



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हड्डो भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250771MN0000666CC7

क	फाइल संख्या FILE NO.	S/49-112/CUS/MUN/2023-24
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-121-25-26
प	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.07.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/96/2023-24 dated 28.06.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Creative Accessories, 2 <sup>nd</sup> Floor, Plot KH No. 311MN, Main Road, Bijwasan, Opp PNB Bank ATM, South West Delhi - 110061



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 बरता 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।
(b)	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/- (रूपए दो सौ मात्र)या रु. 1000/- (रूपए 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	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> 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 रुपए.	
(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;	
(ख)	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; पाँच हजार रुपए	
(ब)	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 रुपए.	
(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, मार्गे 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 Creative Accessories, 2nd Floor, Plot KH No. 311MN, Main Road, Bijwasan, Opp PNB Bank ATM, South West Delhi - 110061, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/96/2023-24 dated 28.06.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that 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

2.1 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
1	ABR	Apple Airpods Pro	10	100	1000
2	ABR	Apple Airpods	5	100	500
3	DDK	Apple Airpods Pro	10	100	1000
4	AJKK	Vivo Mobile Battery, Model No.-BK6 (Bulk Packing)	1	600	600
5	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
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.-B8971 (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.-BHO (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, Model No.-C9 PRO (Bulk Packing)	1	500	500
26	BRT	Boat Neck Band Earphone, Model- Rockers 555	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- Rockers 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
35	GKP	Boat Neck Band Earphone, Model- Rockers 235	9	200	1800
36	GKP	Boat Neck Band Earphone, Model- Rockers 525	29	200	5800
37	DDK	AKG Wired Ear Phone, Bulk Packing	5	1000	5000
38	GKP	Boat Neck Band Earphone, Model- Rockers 425	18	200	3600
39	BRT	Boat Neck Band Earphone, Model- Rockers 535	7	200	1400
40	No Marking	Apple Plastic Airpods Case	2	1200	3200
41	Jimmy	Plastic Mobile Back Cover of Different Colors	1	1000	1973
42	Mittal	Samsung Wired Ear Phone, Bulk Packing	1	200	98000
43	DDK	Boat Neck Band Earphone, Model- Rockers 355	5	100	5800
44	Sangita	Plastic Packing Material for earphone	9	5000 (53 kgs)	45000 (477 Kgs)



45	UP	Boat wired Earphone, Model- Rockers 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- Rockers 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	
		<b>Total</b>	<b>576</b>		

**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**



Sl. 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
1	GKP	Realme True Wireless Buds, Model- TWS-R 11	23	100	2300
2	OUM	Boat Airdopes Ear Buds Model -441	10	100	1000
3	OUM	Realme Buds Q	5	100	500
4	OUM	Oppo Wired Earphone	22	1000	22000
5	OUM	Samsung Wired Earphone	9	1000	9000
6	OUM	Realme Wired Earphone	20	1000	20000
7	OUM	Vivo Wired Earphone	19	1000	19000
8	OUM	Mi Wired Earphone	10	1000	10000
9	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	9	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	5	100	500
26	KNNU	Boat Neck Band Earphone, Model- B 240	5	100	500
27	KNNU	Boat Plus Sport Neck Band Earphone	5	100	500
28	KNNU	Realme Neck Band Earphone, Model- BASS	2	100	200
29	VKM	Plastic Mobile Back Cover of Different Colors	8	1000	8000
30	IK	Boat Neck Band Earphone, Model- Rockerz 345	10	200	2000
31	IK	ONE PLUS 120BT Neck Band Earphone	5	200	1000
32	IK	Realme Neck Band Earphone, Model- Buds 11	5	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-11 pro	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-11 Pro Max	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
		<b>Total</b>	<b>615</b>		

2.2 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.

2.3 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.

<b>Sr. No.</b>	<b>Bill of entry/ BL No.</b>	<b>Container no.</b>	<b>Value of goods</b>
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/-

2.4 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 at Rs. 4,16,76,496/- were seized vide seizure memo dated 28.07.2021 under section 110(1) of the Customs Act, 1962.

2.5 During the course of investigation, statements of different persons involved in the case were recorded and following facts 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 Movers H.No.190/5, Part VI, Sector-5, Gurgaon, Haryana. Shri Narendra 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 was found that the Custom Duty has been paid through M/s GND Cargo Movers and Shri Prince Rana sent AD Code, Signature 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.

