	05	200	1000
33	713	Plastic Mobile Back Cover of Different Colors	62	620	38440
34	713	Plastic Mobile Back Cover of Different Colors	51	500	25500
35	713	Plastic Mobile Back Cover of Different Colors	51	890	45390
36	713	Plastic Mobile Back Cover of Different Colors	30	920	27600
37	Punit	Apple Mobile Battery, Model No-5S	1	500	500
38	Punit	Apple Mobile Battery, Model No-SE	1	210	210
39	Punit	Apple Mobile Battery, Model No-11pro	1	55	55
40	Punit	Apple Mobile Battery, Model No-SE 20	1	55	55
41	Punit	Apple Mobile Battery, Model No-11 Pro Max	1	55	55
42	Punit	Apple Mobile Battery, Model No-X	1	460	460
43	Punit	Apple Mobile Battery, Model No-XS MAX	1	150	150
44	Punit	Apple Mobile Battery, Model No-64	1	2000	2000
45	Punit	Apple Mobile Battery, Model No-11	1	105	105
46	Punit	Apple Mobile Battery, Model No-8G	1	260	260
47	Punit	Apple Mobile Battery, Model No-6G	1	2160	2160
48	Punit	Apple Mobile Battery, Model No-XR	1	30	30
49	Punit	Apple Mobile Battery, Model No-7G	1	1600	1600
50	Punit	Apple Mobile Battery, Model No-7P	1	700	700
51	Punit	Apple Mobile Battery, Model No-8P	1	230	230
52	Punit	Apple Mobile Battery, Model No-6SP	1	170	170
53	Punit	Apple Mobile Battery, Model No-6P	1	1	655
54	Punit	Apple Mobile Battery, Model No-XS	1	140	140
55	Punit	Apple Mobile Battery, Model No-5G	1	130	130
56	Punit	Apple Mobile Battery, Model No-XR	1	120	120
		TOTAL	615		

6.3.2 The goods were also found undervalued and accordingly the goods were valued on the basis NIDB data and DRI alert and 40% of the value of goods shown in e-commerce website.

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Sr. no.	Bill of entry/ BL No.	Container no.	Value of goods
1	3977807 dated 17.05.2021	TGHU6912878 (40')	4,16,76,496/-
2	3898080 dated 10.05.2021	TCNU4235992 (40')	3,12,07,363.4/-

I also find that the undeclared goods are also undervalued as discussed above, hence the goods should be revalued at Rs. 7,28,83,859/-.

6.3.3 Further right holders of different brands i.e. Boat, Apple, Realme, Samsung, Vivo etc. the products are fake or counterfeit and in violation of the intellectual property rights (Imported goods) Enforcement rules, 2007.

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(a) xxx

(b) xxx

(c) xxx

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

(e) xxx

(f) xxx

(g) xxx

(h) xxx

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) xxx

(k) xxx

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

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 2[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

In this regard, the provisions of Section 119 of Customs Act 1962 are reproduced herein below;-

119. Confiscation of goods used for concealing smuggled goods. -

Section 119: Any goods used for concealing smuggled goods shall also be liable to confiscation.

Since the goods of different brands had been concealed as explained in the foregoing paragraphs, attract Confiscation under the provisions of

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Section 111(i) and section 119 of the Customs Act, 1962. Further, since the goods are imported without IPR NOC from the right holders, thereby infringing the intellectual property right of right holder and attract Confiscation under Section and 111(l) and 111(d) of Customs Act, 1962 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Last, but not the least, since the said do not correspond in respect of the description mentioned in the Bill of Entry and grossly undervalued as discuss in para 6.3.2, the said Goods attract the provisions of Confiscation envisaged under Section 111(m).

In light of the above discussion and conclusions, I hold that the goods involved in the instant case have to be confiscated under the said provisions of Section 111(d) and 111(i), Section 111(l), Section 111(m) and 119 of Customs Act, 1962 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. I also hold that these goods have to be ordered to be absolutely confiscated. Consequently, I hold that the main Noticee cannot be allowed the benefit of paying Redemption Fine in lieu of absolute Confiscation.