2.6 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.

2.7 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.

2.8 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 Show Cause Notice.

2.9 On completion of investigation, Show Cause Notice (SCN) bearing no. F.No. S/43-03/Inv.-Creative/SIIBC/CHM/21-22 dated 26.07.2022 was issued to the noticees including appellant proposing as to why:



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.

2.10 SCN was also issued to the Customs Broker M/s Sark Enterprises as to why penalty under Section 112(a)(i) and Section 117 of the Customs Act, 1962 should not be imposed upon them.

2.11 SCN was also to Shri Narendra Narula, Proprietor of M/s GND Cargo Movers, the forwarder, who was actively involved & conniving in the misdeclaration as to why penalty under Section 112(a)(i) and Section 117 of the Customs Act, 1962 should not be imposed upon him.

2.12 The above SCN was adjudicated by the adjudicating authority wherein she ordered as under :-

- (i) She ordered 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(1), 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 ordered for destruction within three months from the receipt of this order. She also ordered M/s Creative Accessories to pay the destruction charges and ensure no environmental pollution and degradation occurs during the destruction.
- (ii) She imposed 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.
- (iii) She imposed penalty of Rs. 10,00,000/- (Rupees Ten Lakh only)



under section 112 (a) (i) of Customs Act, 1962 on Shri Narendra Narula, however she did not impose any penalty under section 117 of Customs Act, 1962.

(iv) She imposed 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

### **3. SUBMISSIONS OF THE APPELLANT:**

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

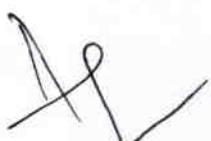
3.1 The adjudicating authority has failed to consider the provisions of the Customs Act, 1962 and the provisions of Intellectual property Rights (Imported Goods) Enforcement Rules, 2007 and has grossly erred in holding that the goods of different brands had been concealed and further observing that the since the goods imported by the appellant are imported without IPR NOC from the Right Holders, thereby the appellant had infringed the intellectual property right of the right holder, thus, making the goods liable for absolute confiscation. The appellant has submitted and the entire order has been passed by the learned adjudicating authority without examining the facts of the case and the relied upon documents and as the entire OIO has been issued in a very casual manner and thus, deserves to be set aside in interest of justice.

3.2 The adjudicating authority has failed to place on records that as to how there was a violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and in absence of any such findings, the entire order is ex facie bad in law and as such the same is required to be set aside as being illegal and passed without considering the facts on record. The appellant has submitted that the first and foremost portion of the allegation related to violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 is itself incorrect and has been erroneously applied in the instant case. The appellant has submitted that the investigation or the learned adjudicating authority have nowhere pointed out that how there is violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, especially, when the

goods imported by the appellant do not fall under the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

3.3 On perusal of the products on internet, it is observed that the goods alleged to be violating the intellectual property rights (Imported Goods) Enforcement Rules, 2007 can never be claimed by the right holders of different brands to be fake or counterfeit and were in violation of the intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 in view of the following submissions.

- i. The analysis of the products information available on the internet was undertaken by the appellant. From the internet, it is observed that there are no such goods available on internet which are made and marketed by the company. Thus, the goods can never be said to be fake or counterfeit and import of the said goods have resulted in violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
- ii. Though the investigation has received confirmation from Samsung and Vivo, however, those letters have not been provided, so as to enable the appellants to make submissions on the said communications.
- iii. Except Samsung and Vivo, none of the brand owners have responded to the communications made by the investigation related to violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The appellant has submitted that in absence of any such communication, the investigation or the learned adjudicating authority has not made any attempt to corroborate any evidence which could substantiate that there was any violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. In absence of any such evidence, the entire allegations have been made on assumptions and presumptions. The adjudicating authority has also reiterated the allegations in her findings.
- iv. All the parties who have been considered in the present matter as right holders have nowhere initiated any action against the



appellant for violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Considering the above submissions, it is the humble submission that all the above submissions, point out that the allegations made against the appellant company are baseless and as such the same are required to be discarded at the time of deciding the present appeal.

v. Considering the above submissions and evidences placed with the appeal memorandum point out that there was no violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and as such the premises of the demand, on the basis of which allegations have been made against the appellant for violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 do not survive and as such the order of absolute confiscation of the goods holding such goods as counterfeit products of various brands viz. Samsung, Apple, Boat etc. are not a part of the RUD. Thus, making it difficult to understand as to how the right holders were affected by the import of such goods, especially when they had failed to provide the details of registration of their products which were similar to the products imported by the appellant and as to how the said goods could be considered as counterfeit goods.