6.4 I find that there is a proposal in the subject SCN for imposition of penalty on the importer under Section 112 (a) (i), 114AA and 117 of the Customs Act, 1962. I find that very serious allegations have been raised against the main Noticee i.e. M/s Creative Enterprises in the present Show Cause Notice, but yet, they have chosen to remain silent. In the absence of any defence submissions by the main Noticee, I hold that silence on the part of the said Main Noticee by not filing any defence submissions have to be treated as acceptance of the allegations charged against them in the Show Cause Notice.

I find that the IEC holder of M/s Creative Accessories is Shri. Bijendra who appeared to be dummy or fake, since the address mentioned in the IEC i.e. 2nd floor, Plot KH No. 311, Minmai Bijwasan, Opp. PNB Bank ATM, New Delhi- 110061, was not found existent at the given address and also the IEC holder did not turn up on multiple summons issued to him. I find that M/s Creative M/s Creative Enterprises filed 2 bills of entry No. 3898080 dated 1005.2021 and 3977807 dated 17.05.2021 for the import and clearance of mobile accessories however on examination goods bearing trademark and logo of different brands i.e. Apple, Vivo, Samsung, Moto, Lava, Infinix, Lenovo, Realme, Boat, One Plus, MI, Oppo etc.

I have already discussed and held that the provisions of Section 111(d), 111(i), Section 111(l) Section 111(m) and Section 119 of Customs Act, 1962 are applicable to the present case. Therefore, I hold that a separate penalty has to be imposed on the main noticee M/s Creative Accessories under Section 112(a)(i) in respect of the violations envisaged in provisions of Section 111 and section 119 of Customs Act, 1962.

The said provision is reproduced hereinbelow; -

112. Penalty for improper importation of goods, etc. -

Any person, -

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

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

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

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

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.

In this regard, it has already been concluded that the Main Noticee had filed the Bills of Entry showing wrong description of the goods in respect the concealed goods. Since the main Noticee have not discharged the onus of proving that the they did not know that the consignment imported by them contained prohibited goods and this aspect has been elaborately dealt with in some of the paragraphs hereinabove. Therefore, I hold a penalty under the said Section 114AA of the Customs Act, 1962 has to be imposed on the Main Noticee.

The Show Cause Notice seeks to impose a penalty under 117 of the Customs Act, 1962 on the main Noticee.

117. Penalties for contravention, etc., not expressly mentioned. -

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

The provisions of the said Section 117 ibid can have a roll only when no other penalty is imposed in respect of the offence committed by the

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Main Noticee. Since I have already held that penalty has to be imposed under various Sections for the offence committed by the main noticee, I hold that no penalty under Section 117 can be imposed.

6.5 The Show Cause Notice seeks to impose a penalty on CB M/s Sark Enterprises under section 112 (a) (i) and 117 of the Customs Act, 1962. The Customs Broker, M/s Sark Enterprise had filed 2 Bills of Entry bearing No. 3898080 dated 10.05.2021 and 3977807 dated 17.05.2021 under section 46 of the Customs Act, 1962 on behalf of the importer M/s Creative Accessories and during investigation, it was found that the IEC of the importer is dummy or fake and the importer is found non existent on the given address. I find that it was the duty of Customs broker to carry out the proper KYC of the importer and other formalities as defined under the Rule 10 of the Customs Brokers Licensing Regulations, 2018 which mandates the Customs Broker to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be and exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage.

I find that Shri Rajan Arora, CB being the partner of the CHA firm M/s Sark Enterprises facilitated the importer by importing the prohibited goods by way of mis-declaration which had made such goods liable for confiscation under section 111(d), 111(l), 111(i), 111(m) and 119 of Customs Act, 1962 and rendered themselves for penal action under section 112(a) of Customs Act, 1962.

The Show Cause Notice seeks to impose a penalty under 117 of the Customs Act, 1962 on the CB M/s Sark Enterprises.