3.4 The investigation has at para 4.1. of the impugned show cause notice examined the valuation aspect of the goods imported by the appellant under the impugned Bill of Entries. The investigation has observed that the valuation of both the Bills of Entry 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 of NIDB data and DRI alert and 40% of the value of goods shown in e-commerce website. Further, the investigation has at para 4.2 of the impugned SCN observed that as per the workings done using the NIDB, E-Commerce websites such as Indiamart, Amazon, Flipkart etc. in terms of brand model specifications or data for similar type of goods, the approx. Value of the goods found during the examination for both the bills of Entries appeared to be Rs. 3,12,07,363.4 and Rs. 4,16,76,496/-

3.5 The provisions of valuation of imported goods are contained in Section 14(1) of the Customs Act, 1962. The provisions of Section 14(1) of the Customs Act, 1962 are reproduced below :

*SECTION [14. Valuation of goods. — (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

*Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*

*Provided further that the rules made in this behalf may provide for,—*

- (i) *the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) *the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) *the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :*

*Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.*

3.6 The entire case satisfies the conditions of Section 14(1) in as much as the department has not been able to rebut the transaction value in as much as the appellant had produced the commercial invoice and filed the Bill of entry by including the cost and services as provided in first proviso to Section 14(1) of the Customs Act, 1962. The appellant has submitted that the only aspect that has been applied by the Department to reject the declared value is by relying on the letters received from the so called right holders who have nowhere initiated any action against the appellant for violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, which itself reflects that the letters received from them was only a eye wash exercise and relying on the NIDB data. The appellant has submitted that the investigation has at para 3.7 of the impugned show cause notice observed that during the course of investigation, the valuation of the goods for both the bills of entries were carried out by searching the similar /identical goods from E-commerce website and the data of similar / identical goods for contemporaneous import from NIDB website. The appellant has submitted that the investigation has committed a grave error by mechanistically reaching to the conclusion to undertake valuation from the E-Commerce website and NIDB data, which is not permitted under the Customs law. Thus, the entire action undertaken by the investigating officers is in excess of the delegated responsibilities bestowed upon them in as much as the investigating proper officer had at no point of time informed the appellants as to how they doubted the truth or accuracy of the value declared by the appellant and due to what reasons they doubted the transaction value declared by the appellant and in absence of the any doubt, how could the declared value be discarded by the assessing officer.

3.7 The proper officer had enhanced the value without following the provisions of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, thus, making their action in this case as completely illegal and arbitrary and as such the same do not have any relevance in the instant case. The appellant in support of the submissions, reproduce the provisions of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The provisions of Rule 12 of the reads as under :

*12. Rejection of declared value. -*

**(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including**

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

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

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

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

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

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include  
 -(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

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

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

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

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

*(f) the fraudulent or manipulated documents.*

3.8 In view of the above rule, the transaction price declared can be rejected in terms of Rule 12 of the said Valuation Rules, 2007, when the proper officer of Customs has reason to doubt the truth or accuracy of the value declared and if even after the importer furnishes further information/documents or other evidence, the proper officer is not satisfied and has reasonable doubts about the value declared. An Explanation to Rule 12 clarifies that this rule does not, as such, provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons that could form the basis for doubting the truth of accuracy of the declared value.

3.9 In the instant case, the investigating officer had never asked the appellant to furnish further information including documents or other evidence, thus, in absence of any such action on the part of the proper officer, it has to be construed that the proper officer had no reason to doubt the truth or accuracy of the value declared in relation to any imported goods. Thus, the value declared by the appellant was required to be accepted. The appellant has submitted the investigation therefore committed a grave error in discarding the value without giving a plausible reason or following procedure prescribed under Rule 12 of the Customs Valuation Rules, 2007 and the process of discarding the transaction value and description of the goods declared by the appellant. The process of gross violation of improper manner of discarding the transaction value declared by the appellant did not stop there in as much as the learned adjudicating authority also accepted the illogical and illegal methodology of discarding the transaction value declared by the appellant. Thus, the learned adjudicating authority also conducted a grave error in discarding the transaction value declared by the appellant.

3.11 It is a settled legal position that that enhancement of value merely on the basis of NIDB (National Import Database) data without any other independent evidence is not acceptable. The appellant wishes to rely on the following judgments annexed with this synopsis, in support of their submissions :



- i. In 'Topsis Estates Private Limited v. Commissioner of Customs (Import-Seaport), Chennai' - 2015 (330) E.L.T. 799 (Tri.-Chennai), the Tribunal held that it is settled that declared value cannot be enhanced merely on basis of NIDB data. The value of impugned goods varies widely on basis of quality, size, etc., and same goods accepted by Department at Kolkata port. 'Special circumstances' for rejecting assessable value is statutorily prescribed in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and in absence of such exceptions, mandatory for Customs to accept price actually paid as assessable value. The enhancement of value of impugned goods on basis of NIDB data is set aside as not acceptable.
- ii. In 'Omx International v. Commissioner of Customs, New Delhi' - 2015 (328) E.L.T. 579 (Tri.-Del.), the Tribunal held that for determining the value of old, used and obsolete models of goods NIDB data is not relevant. No two consignments of second hand goods are comparable as value of any such consignment is to depend upon the condition and usage of the said goods. As imported models obsolete, profit margin is nominal if any. As per Section 14 of Customs Act, 1962 price actually paid or payable is transaction value where seller and buyer are not related persons. There is no allegation of foreign supplier and appellant being related person. **As per Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, rejection of declared value is only inquiry by proper officer and after giving reasonable opportunity to be given to importer of being heard. No such inquiry is done in this case.** Payment of duty was on enhanced valued by importer under protest to avoid detention and demurrage charges only. The enhancement of transaction value on the basis of NIDB data and in absence of evidence of incorrectness of declared value is not sustainable.
- iii. Judgment of Hon'ble CESTAT, Principal Bench, New Delhi in the case of Modern Manufacturers vs. Commissioner of Customs, New Delhi as reported at 2018 (363) E.L.T. 1020 (Tri. - Del.).



- iv. *Judgment of Hon'ble CESTAT, Mumbai Bench in the case of KRYFS Power Components Ltd. vs. Commissioner of Customs, Nhava Sheva as reported at 2021 (375) E.L.T. 417 (Tri. - Mumbai).*
- v. *Judgment of Hon'ble CESTAT, Mumbai Bench in the case of Garva Enterprise vs. Commissioner of Customs (Imports), Nhava Sheva as reported at 2018 (362) E.L.T. 134 (Tri. - Mumbai).*
- vi. *Judgment of Hon'ble CESTAT, Chennai Bench in the case of Sai Exports vs. Commissioner of Customs, Tuticorin as reported at 2019 (370) E.L.T. 398 (Tri. - Chennai).*

3.12 Considering the above submissions, the appellant have made a detailed submission in the foregoing paragraphs which establishes that the allegation of violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and undervaluation has been alleged against the appellant firm without considering the evidences and wrong application of legal provisions of the Customs Act, 1962 and hence both the above allegations are not sustainable. Thus, the appellant prays that the demand related to allegation of violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and undervaluation has been alleged against the appellant firm may be set aside in interest of justice.

3.13 It has been alleged that the goods imported by the appellant are liable for confiscation under the provisions of Section 111(d), (i), (l) and (m) of the Customs Act, 1962. The provisions of Section 111(d), (i), (l) and (m) of the Customs Act, 1962 are reproduced below :

*Section 111. Confiscation of improperly imported goods, etc..*

*The following goods brought from a place outside India shall be liable for confiscation :-*

- (a) to (c) .....
- (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) to (h) .....



- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) to (k) .....
- (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 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipments referred to in the proviso to sub-section (1) of section 54;
- (n) .....

3.14 The appellant has submitted that it may kindly be appreciated that the provisions of Section 111(d) of the Customs Act, 1962 deal with the importation of goods, which are contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The appellant says and submit that in the present case the appellant has not imported any goods that were contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The appellant has submitted that they have in the foregoing made a detailed submission which establishes that the goods imported by them were not in violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The provisions of Section 111(d) of the act ibid will not be applicable in the instance case. The appellant further says and submits that due to the above submissions provisions of Section 111(i) of the act ibid will also not be applicable in the instant case.