117. Penalties for contravention, etc., not expressly mentioned. -

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

The provisions of the said Section 117 ibid can have a roll only when no other penalty is imposed in respect of the offence committed by the Main Noticee. Since I have already held that penalty has to be imposed under various Sections for the offence committed by the main noticee, I hold that no penalty under Section 117 can be imposed.

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6.6 Now moving to the issue of imposition of penalty on Shri. Narender Narula, proprietor of M/s GND Cargo Movers under Section 112 (a) (i) and 117 of the Customs Act, 1962.

I find that from the whastapp chat between M/s Sark Enterprises and Shri. Prince Rana, employee of M/s GND Cargo Movers, it is clear that Shri. Prince Rana, employee of Shri. Narender Narula, continuously looking all work of documentation, details of CHA, container tracking, customs duty payment, AD Code and signature verification and edited details of cartons in invoice and packing list.

I find that Shri. Ketan Sood, authorized representative of M/s Creative Enterprises in his statement dated 19.07.2021 intimated that Shri. Narender Narula sent him to Mundra Port by saying that earphones have been declared and Bluetooth earphones/headphones have been found and directed him to shift the cargo from CFS to Bonded Warehouse.

I find that Adv. Reena Rawat also requested for the cross examination of Shri. Ketan Sood, authorized representative of Importer M/s Creative Accessories. In this regard, I find that-

- v. **Section 138B (2) or in any other provisions of the customs act/law has not such explicit arrangement for examination-in-chief, cross examination and re-examination. Further, it is also not mentioned in the Section 138B(2) that this provisions is subject to the Evidence Act.**
- w. **Request for cross-examination of Noticee who has made voluntary statements during investigation is not acceptable in view of following case laws;**

(i) In the case of Surjeet Singh Chhabra v. UOI, reported in 1997 (89) E.L.T. 646 (S.C.)), it was held that-“ *Customs Officials are not police officers and admission made before them though retracted binds the deponent. In view of voluntary statements recorded and such statements not retracted did not warrant cross-examination when other circumstantial provided reliable basis corroborating the statements. When nothing surfaced that the witnesses had any enmity with appellants, those were not liable to be discarded nor required to be put to cross-examination.*”

(ii) Hon'ble Delhi Tribunal in the case of Onida Saka Ltd. v/s Commissioner of Central Excise, Noida [2011 (267) E.L.T. 101 (Tri.Del)] in para 4 of its order held that-“..... since the statements of the persons whose cross-examination has been sought, has not been retracted, there was no necessity for permitting their cross-examination”.

- v. **Cross Examination sought without indicating specific reason not admissible-**

When request for cross-examination made by Noticee without indicating specific reason is not admissible in view of following case laws:

(i) In the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [2001(138) E.L.T.556 (Tri. -Kolkata)], Hon'ble Tribunal observed at Para 12 that:

"...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice by not allowing the cross-examination of the persons sought by him." This view taken by the Tribunal has been affirmed by Hon'ble Supreme Court – 2004 (164) E.L.T. 4 (S.C.) & 2004 (167) E.L.T.A. 134 (S.C.).

(ii) Hon'ble CESTAT Kolkata in its decision in Dipu Das v/s Commissioner of Customs Kolkata reported as 2010(261) ELT 408 (Tri-Del), has held that;

"...In adjudication proceedings, cross-examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same"

v. Denial of cross examination of Co-Noticee does not amount to violation of principle of natural justice

Further, the issue of cross examination of Co-Noticees/ accused is no longer res integra. When Noticee failed to provide any cogent and valid reason for the cross-examination of person, who are co-noticees, then request is not accepted. The following judicial pronouncements also supports above view.