3.15 The appellant has further submitted that the provisions of Section 111(l) of the Act ibid can be made applicable in the cases where 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. The appellant has submitted that the investigation or the learned adjudicating authority have not at a single point succeeded in establishing that the goods imported by the appellant were either counterfeit or



undervalued and in such a scenario it is difficult to understand that how the provisions of Section 111(l) of the Customs Act, 1962 can be made applicable in the instant case.

3.16 The appellant has further submitted that Section 111(m) of the Customs Act, 1962 are also not applicable in the instant case as the provisions of Section 111(m) are applicable in cases where imported goods do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof. The appellant has submitted that the premises in the basis of which the allegation has been made on the appellant company do not stand in the present case as the entire allegation has been made on assumptions and presumptions and as such the same is not sustainable.

3.17 Considering the above submissions, the allegations and proposals made by the investigation for confiscation of goods imported by the appellant and confirmed by the adjudicating authority during the adjudication proceedings are illogical and without any evidence and as such are required to be discarded during the appellate proceedings.

3.18 The investigation has wrongly proposed the imposition of penalty on the appellant under Section 112(a)(i) of the Customs Act, 1962 and 114AA of the Act ibid and thereafter the learned adjudicating authority has imposed the penalty on the appellant under the 112(a)(i) and 114AA of the Act ibid without considering the facts of the case and thereafter improper and illogical application of the above provisions have been made on the appellant and as such the imposition of the penalty on the appellant is illogical, arbitrary and as such the same is required to be set aside in interest of justice. The appellant has submitted that the provisions of Section 112(a)(i) of the Customs Act, 1962 reads as under :

**112. Any person,—**

(a)	who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
(b)	who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he

	<i>knows or has reason to believe are liable to confiscation under section 111,</i>
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*shall be liable,—*

(i)	<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 <sup>17</sup>/not exceeding the value of the goods or five thousand rupees], whichever is the greater;</i>
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3.19 The appellant has submitted that from the plain reading of the provisions of Section 112(a)(i) of the Customs Act, 1962 can be made applicable in cases where any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act shall be liable 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.

3.20 The appellant has submitted that the appellant at the time of the filing of bill of Entry had declared the goods which were mentioned in the invoice. The above facts have never been disputed by the investigation nor any allegation has been made to that effect that the appellant had not declared the goods as reflected in the invoice nor there has been any allegation that the appellant had shown a value of the imported goods which was not in consonance with the value shown in the invoice and purchase documents received by the appellant.

3.21 The basis of imposition of penalty on the appellant has arisen in the instant case only due to the reason that the investigation had made an allegation which pointed out that there was violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The appellant in view of the above submissions have succeeded in establishing that the allegations made by the investigation were baseless and without any evidences and as such no case of violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 could have ever been made against them. Even the so called right holders or the investigation made an attempt to inform the respective Department that there was violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 by the appellant on account of import of the subject goods. The



appellant has submitted that until the right holders have not made any application against the appellant for violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and when the enforcement of respective departments functioning under the intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, have not initiated any action against the appellant, till that time, the allegation that the import of the goods by the appellant had resulted in violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 becomes absolutely baseless, illogical and without authority of law and as such the said allegation or findings against the appellant are not proper and as such the same are required to be discarded in interest of justice.

3.22 When such type of allegations are made by the investigations without any legal backing then in such case, the allegations for violation of intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 against the appellants do not survive and are therefore required to be set aside with a direction against the officers and the adjudicating authority for their irresponsible behaviour against the appellant, which has resulted the appellant to close his business only because of the inappropriate action on the part of the investigating agency and the learned adjudicating authority.

3.23 When it is established that there is no violation of the intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, then in such a case, it cannot be held that the appellant had imported goods on which there was a prohibition and as such the imposition of penalty on the appellant is not only illogical and illegal and as such is required to be set aside in interest of justice.

3.24 The penalty under Section 114AA of the Customs Act, 1962 can be imposed in cases 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 purpose of the Customs Act, 1962, shall be liable to a penalty not exceeding five times the value of goods. The investigation has nowhere alleged nor the learned adjudicating authority has given his findings that the appellant in the instant case had filed any document knowingly or intentionally made, signed or used, or caused to be made, signed or used, any declaration, statement or document which had been false or incorrect in any material particular and in absence any such findings the imposition of penalty under



Section 114AA of the Act ibid is highly misplaced and deserves to be set aside in interest of justice. The appellant has further submitted that the penalty under Section 114AA of the Act ibid can be imposed on a person who knowingly or intentionally submit a document which is false or incorrect, thus, the penalty under Section 114AA of the Act ibid is illogical, non-speaking and without any provisions of law and as such the same is required to be set aside.