(i) The Hon'ble Principal Bench of CESTAT at New Delhi in the case of Jagdish Shankar Trivedi Vs. Commissioner of Customs, Kanpur reported as 2006 (194) ELT 290 (Tri. Delhi) has held that *"denial of cross examination of co-noticees / accused does not result in violation of principles of natural justice and cannot be insisted on as a matter of right by them otherwise each of the accused can claim right against testimonial compulsions under Article 20(3) of the Constitution of India and thereby by their joint efforts bring out violation of natural justice."*(para 9)

(ii) In the case of N.S. Mahesh vs CC, Cochin reported in 2016 (331) ELT 402 (Ker.) Hon'ble High Court upheld denial of *"cross-examination of co-noticee. Adjudicating authority denied cross-examination of co-noticee on ground that firstly no specific reasons given for such cross-examination and secondly, co-noticee cannot be directed to be a part of proceedings that may incriminate him. It was held that there is no illegality in aforesaid reasoned order warranting interference by High Court [paras 1, 2]*

(iii) In the case of Laxmi v/s. Collector of Customs, Lucknow [2001 (138) ELT 1090 (Tri. Delhi)] Hon'ble Tribunal held that *"Statement of co-noticees corroborated by another person- Denial of permission of cross-*

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examination of co-noticees not violated principles of natural justice (Para 6)".

Hence, the request for the cross examination was denied by the competent authority.

In view of above, I find that Shri. Narender Narula is actively assisting and conniving with the importer and thereby contravened the provisions of Customs Act, 1962 and therefore liable for penal action under section 112 (a) (i) of Customs Act, 1962.

The Show Cause Notice seeks to impose a penalty under 117 of the Customs Act, 1962 on Shri. Narender Narula.

117. Penalties for contravention, etc., not expressly mentioned. -

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

The provisions of the said Section 117 ibid can have a roll only when no other penalty is imposed in respect of the offence committed by the Main Noticee. Since I have already held that penalty has to be imposed under various Sections for the offence committed by the main noticee, I hold that no penalty under Section 117 can be imposed.

7. In view of above, I pass the following order-

ORDER

(i) I order for absolute confiscation of the un-declared goods i.e. counterfeit products of various brands viz. Samsung, Apple, Boat, Realme, vivo etc. and the declared goods i.e. electronics and mobile accessories without any brands' trademark/logo, imported vide Bills of entry no. 3898080 dated 10.05.2021 re-valued at Rs 3,12,07,363/- and 3977807 dated 17.05.2021 re-valued at Rs 4,16,76,496/- totaling to **Rs 7,28,83,859/-** under Section 111(d), Section 111(l), Section 111(i), Section 111(m), and Section 119 of the Customs Act, 1962 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and order for destruction within three months from the receipt of this order. I also order M/s Creative Accessories to pay the destruction charges and ensure no environmental pollution and degradation occurs during the destruction.

(ii) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under section 112 (a) (i) and Rs. 5,00,000/- (Rupees Five Lakh only) under section 114AA of Customs Act, 1962 on importer M/s Creative Accessories.

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(iii) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under section 112 (a) (i) of Customs Act, 1962 on Shri. Narender Narula, however I do not impose any penalty under section 117 of Customs Act, 1962.

(iii) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) under section 112 (a) (i) of Customs Act, 1962 on CB M/s Sark Enterprises however I do not impose any penalty under section 117 of Customs Act, 1962.

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

Signed by

Mukesh Kumari

Date: 28-06-2023 19:26:34
Additional Commissioner of Customs

Custom House, Mundra

Date:28-06-2023

By RPAD/ By Hand Delivery/Email/Speed Post

To,

- i. M/s Creative Accessories, 2nd floor, plot KN No. 311 Mn, main Road, Bijwasan, Opp. PNB Bank ATM, South West, Delhi, 110061
- ii. M/s Sark Enterprises, B-38, Flat No. 5, First Floor, Vishwkarma Colony, New Delhi-110044.
- iii. Shri. Narendra Narula, proprietor of M/s GND Cargo Movers, 217, Peepal Apartment, Sector-17 E, Dwarka, New Delhi – 110075
- iv. The Deputy/Assistant Commissioner (Disposal Section), Custom House, Mundra.
- v. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
- vi. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
- vii. The Deputy/Assistant Commissioner (Group-V), Custom House, Mundra.
- viii. The Deputy/Assistant Commissioner (CB Section), Custom House, Mundra.
- ix. The Deputy/Assistant Commissioner (SIIB), Custom House, Mundra.
- x. Guard File

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