3.26 Considering all the above submissions, the appellant has submitted that the entire OIO confirming the absolute confiscation of goods under Section 111(d), (l), (i) and (m) of the Customs Act, 1962 alongwith proposal of imposition of penalty under Section 112(a)(i) Section 114AA of the Customs Act, 1962 is ex facie, illogical and bad in law and appellant therefore, prays to set aside the OIO in interest of justice, by holding the goods imported by the appellant in the present case as not liable for absolute confiscation and immediately releasing the goods to the appellant with consequential relief.

**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 17.06.2025, following the principles of natural justice wherein Shri Anil. Gidwani, Advocate appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

**DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner of Customs, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 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 re-determined the assessable value of the imported goods and whether the findings of mis-declaration and undervaluation are sustainable.
- (ii) Whether the order of the adjudicating authority for absolute confiscation of goods under Section 111(d), 111(i), 111(l), 111(m), and

119 of the Customs Act, 1962, read with the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, is legally sustainable or otherwise.

- (iii) Whether imposition of penalty on the appellant under Section 112(a)(i) and Section 114AA of the Customs Act, 1962 is legal and proper or otherwise.

5.2 The adjudicating authority's finding of undervaluation is based on specific intelligence, detailed investigation, and comparison with NIDB data and e-commerce website prices. The SCN itself lists the declared values, and the investigation re-valued them significantly higher based on "workings of the NIDB, E-commerce websites". While the Appellant questioned the RUDs, the OIO explicitly states that the goods were "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."

5.3 The Hon'ble Supreme Court in Commissioner of Customs, Bangalore v. Toyota Kirloskar Motor Pvt. Ltd. [2007 (213) E.L.T. 4 (S.C.)] has held that if the transaction value is found to be not genuine, the Customs authorities are justified in rejecting it and resorting to other valuation methods. The reliance on NIDB data and other contemporaneous import data is a permissible method under the Customs Valuation Rules, 2007, particularly under Rule 9 (Residual Method) when other methods are not applicable due to evidence of fraud or mis-declaration. The Appellant's citations, such as Modern Manufacturers or KRYFS Power Components, typically involve situations where NIDB data was relied upon solely without other corroborative evidence or where there was no finding of wilful mis-declaration or suppression. In the present case, the undervaluation is coupled with strong findings of mis-declaration of branded goods as generic and IPR infringement, which provides strong grounds for doubting the transaction value and resorting to best judgment assessment. In view of the same, the re-determination of value by the adjudicating authority is justified.

5.4 The detailed tables in the impugned order comparing the declared description with the brands found during examination (Apple, Samsung, Vivo, etc.) clearly support the finding of mis-declaration. The investigation specifically revealed that goods found were bearing trademarks and logos of various brands,

which were not declared in the Bills of Entry. This constitutes a clear mis-declaration of description.

5.5 The finding of mis-declaration of description and undervaluation directly attracts Section 111(m) of the Customs Act, 1962, which makes goods liable for confiscation if their value or description has been mis-declared. More importantly, the goods were found to be counterfeit/fake and in violation of Intellectual Property Rights. The impugned order states that inspection reports from right holders (Apple, Boat, Realme, Samsung, Vivo) confirmed that the products were fake. The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, specifically provide for the suspension of clearance and eventual confiscation of goods infringing IPR. Rule 7 allows suspension if goods appear to be infringing, and Rule 11 states that if the Assistant or Deputy Commissioner of Customs is satisfied that the goods are infringing, they shall be liable to confiscation under Section 111(d) of the Customs Act. Section 111(d) makes goods liable to confiscation if imported contrary to any prohibition imposed under the Customs Act or any other law. Infringement of IPR is a form of prohibition.

5.6 Therefore, the confiscation under Section 111(d) and 111(m) is fully justified. Further it is observed that goods of different brands were found to be concealed during the examination. Hence Section 111(i) read with Section 119, which deals with confiscation of goods used for concealing smuggled goods is rightly invoked by the adjudicating authority given the nature of the mis-declaration and intent to evade duty. It is also observed that goods of different brands were not as per the entry made by the appellant and accordingly the provisions of Section 111(l) are also attracted and justified in the facts and circumstance of the case.

5.7 The imposition of penalties is a direct consequence of the goods being liable for confiscation and the proven mis-declaration and IPR infringement.

- Section 112(a)(i): This section provides for a penalty on any person who does or omits to do any act that would render goods liable to confiscation. Since the goods were found to be mis-declared, undervalued, and IPR infringing (rendering them liable to confiscation under Section 111), the Appellant, by their actions, has clearly attracted this penalty. The penalty

under Section 112 is not dependent on mens rea in all cases, but even if it were, the extensive findings of mis-declaration and IPR infringement indicate a deliberate act.

- Section 114AA: This section imposes a penalty for false declaration or documents. It applies when 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." The findings of mis-declaration of description (generic for branded goods) and undervaluation of goods, as evidenced by the investigation and re-valuation, clearly point to false and incorrect declarations.

5.8 The Appellant's claim of no mens rea is rebutted by the nature of the allegations and findings. The systemic undervaluation and mis-declaration of branded goods as generic, along with the finding of being a "dummy or fake" entity, strongly suggest a deliberate attempt to evade duties and infringe IPR.

5.9 The Appellant has contended that the SCN was defective as the "intelligence has not been placed on record" and that copies of letters to right holders and their reports were not made RUDs. While it is crucial to provide RUDs to the noticee for effective defense, the impugned order's detailed discussion shows that the adjudicating authority did consider the Appellant's defense submissions regarding these points. The order also records that the Appellant's representative failed to avail opportunities for personal hearing.

5.10 The SCN provides details of the Bills of Entry, goods description, reasons for putting on hold, examination findings, IPR issues, undervaluation, and sections contravened. This constitutes a sufficiently detailed SCN to apprise the Appellant of the charges against them. The findings in the impugned order are based on investigations that included statements from various persons and inspection reports, which forms the basis for the conclusions drawn. The Appellant's argument that "no representation was received from Oppo India and One Plus" does not invalidate the findings for other major brands that did confirm infringement. Therefore, the arguments regarding a defective SCN or violation of natural justice are not sustainable in this case, particularly given the opportunity for submission and hearing offered.



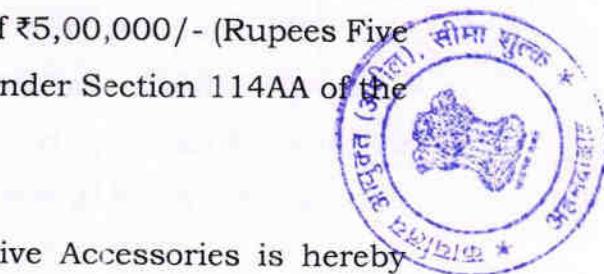
6. In view of the detailed discussions and findings above, I find no infirmity in the impugned order passed by the adjudicating authority. The findings of mis-declaration, undervaluation, and IPR infringement are well-supported by the facts on record and are in consonance with the relevant provisions of the Customs Act, 1962, and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, as well as established legal precedents. The Appellant's grounds of appeal are found to be without merit.

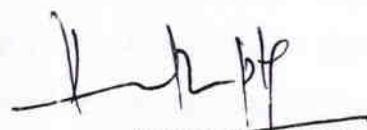
7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- (i) I hereby uphold the re-determination of the assessable value of the imported goods at ₹ 7,28,83,859/-.
- (ii) I hereby uphold the absolute confiscation of the imported goods under Section 111(d), 111(i), 111(l), 111(m), and 119 of the Customs Act, 1962, read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
- (iii) I hereby uphold the imposition of penalty of ₹10,00,000/- (Rupees Ten Lakh Only) on M/s. Creative Accessories under Section 112(a)(i) of the Customs Act, 1962.
- (iv) I hereby uphold the imposition of penalty of ₹5,00,000/- (Rupees Five Lakh Only) on M/s. Creative Accessories under Section 114AA of the Customs Act, 1962.

8. Consequently, the appeal filed by M/s. Creative Accessories is hereby rejected.

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



  
 (AMIT GUPTA)  
 Commissioner (Appeals),  
 Customs, Ahmedabad

F. No. S/49-112/CUS/MUN/2023-24  
 2353

Date: 10.07.2025

By Registered post A.D/E-Mail

To,  
M/s. Creative Accessories,  
2nd floor, plot KH No. 311MN,  
Main road, Bijsawan, Opp. PNB Bank, ATM,  
South West Delhi-110061.



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.